

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D22301
G/kmg

_____AD3d_____

Argued - January 27, 2009

PETER B. SKELOS, J.P.
DAVID S. RITTER
ANITA R. FLORIO
HOWARD MILLER, JJ.

2007-09135
2007-09136

DECISION & ORDER

J. Sackaris & Sons, Inc., respondent,
v Onekey, LLC, appellant.

(Index No. 119/07)

Craig B. Johnson, Esq., LLC, Valley Stream, N.Y., for appellant.

Cary Scott Goldinger, Garden City, N.Y., for respondent.

In an action, inter alia, pursuant to Debtor and Creditor Law article 10 to set aside certain transfers as fraudulent, the defendant appeals, as limited by its brief, (1) from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), entered June 20, 2007, as denied that branch of its motion which was pursuant to CPLR 3211(a)(3) to dismiss the complaint, and (2) from so much of an order of the same court entered September 7, 2007, as, in effect, upon reargument, adhered to the prior determination.

ORDERED that the appeal from the order entered June 20, 2007, is dismissed, as that order was superseded by the order entered September 7, 2007, made, in effect, upon reargument; and it is further,

ORDERED that the order entered September 7, 2007, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

March 10, 2009

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J. SACKARIS & SONS, INC. v ONEKEY, LLC.

Contrary to the defendant's contention, the Supreme Court did not err in denying that branch of its motion which was pursuant to CPLR 3211(a)(3) to dismiss the complaint on the ground that the plaintiff, as a dissolved corporation, lacks the legal capacity to sue. Since the claim underlying this suit is an alleged breach of contract which occurred in 1998, prior to the plaintiff's dissolution, it was properly permitted to pursue that claim in the course of winding up its affairs (*see* Business Corporation Law § 1006[b]; *Tedesco v A.P. Green Indus., Inc.*, 8 NY3d 243).

The defendant's remaining contentions are without merit.

SKELOS, J.P., RITTER, FLORIO and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court