

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:    HON. VERNA L. SAUNDERS, JSC                 **PART                 IAS MOTION 36****

*Justice*

-----X         **INDEX NO.                 656575/2020**

CLARE MARIE STILE,

Plaintiff,

**MOTION SEQ. NO.         001**

- v -

C-AIR CUSTOMHOUSE BROKERS-FORWARDS, INC.,  
C-AIR INTERNATIONAL, INC.,  
MILTON HEID and AUGUSTUS ANTICO,  
  Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

**DISMISSAL**

In November 2020, plaintiff Clare Stile,<sup>1</sup> the widow of Salvatore Joseph Stile a/k/a Salvatore J. Stile ("Stile"), commenced this action by summons and complaint against defendants, alleging that, at the time of her husband's death, he was a one-third (1/3) co-shareholder of defendants C-Air Customhouse Brokers-Forwards, Inc. ("C-Air NY") and C-Air International, Inc. ("C-Air LA") (collectively "the companies"), along with defendants Milton Heid ("Heid") and Augustus Antico ("Antico"), and that the estate succeeded to his rights to the same. (NYSCEF Doc. No. 1, *summons and complaint*).

As relevant background, Heid and Antico commenced an action against Stile in 2008 wherein they sought a judgment declaring that Stile was not involved in the companies and thus, not entitled to further payments and seeking damages for breach of contract, premised on allegations that he solicited and competed for customers of the companies, solicited employees of the companies and misappropriated the companies' confidential information, and breached his fiduciary duties to the companies. Heid and Antico also claimed that Stile breached his fiduciary duty of loyalty to them. (NYSCEF Doc. 1, *summons and complaint*, in *Milton Heid et al. v Salvatore J. Stile et al.*, Sup Ct, NY County, Index No. 603252/2008). The 2008 action, however, was resolved by a so-ordered stipulation dated May 21, 2010. In conjunction with said agreement, Stile also executed a release, dated May 19, 2010. (NYSCEF Doc. No. 2, *stipulation of settlement and release*).

The settlement agreement provided, in relevant part, that Stile would receive income and distribution payments per year until his death. (NYSCEF Doc. No. 2 ¶ 2-4). It further stated, "Stile agrees that he forever forbear from commencing, prosecuting, and/or participating in, directly or indirectly, any action or proceeding against Heid, Antico, [the companies] concerning

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<sup>1</sup> The complaint states that plaintiff commenced this action as personal representative for the estate of Salvatore Joseph Stile a/k/a Salvatore J. Stile ("Stile") and plaintiff cross-moves to amend the caption.

the issues of petty cash, credit card charges, loan to [the companies], and any other matter related to the operation and/or business of [the company] (other than the issue of any sums due and owing to Stile for loans made or to be made by Stile to [the companies]).” (NYSCEF Doc. No. 2 ¶ 7). In the settlement agreement, “Stile specifically acknowledge[d] and agree[d] that except for payments and benefits provided for in paragraph 2, 3, 4, 5, 11, 14 and 15 herein the repayment of the loans from C-Air LA and payments due upon the sale of C-Air NY and/or C-Air LA, Stile shall not be entitled to any other payments, profits and has no interest in the operations of C-Air NY and C-Air LA.” (NYSCEF Doc. No. 2 ¶ 7).

Stile died on April 16, 2020. (NYSCEF Doc. No. 15, *order admitting will to probate & appointing personal representative*). On September 25, 2020, plaintiff demanded the right to inspection and copying of the accounting books and records of the companies. (NYSCEF Doc. No. 3, *demand for inspection and copying*). In response, defendants stated, “[p]lease be advised that Mr. Stile is no longer a shareholder of either company. He released all of his rights in both C-Air LA and C-Air New York in the court endorsed settlement stipulation dated May 21, 2010 in return for receiving lifetime payments which he received for approximately 10 years until his death.” They further indicated, “[y]ou will note that the stipulation quite clearly provides for the termination of all rights upon the death of Mr. Stile. Even if that were not the case, we refer you to paragraph 10(b)(x) of the agreement in which Mr. Stile specifically waived the right to inspect books and records. As a consequence, we reject your request for an inspection of books and record or to claim any other rights as a shareholder of either C-Air NY or C-Air LA.” (NYSCEF Doc. No. 4, *response to demands*).

In her complaint, plaintiff asserts several causes of action, to wit: shareholder distribution (first cause of action); minority shareholder oppression (second cause of action); common law dissolution against C-Air NY (third cause of action); dissolution pursuant to Business Corporation Law § 1104-a, against C-Air NY (fourth cause of action); fair value of shares, against C-Air NY (fifth cause of action); appointment of receiver pursuant to Business Corporation Law § 1113 (sixth cause of action); conversion (seventh cause of action); unjust enrichment (eighth cause of action); accounting (ninth cause of action); declaratory relief pursuant to CPLR 3001 as to the parties’ rights and liabilities (tenth cause of action); breach of fiduciary duty against the individual defendants (eleventh and twelfth causes of action); constructive trust (thirteenth cause of action); breach of contract (fourteenth cause of action); “money had and received” (fifteenth cause of action).

Defendants now move, pre-answer, pursuant to CPLR 3211(a)(1); (a)(5) and (a)(7), for dismissal of the complaint, with prejudice. (NYSCEF Doc. No. 6, *notice of motion*). Plaintiff opposes the motion and cross-moves, pursuant to CPLR 3025, to amend the caption to reflect that plaintiff is proceeding as personal representative of Stile’s estate. (NYSCEF Doc. No. 12, *notice of cross motion*). Defendants do not oppose the amendment to the caption. (NYSCEF Doc. No. 20 at 12, *memorandum in reply*).

In support of their motion, defendants argue, *inter alia*, that Stile forfeited any rights he could have in his stock pursuant to the settlement agreement in exchange for payments which he received for over a decade. They further contend that under the settlement agreement, the purported transferee of Stile’s stock was required to agree, in writing, to be bound by the

settlement agreement and that, since plaintiff has failed to provide such written agreement, there has been no transfer of Stile's stock. According to defendants, plaintiff has breached the settlement agreement by (1) sending a demand letter to inspect the companies' books and records; (2) filing the instant action; (3) seeking the dissolution and liquidation of the companies; (4) seeking to acquire the assets of the companies; and (5) doing all of the foregoing in a publicly filed complaint. Additionally, defendants maintain that the release binds Stile's "successors and assigns" to the terms of the settlement agreement and releases any claims they might have against defendants. Since the settlement agreement provides that "Stile shall not be entitled to any other payments, profits and has no interest in the operations of [the companies]" (NYSCEF Doc. 2 ¶ 7), defendants insist that, upon Stile's passing, any holder of his stock has no rights to any further payments from either of the companies, has no claim to their profits, and no interests in their operation. Defendants also argue that this action is barred by *res judicata*. (NYSCEF Doc. No. 7, *memorandum of law in support of defendants' motion*).

In opposition to the motion for dismissal, plaintiff contends, *inter alia*, that the settlement agreement and release do not resolve the issue before the court insofar as it does not, (i) grant defendants full releases; and (ii) does not forfeit, waive, or surrender plaintiff's shareholder interest in the companies. The settlement agreement, argues plaintiff, did not purport to negate Stile's shares at his death or rights to payments attaching to such shares upon his death. Plaintiff further claims that "the documents are ambiguous, self-contradictory, and incapable of supporting [d]efendants' [m]otion." Additionally, plaintiff asserts that the settlement agreement does not purport to bind Stile's heirs and that defendants seek a forfeiture contrary to the terms of the agreement. (NYSCEF Doc. No. 13, *memorandum of law in opposition*).

In reply, defendants maintain that plaintiff fails to completely dispute that she is bound by the settlement agreement. (NYSCEF Doc. No. 20, *memorandum in reply*).

In determining a motion to dismiss pursuant to CPLR 3211, "the pleading is to be afforded a liberal construction. [The court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citations omitted].) CPLR 3211 provides, in pertinent part, that "[a] party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that . . . a defense is founded upon documentary evidence." (CPLR 3211[a][1]). However, a dismissal under CPLR 3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. (see *Leon v Martinez*, 84 NY2d 83, 88-89 [1994].) Furthermore, a pleading may be dismissed, pursuant to CPLR 3211(a)(7) if plaintiff fails to identify a claim cognizable at law or where the plaintiff has identified a cognizable cause of action but has nevertheless failed to plead a material allegation necessary to establish it. (see CPLR 3211[a][7]; *Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014].)

As an initial matter, having reviewed the cross-motion to amend the caption to reflect plaintiff moving as representative of Stile's estate, the relief is granted, without opposition.

Now turning to defendants' motion to dismiss, although the settlement agreement explicitly provides that Stile forfeited, in exchange for lifetime payments, certain rights, i.e., participating in the operation of the companies; commencing any action against defendants concerning the issues of petty cash, credit card charges, loans and/or other matters regarding the operation and/or business of the companies; and making requests or demands for inspection of the records of the companies, it fails to conclusively establish that all of Stile's rights in the companies were extinguished at the time of his death. While it does appear that the settlement agreement, sought to enjoin Stile from conduct believed to be potentially detrimental to defendants, it is unclear from said instruments whether it would apply after his death and, thus, to his estate. (see generally *Meiri v McNichols*, 151 AD3d 490, 491 [1st Dept 2017].)

Defendants' request for dismissal of this action based upon plaintiff's alleged failure to establish a valid "transfer" by agreeing in writing, pursuant to section 10(d) of the agreement, to be bound by the terms of the settlement, is rejected. That provision contemplates events where Stile "sells, pledges, encumbers, transfers, or otherwise disposes of, or agrees to sell, pledge, encumber or otherwise dispose of, any interest in his shares of stock of [the companies]" and further directs that "no transfer shall be authorized unless and until the buyer, transferee, assignee or pledgee (hereinafter "Buyer") shall agree in writing to be bound by [certain] terms and conditions of [the agreement]." The provision concerns conduct contemplated during Stile's lifetime and the extent to which it was meant to apply to the estate is not expressly denoted.

The settlement agreement did include a provision on death benefits. It provided that the parties would meet and confer, within six (6) months, to discuss what, if any, death benefits shall be provided to shareholders of the companies. The settlement further provided that, if a resolution was not resolved within six (6) months from the execution of the settlement stipulation, "[t]he parties shall thereafter have no death benefits." (NYSCEF Doc. No. 2 ¶ 15). Defendants assert that no resolution on this issue was reached between the parties. Notwithstanding, this provision does not, as defendants assert, establish "that the holder of Stile's stock would be due nothing from the [c]ompanies following his passing." Based on the foregoing, this court finds that defendants fail to conclusively establish that the settlement agreement intended for Stile's rights to be terminated upon death. (*Boster-Burton v Burton*, 92 AD3d 909, 910 [2d Dept 2012] ["(t)he resolution of an ambiguous provision, for which extrinsic evidence may be used, is for the trier of fact."]; see *State v Home Indem. Co.*, 66 NY2d 669, 671 [1985].)

The release is also not documentary proof barring the allegations asserted in this action insofar as it applies to claims "from the beginning of the world to the day of the date of th[e] [release]." Therefore, it fails to preclude potential claims arising after its execution. (see *Berlin v Jakobson*, 137 AD3d 659, 660 [1st Dept 2016], citing *Lexington Ins. Co. v Combustion Eng'g, Inc.*, 264 AD2d 319, 321-322 [1st Dept 1999].)

Since defendants' motion is premised on plaintiff's rights to the companies, which is not resolved by neither the settlement agreement nor the release, plaintiff's causes of action are not ripe for dismissal. All remaining arguments have been considered and are either without merit or need not be addressed. Accordingly, it is hereby

**ORDERED** that defendants' motion seeking dismissal of the complaint is denied; and it is further

**ORDERED** that defendants shall interpose an answer within twenty (20) days after this decision and order is uploaded to NYSCEF; and it is further

**ORDERED** that plaintiff's cross-motion is granted and the caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

CLARE MARIE STILE, as personal representative  
of the estate of SALVATORE JOSEPH STILE  
AKA SALVATORE J. STILE,

Plaintiff,

Index No. 656575/2020

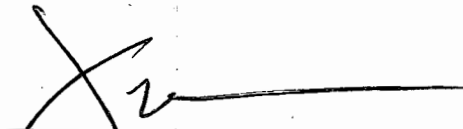
-against-

C-AIR CUSTOMHOUSE BROKERS-FORWARDS, INC.,  
C-AIR INTERNATIONAL, INC.,  
MILTON HEID AND AUGUSTUS ANTICO,  
Defendants.

and it is further

**ORDERED** that, within twenty (20) days of entry of this order, counsel for plaintiff is directed to serve a copy of the same, with notice of entry, upon defendants, as well as, the Clerk of the Court and upon the Clerk of the General Clerk's office in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)), who are directed to amend their records to reflect the change in the caption herein.

September 13, 2021

  
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HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: