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Broward County Commission

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IN THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CIVIL DIVISION 08

CASE NO: CACE19-002954

CHRISTOPHE JEAN,

JUDGE: DAVID A. HAIMES

Plaintiff,

v.

LEONARD FRANCOIS, MARI OSAKA and NAOMI OSAKA,

Defendants.
_____/

FINAL ORDER OF DISMISSAL AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS MATTER is before the Court upon Defendants, Leonard Francois, Mari Osaka, and Naomi Osaka's, Motion to Dismiss the Amended Complaint. On July 29, 2019, the Court held a hearing on said motion where it heard arguments from the Plaintiff and Defendants. The Court has carefully reviewed the merit of said motion and the court file herein, and for the reasons that follow the Court GRANTS the motion to dismiss.

I. Background

This action arises out of the alleged breach of a March 21, 2012 contract for tennis instruction that Plaintiff, Christophe Jean ("Plaintiff"), provided to Defendants, Leonard Francois, Mari Osaka, and Naomi Osaka (collectively "Defendants"). The Amended Complaint alleges that in 2011, Plaintiff began coaching Mari Osaka and Naomi Osaka, the minor daughters of Leonard Francois. Plaintiff alleges Defendants could no longer compensate him for his tennis instruction and equipment he provided to the daughters, or for Plaintiff's travel to the daughters' tennis

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tournaments. As a result, Plaintiff alleges that on or about March 21, 2012, Plaintiffs and Defendants entered into the March 21, 2012. The daughters were 14 and 15 years old at that time.

The alleged contract, attached to the Amended Complaint as Exhibit A, was made "between Christophe Jean and Leonard Francois on behalf of Mari Osaka; Naomi Osaka (Tennis Players)." Pursuant to the terms of the alleged contract, "[b]oth parties agree on a fixed fee of twenty percent (20%) on every tennis contract or monetary agreement on behalf of Marie (sic) Osaka and Naomi Osaka." The contract, however, does not specify what, if any, services Plaintiff agreed to provide Defendants. The contract set forth "the term of employment shall be indefinite. Either party may terminate this agreement by giving three months written notice to the other party." The Amended Complaint alleges Plaintiff performed under this contract for over five years, and that he has not received any compensation for performing under the contract, and that he has not received any income from Defendants' tennis careers, including Women's Tennis Association prize money and endorsement deals.

On February 7, 2019, Plaintiff filed the present action. On March 6, 2019, Plaintiff filed the subject Amended Complaint asserting three separate claims: (1) breach of contract, (2) quantum meruit, and (3) unjust enrichment. On April 8, 2019, Defendants filed the present Motion to Dismiss the Amended Complaint.

II. Discussion

Pursuant to Rule 1.140(b)(6) of the Florida Rules of Civil Procedure, a claim is subject to dismissal if it fails to state a cause of action. "The test for a motion to dismiss under rule 1.140(b)(6) is whether the pleader could prove any set of facts whatever in support of the claim." Rocks v. McLaughlin Engineering Co., 49 So.3d 823, 826 (Fla. 4th DCA 2010). "To rule on a motion to dismiss, a court's gaze is limited to the four corners of the complaint, including the attachments

incorporated in it, and all well pleaded allegations are taken as true." Swerdlin v. Fla. Municipal Ins. Trust, 162 So.3d 96 (Fla. 4th DCA 2014) (quoting U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc., 861 So.2d 74, 76 (Fla. 4th DCA 2003)). A review of Plaintiff's Amended Complaint reveals that the Complaint fails to state a cause of action under any of the Plaintiff's three asserted claims.

Turning first to the claim for breach of contract, before Plaintiff can succeed on such claim, there must be an enforceable contract. Bus. Specialists, Inc. v. Land & Sea Petroleum, Inc., 25 So.3d 693, 695 (Fla. 4th DCA 2010). In the present case, the subject contract is not enforceable.

First, it is well settled that "contracts with a minors are voidable and the minor has a legal right to disavow a contract because of minority. Orange Motors of Miami, Inc. v. Miami Nat. Bank, 227 So. 2d 717, 718 (Fla. 3d DCA 1969). Here, Mari and Naomi Osaka were 14 and 15 years old at the time of the alleged contract, and they have disavowed the contract.

If Plaintiff had wanted to validate the contract, Plaintiff was required to submit the contract to a court for approval under Section 743.08(3), Florida Statutes (known as the Child Performer and Athlete Protection Act). The Act states that artistic, creative, or professional sports contracts of minors must be submitted to the court and approved, and once approved the minor may not disaffirm based on minority. § 743.08(3), Fla. Stat. Moreover, the Act specifically limits the terms of such contracts to three years. § 743.08(4)(e), Fla. Stat. Here, the term of the subject contract is "indefinite" and Plaintiff admittedly never submitted the contract to a court for approval.

Plaintiff cites to Global Travel Mktg., Inc. v. Shea, 908 So.2d 392 (Fla. 2005) and Herig v. Akerman, Senteriff &Edison, P.A., 741 So.2d 591 (Fla. 1st DCA 1999) in support of his argument that the contract was enforceable despite the daughters being minors and the lack of court approval.

However, Both Shea and Herig are clearly distinguishable and Herig is ultimately contrary to Plaintiff's position.

In Shea, the Florida Supreme Court upheld the enforceability of an arbitration clause signed by a parent on behalf of her child. The Court based its ruling on public policy in favor of arbitration and on a parent's right to make decisions on behalf of a child regarding educational issues. Here, the contract involved a service agreement and future earnings for an indefinite period, which the Court notes is both distinguishable from Shea and is contrary to public policy regarding minors.

Herig involved a legal malpractice action and addressed the prevailing case law regarding minor contracts at the time the attorneys were representing a client who was contracting with a minor. The parties in that case entered into their contract prior to the enactment of the Child Performer and Athlete Protection Act. Most importantly, the minor eventually voided the contract at issue, which then led to the subsequent legal malpractice action. Therefore, Herig does not support Plaintiff's position. Because no court ever approved the subject contract, and Naomi Osaka and Mari Osaka, who were minors, disavowed said contract, the Court holds that the subject contract is not valid or enforceable.

Alternatively, the contract on its face fails to specify the required elements for a valid contract.

> Under the law of Florida, there are several "basic requirements" of a valid contract: "offer, acceptance, consideration[,] and sufficient specification of essential terms." *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004). Consideration, Florida courts have held, is "the primary element moving the execution of a contract," *Frissell v. Nichols*, 94 Fla. 403, 114 So. 431, 434 (Fla. 1927), and "absolutely necessary to the forming of a good contract," *Jones v. McCallum*, 21 Fla. 392, 392 (Fla. 1885). Put simply, absent consideration there is no contract—never was. Rather, "[t]he law aptly terms an agreement to do an act or to pay money or other thing where there is no consideration for it a *nudum pactum*—a naked agreement—a promise without legal support, which the law will not enforce, no matter whether verbal or written, or however earnestly and solemnly made." *Jones*, 21 Fla. at 395.

Pier 1 Cruise Experts v. Revelex Corp., 929 F.3d 1334, 1347 (11th Cir. 2019). At a minimum, a review of the subject contract reveals that it fails to set forth any consideration on behalf of Plaintiff. The contract is silent as to what, if any, obligation Plaintiff had under the contract. Moreover, the essential terms of Defendants' obligations are also ambiguous and not sufficiently specific. Accordingly, the Amended Complaint fails to state a claim for breach of contract.

Turning to the equitable claims of quantum meruit and unjust enrichment against the daughters, the claims likewise fail for the same reason that the daughters were minors. See Mossler Acceptance Co. v. Perlman, 47 So.2d 296 (Fla. 1950). Courts have routinely held that one cannot bring a claim for unjust enrichment against a minor. See Magwood v. Tate, 835 So.2d 1241 (Fla. 4th DCA 2003 (rejecting unjust enrichment claim against a child and citing cases holding that "[t]he issue in this case is whether the law will find unjust enrichment to creaye a contract implied in law that visits the sins of the parents upon their child. We hold that no contract in law arises.").

Finally, any claim separately brought against the Defendant, Francois, fails because he was solely acting in his capacity as an agent for the daughter. An agent signing in a representative capacity generally does not bind the signing party individually. See, e.g., Sussman v. First Fin. Title Co. of Fla., 763 So.3d 1066, 1068 (Fla. 4th DCA 2001). Florida law imposes no personal liability on one signing in a representative capacity except in the rare exception where there is an express agreement to the contrary. See Valdis, Inc. v. PDVSA Servs., Inc., 424 F.Appx. 862, 874 (11th Cir. 2011).

III. Conclusion

Accordingly, after due consideration, it is

ORDERED and ADJUDGED as follows:

1. Defendants' Motion to Dismiss the Amended Complaint is hereby **GRANTED**; and
2. The above-referenced case is hereby **DISMISSED**.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida, this 13 day of September 2019.

HONORABLE DAVID A. HAIMES
CIRCUIT COURT JUDGE

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