SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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RICHARD BURTON,

Plaintiff,

Index No. 506967/2021

v.

DECISION & ORDER
Hon. Larry D. Martin

HAYDEN ADAMS,

Defendant.

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Plaintiff RICHARD BURTON commenced this action against Defendant HAYDEN ADAMS, founder and chief executive officer of Universal Navigation, Inc. ("Universal") seeking $100 million in damages for breach of contract or restitution for unjust enrichment sounding in *quantum meruit* in connection with Plaintiff's role in developing "Uniswap," a multi-billion-dollar software used to trade cryptocurrency and digital assets on possibly the largest crypto-asset exchange in the world. Defendant moved to dismiss the complaint pursuant to CPLR § 3211. By December 17, 2021 interim decision (the "Interim Decision"),[1] this Court found that Plaintiff failed to set forth a *prima facie* breach of contract cause of action, but had set forth three of the four requisite elements of a *prima facie* cause of action for unjust enrichment and/or quantum meruit. The *Interim Decision* granted the parties leave to brief the Court on the proper measure of calculating the value of services in unjust enrichment and/or *quantum meruit* cases involving cryptocurrency startups, particularly where, as here, no misconduct, malfeasance or statutory violation is alleged, *i.e.*, whether there is a clear and accepted market-place convention for valuing such services beyond reasonable hourly rate. Now, the case is decided as follows.

[1] 2021 NY Slip Op 32745

Background

A. Cryptocurrency

Each unit of cryptocurrency, "virtual or digital money," is either called a "coin" or a "token." The terms coins (or "convertible coins") and "tokens" are often used interchangeably, however, while coins - the most notable of which is Bitcoin - have a stated or discernible monetary value,[2] by contrast, tokens are better thought of as "digital assets" that "fluctuate in value as any commodity would." *Sec. & Exch. Commn. v Telegram Grp Inc.*, 448 F Supp 3d 352, 358 (SDNY 2020). As a practical matter, both coins and tokens are cryptocurrency that "may be used to pay for goods or services[ ] or held for investment."[3]

Cryptocurrencies operate via a record-keeping technology called "blockchain," which conspicuously (*i.e.*, viewable by anyone) and permanently stores every transaction. The blockchain mechanism allows for the use of crypto-assets as secure stores of value and media of exchange that do not rely on a centralized government or singular control. Cryptocurrency transactions may occur directly between parties via "decentralized cryptocurrency exchanges" (DEX), which allow users to trade one cryptocurrency for another, or for traditional currencies such as U.S. dollars.[4]

Bitcoin, the first and most popular cryptocurency, is an example of a crypto-asset that serves primarily as a medium of exchange. Ether," another popular crypto-asset, "operates on Ethereum, which is a different blockchain from Bitcoin, and has some additional features, but otherwise functions similarly.

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[2] § 9:14. Cryptocurrencies/Coins and SAFT's, Limited Offering Exemptions Reg. D § 9:14.
[3] Internal Revenue Service, *Virtual Currency Guidance*, 2014-16 IRB 938, 2014 WL 1224474 (2014).
[4] Internal Revenue Service; *see also In re Bibox Group Holdings Limited Securities Litigation*, 534 F Supp3d 326 (SDNY 2021).

B. Factual Background

As the Court is bound to accept the facts alleged by the non-moving party as true, for purposes of the CPLR § 3211 dismissal motion (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 762, 16 NYS3d 222 citing *Leon v Martinez*, 84 NYS2d 83, 87, 614 NYS2d 972 [1994]), Plaintiff Burton is a software developer, designer and entrepreneur, and the founder of "Balance," an Ethereum blockchain wallet startup. Defendant Adams is founder and CEO of "Uniswap," a DEX software that "improves the functionality" of trading on the Ethereum blockchain's platform. While Uniswap is currently the largest DEX on Ethereum, when the parties met in 2018, Uniswap was "little more than an idea." Burton loaned Adams money and office space within Balance's offices to support Adams in creating Uniswap, including "technical and design advice," and $25,000 for software development, rent, and other costs.

As consideration for Burton's assistance, the parties orally agreed that Burton would be given the option to be an early investor in Uniswap, and, but for that oral agreement, Burton would not have provided the support that Adams relied upon.

At some point, Adams offered Burton a deal "term sheet," however, while Burton confirmed his continued interest in investing, he indicated he would now only do so after Adams had found a "lead investor to set the terms and price the deal." Burton thereafter financed Adams's flight to San Francisco to "pitch Uniswap to Paradigm," a well-known blockchain-focused venture capital firm. Paradigm went on to seed $1 million into Adams's then-still-unincorporated enterprise, now Universal, which, at the time of briefing, was valued at $10 million. Since then, Uniswap has seen a major increase in trading, processing over $110 billion in volume, and "increasing to the tune of more than $1 billion daily."

Analysis

A. Contract Claim

As noted in the *Interim Decision*, the basic requirements for contract formation are (1) at least two parties with legal capacity to contract, (2) mutual assent to the terms of the contract, and (3) consideration (Restatement [Second] of Contracts §§ 9, 12, 23). The basic elements of a breach of contract cause of action are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage (*Riccio v Genworth Fin.*, 184 AD3d 590, 124 NYS3d 370 [2d Dept 2020]).

In analyzing the first step, the parties' legal capacity to contract, this Court accepted the Burton's statement that the parties reached an "oral agreement," bearing in mind that assent to such an agreement may take the form of written or spoken words (express contract) or conduct manifesting agreement (contract implied-in-fact) (*Miller v Schloss*, 218 NY 400, 113 NE 337 [1916]). Thus, an oral agreement can be enforceable as long as the terms are clear and definite and the conduct of the parties evinces mutual assent "sufficiently definite to assure that the parties are truly in agreement with respect to all material terms" (*Matter of Express Indus. & Term. Corp. v New York State Dept. of Transp.*, 93 NY2d 584, 589 [1999]). A contract also may be implied where inferences can be drawn from the facts and circumstances of the case and the intention of the parties as indicated by their conduct. However, not *all* terms of a contract need be fixed with absolute certainty. Thus, the doctrine of indefiniteness should not be used to "defeat the reasonable expectations of the parties in entering into the contract" (*Cobble Hill Nursing Home v Henry & Warren Corp.*, 74 NY2d 475, 483 [1989], *cert denied* 498 US 816 [1990]). Where "there may exist an objective method for supplying the missing terms needed to calculate the alleged compensation owed plaintiff," an oral agreement is not, as a matter of law, unenforceable for indefiniteness (*see,*

e.g., Basu v Alphabet Mgt. LLC, 127 AD3d 450, 450 [1st Dept 2015]; *Abrams Realty Corp. v Elo*, 279 AD2d 261 [1st Dept 2001], *lv denied* 96 N.Y.2d 715 [2001]).

The *Interim Decision* noted, however, that when, as here, acceptance is expressly qualified with conditions, it is generally treated as either a rejection and counteroffer or an agreement to agree (*Roer v Cross Cnty. Med. Ctr. Corp.*, 83 AD2d 861, 441 NYS2d 844 [2d Dept 1981]; *410 BPR Corp. v Chmelecki Asset Mgmt., Inc.*, 51 AD3d 715, 859 NYS2d 209 [2d Dept 2008]; *Carmon v Soleh Boneh Ltd.*, 206 AD2d 450, 450, 614 NYS2d 555, 556 [2d Dept 1994]). Thus, this Court concluded that, even if the parties initially reached what could have been an enforceable oral contract, Burton rejected that agreement by declining the proposed term sheet unless and until Adams found a lead investor to set the term. The question then became whether a second enforceable express oral contract was formed thereafter, *i.e.*,, or whether the parties' course of conduct manifested a new implied-in-fact contract when Adams accepted Burton's financed flight to San Francisco to "pitch Uniswap to Paradigm."

This Court now finds that even if such conduct suggested a potential new implied-in-fact agreement, that new agreement would again be too indefinite to give rise to an enforceable contract. There has been no suggestion that Plaintiff will be able, after discovery, to show proof of key material terms, and it would again anticipate future approval, preparation and execution of documents. In brief, Plaintiff has provided no hint of a prospective basis or standard for deciding whether the agreement had been kept or broken, or to fashion a remedy. (*Kolchins v Evolution Mkts., Inc.*, 31 NY3d 100, 73 NYS3d 519 [2018]; *Foros Advisor LLC v Digital Globe, Inc.*, 333 F Supp3d 354, 360 [SDNY 2018]; *V. Groppa Pools, Inc. v Massello*, 106 AD3d 722, 712 [2d Dept 2013]; *Schuckman Realty v Marine Midland Bank*, 244 .D2d 400, 401 [2d Dept 1997)]).

B. Statute of Frauds and the Doffman Exception

Adams further argued that contract formation was prohibited by New York's "Statute of Frauds," codified in General Obligations Law Sections 5-701 and 5-703, which provides, with many exceptions, that certain agreements, promises, or undertakings are void unless in writing. Section 5-701(a) applies the Statute of Frauds to "a contract to pay compensation for services rendered in negotiating a . . . business opportunity, business, . . . or an interest therein ..." Burton argues, however, that he also "spent countless hours in front of a whiteboard" providing Adams with "technical and design advice" when "the Uniswap protocol and project were still in proof of concept form."

In *Dorfman v Refkin,* 144 AD 3d 10, 16, 19 (1st Dept 2016) ("Dorfman"), the First Department noted that the services therein, where not merely "developing materials to secure investor backing, recruiting engineers," but further "develop[ed] the details of how [the company's] software . . . would be 'architected,'" and accordingly found that they consisted of more than just assisting in the negotiation or consummation of the business opportunity. Thus, the First Department ruled that the oral agreement therein was not void pursuant to Section 5-701(a)(10).

Here, however, even if the *Dorfman* exception applied, and the agreement was not void *per se* pursuant to New York's "Statute of Frauds, it would still suffer from the same uncertainty and rejection-of-offer issues that precluded it from being deemed an enforceable contract.

C. Unjust Enrichment, Quantum Meruit, and Reasonable Value of Services

Under New York law, *quantum meruit* and unjust enrichment are not separate causes of action and are therefore analyzed under the same principles (*Assoc. Mortg. Bankers, Inc. v Calcon Mut. Mortg. LLC,* 159 F Supp 3d 324, 337 [EDNY 2016]. As noted in the *Interim Decision*, in order to set forth a claim in *quantum meruit*, a plaintiff must establish (1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation, and (4) the reasonable value of the

services (*see, e.g., Miranco Contracting, Inc. v Perel*, 57 AD3d 956, 871 NYS2d 310 [2d Dept 2008]; *Geraldi v Melamid*, 212 AD2d 575, 622 NYS2d 742 [2d Dept 1995]; *Tesser v Allboro Equip. Co.*, 302 AD2d 589, 590, 756 NYS2d 253, 254 [2d Dept 2003]. An unjust enrichment claim is rooted in "the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another" (*Miller v Schloss*, 218 N.Y. 400, 407, 113 N.E. 337 [1916]) and a viable claim merely requires that the plaintiff allege "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182, 919 NYS2d 465. The *Interim Decision* noted that the pleadings herein were sufficient to establish the first three of those elements of an unjust enrichment claim, at least for purposes of defeating the instant dismissal motion, but granted the parties leave to brief the issue of calculating the "reasonable value of services" in connection with assisting a cryptocurrency startup, with respect to unjust enrichment and *quantum meruit* claims.[5]

Without a contract to govern the terms of payment for services, Adams argues that the measure of compensation is generally based on a reasonable hourly rate multiplied by the number of hours of services (*see, e.g., Carlino v Kaplan*, 139 F Supp2d 563, 566 [SDNY 2001]; *Wong v. Michael Kennedy, P.C.*, 853 F Supp 73, 81-82 [EDNY 1994]. There are, however, exceptions where, even absent a contract, industry conventions dictate that the value of services may be based upon the value of the product. The question presented was whether the facts and/or industry

[5] The Interim Decision rejected Defendant argument that Plaintiff could not plead quasi contract and breach of contract in the alternative, where as here there is a bona fide dispute as to the existence of a contract (*Polley v Plainshun Corp.*, 8 AD2d 638, 186 NYS2d 295 [2d Dept 1959]; *Krigsfeld v Feldman*, 115 AD3d 712, 982 NYS2d 487 [2d Dept 2014]; *AHA Sales, Inc. v Creative Bath Products, Inc.*, 58 AD3d 6, 867 NYS2d 169 [2d Dept 2008]).

conventions within the start-up field, or perhaps more specifically emerging cryptocurrency field, where vast fortunes may be made or lost, warrant such an exception.

At stake is the difference between the Complaint's allegations of Burton's 'provision of services' and funds totaling $25,000, versus his claim for $100 million in "restitution" under unjust enrichment or *quantum meruit* theories. There remains a question of fact whether the "reasonable value" of services should be limited to a calculation based upon hours and costs purportedly spent (*Collins Tuttle & Co. v. Leucadia, Inc.*, 153 AD2d 526, 526 [1st Dept 1989]; *Hindsight Sols., LLC v Citigroup Inc.*, 53 F Supp 3d 747, 776–77 [SDNY 2014]; *Caribbean Direct, Inc. v Dubset, LLC*, 100 A.D.3d 510, 511 [1st Dept 2012]), or whether in fact industry standards, and/or the parties discussions or conduct reflects some other reasonable value of services. The parties will proceed with discovery on this narrowed issue. Burton argues that $100 million is the reasonable value of his roughly $25,000 in cash and critical developmental support. The parties shall proceed with discovery on that issue of whether their industry and/or their communications or conduct support a finding consistent or inconsistent with that argument.

Dated: May 20, 2022

Hon. Larry D. Martin, J.S.C.

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT