SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 62

BC700197 April 17, 2019
CHARLIE KESSLER VS MATT DUFFER ET AL 8:14 AM

Judge: Honorable Michael L. Stern
Judicial Assistant: M. Alaniz
Courtroom Assistant: P. Figueroa

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The matter is not called for hearing.

The Court, having taken the matter under submission on 04/12/2019, now rules as follows:

The motion raises four main issues to be determined by the Court. First, defendants contend that New York law should be applied because its law concerning implied contracts requires that an idea must be "novel," which is not an element of implied contract law in California. Plaintiff argues that the "novel" concept is not a required element in New York and thus the laws of the two states do not conflict. In Blaustein v. Burton, 9 Cal.App. 3rd 161, 184 (1970), the Court found that "Even though the agreement has been reached in New York, the plaintiff's claim could not be dismissed on summary judgment because New York did not require the idea to be 'novel' to be the subject of contract protection and therefore the laws of California and New York did not materially differ for a breach of implied contract claim." Thus, a "novel" element is not required under New York law. As applied to the present situation, there is no conflict. California law is applicable and it is not necessary for the Court to determine issues of state interest.

Second, defendants rely heavily on Faris v. Enberg, 97 Cal.App.3rd 309 (1979) for the proposition that no implied in fact contract was formed. However, defendants' analysis of Faris is not complete. Faris provides that to prove an implied in fact contract, one must show that he or she prepared the work, disclosed it to the offeree for sale; and that, under all circumstances attending disclosure that the offeree voluntarily accepted the disclosure knowing the conditions on which it was tendered (i.e., the offeree must have the opportunity to reject the attempted disclosure if the conditions were unacceptable; and there was reasonable value of the work. 97 Cal.App.3rd at 318-319. In Faris, the trial court held that there was not triable issue of fact on the cause of action for implied in fact contract as there were undisputed facts that plaintiff voluntarily submitted his idea for the sole purpose of enabling the defendant to make a

determination of his willingness to enter into a future business relationship with the plaintiff. Importantly, there was no evidence that the plaintiff expected or indicated an expectation of receiving compensation for the service of revealing the format to the defendant. As stated by the court, "Plaintiff never intended to submit the property for sale and did not tell Enberg that he was submitting it for sale. There is no reason to think that Enberg, or anyone else with whom Enberg spoke, would have believed that Faris's submission was an offer to sell something, which if used would oblige the user to pay." 97 Cal.App.3rd at 319. The present situation presents far different facts than those detailed in Enberg. The circumstances under which plaintiff claims to have submitted his ideas to the defendants are not analogous. The plaintiff's claimed expectations also differ significantly. He contemplated commercial exploitation and profitability. For these reasons, defendants' reliance on Faris to show that there was no implied in fact contact is misplaced. Triable issues of fact remain to be determined concerning what plaintiff said, what he meant to convey by his conversation and how the defendants responded before it can be definitively concluded whether or not an implied in fact contract was formed.

Third, defendants submit that their creation was independent and occurred prior to plaintiff's alleged disclosure of his idea to them. They each submit declarations relying upon and substantiating the credibility of each other's testimony. However, there is little independent verifying evidence of the originality of their idea. See, Teich v. General Mills, 170 Cal.App.2nd 791, 799 (1959) (in order to establish a complete defense regarding an independent creation, a defendant must offer clear, positive and uncontradicted evidence to negate triable issues of fact). Defendants have not done so here. Without such admissible evidence, we are left with an issue of determining credibility that must be decided by the trier of fact. Moreover, whether or not there is a similarity between the concepts to be discerned by comparing them is a subissue of independent creation that must be decided by the trier of fact. See Weitzenkorn v. Lesser, 40 Cal.2nd 778, 791 (1953). Once again, the credibility of the parties is an issue of material fact to be decided by the trier of fact.

Lastly, for the reasons discussed above, the argument regarding whether the ideas are "novel" need not be addressed at this time as this is an element, but not a required one, under New York law.

Finally, plaintiff's objections to the defendants' material facts 1 through 29 are overruled and sustained regarding 30.

For the reasons stated herein, The Motion for Summary Judgment filed by Matt Duffer, Ross Duffer on 01/30/2019 is Denied.

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Clerk is to give notice.

Certificate of Mailing is attached.