UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CCR INTERNATIONAL, INC., CCR DEVELOPMENT GROUP, INC., JOSÉ FUERTES, and BANCO COOPERATIVO DE PUERTO RICO, Plaintiffs and Counterclaim Defendants, -v- ELIAS GROUP, LLC, Defendant and Counterclaim Plaintiff.	15 Civ. 6563 (PAE) 16 Civ. 6280 (PAE) 17 Civ. 6697 (PAE) OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This case arises from a series of transactions concerning a Puerto Rican soda brand, Coco Rico. Before 2008, Coco Rico was owned by CCR International, Inc. ("CCR") and José Fuertes ("Fuertes"), whose family had long operated the company. In 2008, CCR sold the Coco Rico assets to CCR Development Group, Inc. ("CCRDG"), which promised to pay for those assets over time. But when CCRDG defaulted on its payments, CCR turned to the owner of Elias Group, LLC ("Elias"), who had long distributed Coco Rico soda, for help. In 2013, CCR assigned the debt owed to it by CCRDG to Elias. In exchange, Elias paid CCR some cash and agreed to make efforts to buy the Coco Rico assets from CCRDG. In 2015, Elias did so.

The pending summary judgment motions concern whether Elias has met its contractual obligations to CCR, CCRDG, and Fuertes (the "CCR Parties"). Elias contends that it has. The CCR Parties argue that Elias owes CCR another $8.5 million and Fuertes an annual salary of $180,000. Both sides seek summary judgment on the claims relating to Elias's obligations to CCR. Only Elias seeks summary judgment as to Fuertes's claims against it.

For the following reasons, the Court grants Elias's motion in full and denies the CCR Parties' motion in full.

I. Background

A. Factual Background[1]

1. Parties

CCR is a Puerto Rico corporation operated by its two sole shareholders, José Fuertes ("Fuertes") and his brother Roberto Fuertes ("Roberto Fuertes"). Dkt. 201 ("CAC") ¶ 1; JSF ¶ 1; Dkt. 242-3 ("Fuertes Tr.") at 118. Until 2008, CCR owned the Coco Rico soda brand and all its assets (the "Coco Rico assets"). JSF ¶ 2. CCR's main business was manufacturing and selling the concentrate used to make Coco Rico soda. Fuertes Tr. at 118.

CCRDG is also a Puerto Rico corporation. CAC ¶ 2. Its sole shareholder is Francisco Jose Rivera Fernandez ("Rivera"). JSF ¶ 6. In 2008, it bought all right, title, and interest in the Coco Rico assets, including all trademark rights. *Id.* ¶ 11.

Until 2015, Fuertes maintained homes in both New York and Puerto Rico. *Id.* ¶ 5. As of August 8, 2016, he moved from New York to Florida, while maintaining a separate residence in Puerto Rico. *Id.* ¶¶ 4–5.

Elias is a Delaware limited liability company ("LLC") with a principal place of business in New York. CAC ¶ 5; Dkt. 189 at 1. Richard Hahn, a citizen of California, is Elias's sole member. CAC ¶ 5; Dkt. 189 at 1.

[1] The Court draws its account of the facts from the parties' respective submissions on their motions for summary judgment, including the parties' joint statement of undisputed facts, Dkt. 242-1 ("JSF"); the exhibits attached to Elias's motion for summary judgment, *see* Dkts. 242-1–28; and the exhibits attached to the CCR Parties' memorandum of law in support of their motion for summary judgment and opposition to Elias's motion, Dkts. 248-2–12. Unless otherwise noted, docket references relate to Case No. 15 Civ. 6563.

Banco Cooperativo de Puerto Rico ("BanCoop") is a Puerto Rico corporation with its principal place of business in Puerto Rico. CAC ¶ 4; Dkt. 189 at 1.[2]

2. General Background

CCR is a family business, which had been owned and operated by Fuertes's father before he and his brother took over. *See* Fuertes Tr. at 86, 226. Since at least 1999, the Fuertes family had entertained and negotiated offers to sell the company. *Id.* at 24–25. One of those negotiations included a nearly completed sale to a company called B. Fernandez, which had offered about $6 million. *Id.* at 135. Another involved a potential sale to Coca Cola's Puerto Rican franchisee. *Id.* at 133–34. Last, Harold Honickman, the father-in-law of Elias's sole member, Richard Hahn, had at one point offered Fuertes $5 million. *Id.* at 134–36, 214; *see also id.* at 51, 144–45 (Honickman and Hahn had "always been interested in the brand"). The Fuertes family, however, did not accept any of these offers and, instead, remained the owners of the CCR brand and assets until 2008. *Id.* at 135–36.

3. Relevant Agreements

The parties' claims revolve around several agreements relating to ownership over, management of, and work related to the Coco Rico assets. The Court reviews the terms of each in turn.

a. 2008 Asset Purchase Agreement Between CCR and CCRDG

On March 31, 2008, CCR sold "100% of the CCR INTERNATIONAL, INC assets, including but not limited to, those assets used to manufacture the Coco Rico Beverage and the Coco Rico Trademark along with the registered Product Base Formula," to CCRDG. 2008 APA at 2; JSF ¶ 11. To effect that deal, CCR and CCRDG, which had recently been formed for the

[2] After joining this action, BanCoop settled its claims with the other parties and was terminated from the cases. *See* 17 Civ. 6697, Dkt. 120.

purpose of buying those assets, entered into an asset purchase agreement. *See* 2008 APA; Dkt. 242-6 ("Rivera Tr.") at 13. Rivera is CCRDG's sole owner and operator. *See* Rivera Tr. at 13. Rivera and Fuertes also run a consulting and investment firm together and have engaged in various business transactions together. *See id.* at 173–74; Fuertes Tr. at 16–18.

Under the 2008 APA, CCRDG agreed to pay "approximately, but not more than" $12.8 million, including a $100,000 up-front "cash deposit"; $11.2 million payable in six years' worth of $50,000 monthly "apportionments," with the balance due at the end of the sixth year; and $1.5 million to be placed in an escrow account at the time of closing. *Id.* § 2. CCRDG appears to have restructured most of its obligations under the 2008 APA by issuing a $9 million note to CCR, although the terms of that note do not appear to have been produced or explored in this litigation. *See* Fuertes Tr. at 39 ("Q. So CCRDG, let me say it different and tell me if I am right. CCRDG purchased the Coco Rico assets as they are defined in the agreements from CCR for 12.8 million dollars? A. Yes. Q. And as part of that purchase CCR took a note from CCRDG in the amount of $9,000,000? A. Yes."); Rivera Tr. at 20–21. As discussed more fully below, CCRDG defaulted on most of its payment obligations under the 2008 APA and the $9 million note, leaving the bulk of the latter unpaid after several years. As a result, CCR began looking for other ways to resolve that uncollectable debt.

b. 2009 Independent Contractor Agreement

On August 26, 2009, CCRDG and Fuertes executed an agreement in which CCRDG retained Fuertes to "dedicate his entire working time, attention and energies to the business of" CCRDG. JSF ¶ 17; Dkt. 242-14 ("2009 ICA") § 1. In exchange, CCRDG agreed to pay Fuertes $18,000 per month and up to 10% of the company's profits, as well as a percentage of the selling price should CCRDG ever sell the Coco Rico trademarks to a third party. *Id.* § 3.

c. 2013 Assignment Agreement Between CCR and Elias

After CCRDG and CCR executed the 2008 APA, CCRDG defaulted on its payments thereunder. *See* JSF ¶ 19; Fuertes Tr. at 205 (CCRDG paid about $3.6 million total); Rivera Tr. at 67 (CCRDG only paid between $3 and $4 million under the 2008 APA); Dkt. 242-9 ("First Hahn Tr.") at 138–39.[3] In response, CCR "explored many alternatives," including suing CCRDG directly. Fuertes Tr. at 51, 86. Ultimately, because of CCR's own lack of cash, CCR instead "went for help" to Richard Hahn. *Id.* at 86; *see id.* at 51 ("We didn't have any cash."). Hahn is the owner and president of Good-O Beverages ("Good-O"), a longtime and major distributor of Coco Rico soda for CCR (and then CCRDG). First Hahn Tr. at 14, 30; Rivera Tr. at 88. He is also the son-in-law of Harold Honickman, who had once offered to buy CCR for roughly $5 million. Fuertes Tr. at 134–36, 214.

On January 30, 2013, CCR assigned to Elias—of which Hahn is the sole member—all of CCR's rights to receive payment from CCRDG under the 2008 APA. *See* JSF ¶¶ 23–24; Dkt. 242-15 ("Assignment Agreement"). CCR's obligations to Elias under the Assignment Agreement are straightforward. CCR agreed to assign to Elias "[a]ll rights of [CCR] to receive payments under the [2008 APA], including, without limitation, the Escrow Amount," as well as all of CCR's rights "to receive stock in CCRDG" and "any . . . other rights arising by reason of, or in connection with," the 2008 APA. Assignment Agreement § 1.01(a)–(d). In other words, Elias obtained from CCR the right to receive any payments then owed by CCRDG to CCR under the 2008 APA, which the Assignment Agreement represented to be "at least $9,000,000." *See id.* at 1.

[3] CCRDG had also pledged the Coco Rico assets as collateral for a separate bank loan, on which it had defaulted. *See* First Hahn Tr. at 138–39. "So the bank was in the position where it could foreclose on those assets." *Id.*

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