IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KENNETH BROOKS,

Plaintiff,

v.

STEADFAST SERVICES, INC.,

Defendant.

CIVIL ACTION NO.
1:20-cv-1157-AT

ORDER

Plaintiff Kenneth Brooks brings this action against his former employer, Steadfast Services, Inc. ("Steadfast" or "Defendant"), which hired Mr. Brooks to operate a debris grinding machine in connection with cleanup efforts in Florida after Hurricane Michael hit in 2018. In his initial Complaint, Plaintiff asserted two claims — one for unpaid overtime under the Fair Labor Standards Act ("FLSA"), the other for breach of contract — against Steadfast, its owner, and a manager. The FLSA claim has since settled and the individual defendants have been voluntarily dismissed. All that remains is the breach of contract claim. Steadfast filed its Motion for Summary Judgment [Doc. 81] on the breach of contract claim on February 26, 2021. For the reasons that follow, Steadfast's Motion [Doc. 81] is **DENIED**.

I. Background[1]

In October 2018, Defendant Steadfast was hired by a logging and disaster relief company called Tri Rivers Enterprise, Inc. ("Tri Rivers") for subcontracting work to grind and clear debris from Hurricane Michael in Bay County, Florida. (*See* Subcontract Agreement Between Tri-Rivers and Steadfast, Doc. 86-13; *see also*, Deposition of Michael Trey Davis ("Davis Dep."), Doc. 86-5 p. 9:6-17).[2] In turn, Steadfast hired Plaintiff Brooks around the same time in October 2018, (Deposition of Kenneth Brooks ("Brooks Dep."), Doc. 86-4 p.21:3-8), and tasked him with running a grinder machine and maintaining the grinder and job site. (*Id.* p. 10:19-22.) Plaintiff went to Florida to begin work on October 21, 2018. (*Id.* p. 21:6-8.) For approximately a year, Plaintiff was assigned to work at a site called Camp Flowers in Bay County, Florida. (Davis Dep. pp. 44:19-22; 45:1-12.) Plaintiff also later operated the grinder at other sites called Tram Road, Majette Park, and Highway 231. (Brooks Dep. p. 26:20-25.) Plaintiff worked for Steadfast for approximately seventeen months. (*Id.* p. 8:19-20.)

Plaintiff was initially hired by Robert Day (*id.* p. 41:5-6), who is the Grinding Division Manager at Steadfast (Davis Dep. p. 29:9-11). Robert Day is also Plaintiff's brother-in-law. (Brooks Dep. p. 40:12). According to Plaintiff, Mr. Day first attempted to call him about this job opportunity, but when he (Plaintiff) did not

[1] This statement does not represent actual findings of fact. *In re Celotext Corp.*, 487 F.3d 1320, 1328 (11th Cir. 2007). Instead, the Court has provided the statement simply to place the Court's legal analysis in the context of this particular case or controversy.
[2] Tri Rivers had in turn been hired by Ashbrick, the "prime contractor." (Davis Dep. p. 9:6-9.)

answer his phone, Mr. Day called Dana Brooks — Mr. Day's sister and Plaintiff's wife — to discuss the offer. (Brooks Dep. p. 19:17-22.) Dana Brooks, playing telephone between her brother and husband, relayed the message to Plaintiff who, in turn, asked her to inform Mr. Day that he would not accept the job to go to Florida for less than $2,100 per week, after taxes. (*Id.* p. 19:22-24.) In response, Mr. Day explained (to Dana Brooks) that Steadfast would pay Plaintiff a bonus of a dollar per yard of debris that left the job site after being ground by Plaintiff. (*Id.* p. 19:24-25; 20:1-3.) Later the same day, Mr. Day called back and spoke with both Plaintiff and his wife and again offered the same bonus. (*Id.* p. 20:4-12.) After some negotiations, Plaintiff and Mr. Day agreed on a salary of $1,800 a week, after taxes. (*Id.* p. 20:13-21.) Plaintiff was paid this salary until he quit his employment in February of 2020. (*Id.* p. 53:9-13.)

The Parties dispute whether Mr. Day and Plaintiff in fact additionally agreed (*i.e.*, on top of the $1,800) to the bonus arrangement of one dollar per cubic yard of debris material leaving the job site. (See, Def. Statement of Material Facts ("SOMF"), Doc. 81-2 ¶¶ 7, 9; Pl. Resp. to Def. SOMF ¶¶ 7, 9). But they agree that there is no written contract evincing such an agreement. (*Id.* ¶¶ 14, 15). The Parties also dispute whether Mr. Day had the authority to determine compensation or offer bonuses to Steadfast employees. (*Id.* ¶ 8.) The Parties also disagree on whether Steadfast kept records of the amount of debris ground by Plaintiff and other employees. (*Id.* ¶ 11.)

As noted above, the FLSA claim in this action has settled and the individual defendants — Mr. Davis and Mr. Day — have been dismissed as defendants. (Docs. 29, 41, 56.) Steadfast filed its Motion for Summary Judgment on the remaining breach of contract claim in February of 2021. (Doc. 81). Plaintiff has filed his response (Doc. 86) and Steadfast replied (Doc. 89).

II. Legal Standard

The Court may grant summary judgment only if the record shows "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is material if resolving the factual issue might change the suit's outcome under the governing law. *Id.* The motion should be granted only if no rational fact finder could return a verdict in favor of the non-moving party. *Id.* at 249.

When ruling on the motion, the Court must view all the evidence in the record in the light most favorable to the non-moving party and resolve all factual disputes in the non-moving party's favor. *Reeves v. Sanderson Plumbing Prods, Inc.*, 530 U.S. 133, 150 (2000). The moving party need not positively disprove the opponent's case; rather, the moving party must establish the lack of evidentiary support for the non-moving party's position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets this initial burden, in order to survive

summary judgment, the non-moving party must then present competent evidence beyond the pleadings to show that there is a genuine issue for trial. *Id.* at 324-26. The essential question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

III. Discussion

Steadfast argues that Plaintiff's breach of contract claim is foreclosed as a matter of law (1) under Georgia's Statute of Frauds and (2) because Mr. Day did not have authority or apparent authority to offer the purported bonus at issue. (*See generally*, Doc. 81.) In so arguing, Steadfast relies exclusively on Georgia law.

Plaintiff contends that Steadfast's Motion fails for a number of reasons, namely because: (1) Steadfast's Motion improperly relies on Georgia law when Florida law governs this dispute; (2) Steadfast's Motion is based on two affirmative defenses that it failed to assert in its Answer; (3) under Florida or Georgia law, the Statute of Frauds does not apply; and (4) there are material fact questions as to whether Mr. Day had actual or apparent authority to bind Steadfast. (Pl. Resp. at 2-3.) In response to Plaintiff's brief, Steadfast submitted a five-page reply brief that only very briefly addresses Plaintiff's arguments that Florida law applies and that Steadfast cannot rely on defenses it did not plead in its Answer. (Doc. 89.)

A. Choice of Law

"When a federal court decides a state law claim, whether acting pursuant to diversity or supplemental jurisdiction, it applies the choice-of-law rules of the

jurisdiction in which it sits." *Benchmark Medical Holdings, Inc. v. Rehab Solutions, LLC*, 307 F.Supp.2d 1249, 1259-60 (M.D. Ala. 2004) (citing *U.S. Fid. & Guar. Co. v. Liberty Surplus Ins. Corp.*, 550 F.3d 1031, 1033 (11th Cir. 2008); *Glennon v. Dean Witter Reynolds, Inc.*, 83 F.3d 132, 136 (6th Cir. 1996)). Accordingly, the Court must apply the choice of law rules Georgia to determine which substantive law governs the action. Georgia "follows the traditional doctrine of *lex loci contractus*: contracts are 'governed as to their nature, validity and interpretation by the law of the place where they were made' *unless the contract is to be performed in a state other than that in which it was made*." *Boardman Petroleum, Inc. v. Federal Mut. Ins. Co.*, 135 F.3d 750, 752 (11th Cir. 1998) (quoting *Gen. Tel. Co. v. Trimm*, 311 S.E.2d 460, 461 (Ga. 1984)) (emphasis added); *see also, Farm Credit of Nw. Fla., ACA v. Easom Peanut Co.*, 718 S.E.2d 590, 600 (Ga. Ct. App. 2011) ("When a contract is made in one state and is to be performed in another state, the substantive law of the state where the contract is to be performed applies."); *Covergys Corp. v. Keener*, 582 S.E.2d 84, 86 n. 1 ("[W]here it appears from the contract itself that it is to be performed in a State other than that in which it was made, [] ... the laws of that sister State will be applied.") (citing *Trimm*, 311 S.E.2d at 461).

As noted above, the Parties here dispute the existence of a contract, (Def. SOMF ¶¶ 7, 9; Pl. Resp. to Def. SOMF ¶¶ 7, 9), although they agree that, if there is a contract, it is an oral contract (*id.* ¶¶ 14, 15). Plaintiff does not explicitly indicate where he contends the contract was made but asserts that he negotiated and

finalized his contract with Steadfast from his home in Alabama. (Pl. Resp. at 7) (citing Brooks Dep. p. 6:21-25; 19:13-20:21.) Defendant does not articulate a clear position on where the oral contract was made, though it emphasizes that Plaintiff signed his written employment contract at Steadfast's office in Alpharetta, Georgia. (Reply, Doc. 89 at 2.)

Regardless, the Court finds that the evidence plainly establishes that, if a contract was formed under which Plaintiff was to be paid one dollar per cubic meter of debris ground, it was to be performed in Florida. It is undisputed that Tri Rivers contracted with Steadfast to provide hurricane debris disposal in Bay County, Florida subsequent to Hurricane Michael's landfall on October 10, 2018. (Subcontract Agreement, Doc. 86-13.) Plaintiff's first and primary job site, and the location that he worked from around October 28, 2018 and for approximately a year thereafter, was a debris site in Bay County, Florida called "Camp Flowers." (Davis Dep. p. 45:1-12.) Defendant does not dispute that Plaintiff was hired specifically to go to Florida to work on Hurricane Michael cleanup.

Because any agreement that Plaintiff was to be paid a bonus of one dollar per cubic meter of debris ground at his job site clearly contemplated performance in the state of Florida, Florida law applies. *Trimm*, 311 S.E.2d at 461 (citing *Tillman v. Gibson*, 161 S.E. 630, 632 (Ga. 1931)) (explaining that where contract is to be performed in state other than in which it was made, the laws of the sister state shall apply). *See e.g., Jones v. Ditech Fin. LLC*, No. 1:17-cv-1200-ELR-LTW, 2018 WL 5258631, at *6 (N.D. Ga. Aug. 16, 2018) (finding that record did not reveal where

parties were located at time of alleged promises but "it is clear that the anticipated performance would occur in Minnesota" and therefore Minnesota law applied), *report and recommendation adopted*, 2018 WL 5262047 (N.D. Ga. Sept. 5, 2018); *In re Rose Marine, Inc.*, 1992 WL 12004266, at *2 (Bankr. S.D. Ga. June 24, 1992) (finding that alleged oral agreements called for contract work to be performed in Virginia and therefore Virginia law governed breach of contract claims).

As Plaintiff points out, this should be no surprise to Defendant. Indeed, Steadfast previously acknowledged that Florida state law applies to this dispute. In Plaintiff's Complaint, Plaintiff put Defendant on notice of his position that Florida law applies, first alleging that "Plaintiff also seeks recovery of unpaid bonuses or commissions pursuant to contract law as per the laws of the State of Florida." (Compl., Doc. 1 ¶ 1.) Plaintiff also alleged that "Plaintiff performed work at all times in Florida, such that Defendants are subject to the wage laws of the State of Florida." (*Id.* ¶ 55.) Defendant admitted this allegation. (Answer, Doc. 13 ¶ 55.)

The Court also notes that Steadfast provides no substantive response in its reply brief to Plaintiff's position that Florida law controls this contract dispute. Defendant devotes a single page of its reply brief to argue that "Brooks Has Failed to Show Georgia Law is Inapplicable in this Suit." (Reply at 5.) But this argument only outlines the standard for a choice of law analysis under Georgia law. (*Id.*)[3] Defendant also has not requested from the Court any alternative relief to

[3] The Court also notes that Steadfast's reply brief does not respond to Plaintiff's substantive arguments in connection with the statute of frauds or Mr. Day's authority to bind the company.

ameliorate the failure of its principal brief to cite to applicable legal authority or to justify withdrawal of its admission in its Answer that Florida law applied.

As Steadfast has failed to cite to any controlling authority supporting a grant of summary judgment under the specific circumstances presented in this case, it has failed to carry its burden to show that it is entitled to judgment as a matter of law. *See Bacardi U.S.A., Inc. v. Major Brands, Inc.*, 2014 WL 2200042, at *8-9 (S.D. Fla. Mar. 20, 2014) (denying summary judgment where defendant failed to cite to any applicable authority under Florida law in support of its position that plaintiff's termination rights under contract were illegal, unenforceable, or void); *Gaylor v. Arbor Place, II, LLC*, 2013 WL 5429742, at *3 (N.D. Ga. Sept. 30, 2013) (denying motion to dismiss where defendant relied on Georgia law, where Tennessee law governed the dispute).

The Court furthermore finds that a review of the record establishes a slew of disputed facts that would otherwise preclude summary judgment. As noted above, the Parties have presented conflicting evidence, specifically regarding the content and nature of the conversation whereby Mr. Day allegedly offered Plaintiff the bonus at issue as well as in connection with Mr. Day's authority or apparent authority to bind Defendant Steadfast. (See Def. SOMF ¶¶ 7, 8, 9, 11; Pl. Resp. to Def. SOMF ¶¶ 7, 8, 9, 11.)[4]

[4] For example, Steadfast relies on Mr. Day's testimony that he never offered Mr. Brooks a bonus of a dollar per cubic yard of mulch ground. (Deposition of Robert Day ("Day Dep."), Doc. 86-6 p. 37:17-22.) But Plaintiff relies on his own testimony that Day did offer him this bonus (Brooks Dep. p. 19:13-20:21); his wife's testimony that Mr. Day asked her to relay to Plaintiff the bonus offer

IV. Conclusion

As Steadfast has failed to carry its burden, Defendant's Motion for Summary Judgment [Doc. 81] is **DENIED.** The Court **ORDERS** the Parties to engage in mediation to be conducted by a magistrate judge of this Court. The Clerk is **DIRECTED** to refer this action to the next available magistrate judge for the purpose of conducting the mediation. The mediation shall be concluded within forty-five (45) days of the date of this order unless otherwise extended by the Magistrate Judge. If the case is not settled at the mediation, the parties are **DIRECTED** to file a status report with the Court within ten (10) days of the conclusion of the mediation and file a proposed consolidated pretrial order within twenty (20) days of the conclusion of the mediation.

IT IS SO ORDERED this 6th day of July 2021.

Honorable Amy Totenberg
United States District Judge

(Declaration of Dana Brooks, Doc. 86-10 ¶ 3); and the declarations of other employees that Mr. Day offered them a similar production bonus of one dollar per cubic yard of mulch. (Declaration of Danny Rainwater, Doc. 86-8 ¶ 9; Declaration of Charles Kelly, Doc. 86-9 ¶ 4.)