

LI City Ventures LLC v Ascent Dev. LLC

2024 NY Slip Op 31301(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 155577/2022

Judge: Alexander M. Tisch

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ALEXANDER M. TISCH

PART 18

Justice

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LI CITY VENTURES LLC D/B/A MODERN SPACES,

Plaintiff,

- v -

ASCENT DEVELOPMENT LLC, PEARSON JV, LLC,

Defendants.

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INDEX NO. 155577/2022

MOTION DATE 09/18/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for AMEND CAPTION/PLEADINGS

Plaintiff LI City Ventures LLC d/b/a Modern Spaces (“Modern Spaces”) is a real estate marketing and sales company. It entered into a contract (the Project Marketing Exclusive Sales Agency Agreement, hereinafter the “Agreement,” NYSCEF Doc. No. 14) with defendant Ascent Development LLC (“Ascent”), then-owner of the condominium building located at 45-30 Pearson Street, 45-26 Pearson Street, 45-24 Pearson Street, and 45-31 Davis Street (hereinafter the “Property”) to market and sell condominium apartments. Defendant Pearson JV, LLC (“Pearson”) purchased the Property from Ascent in August of 2020.

Plaintiff alleges that defendant Ascent and defendant Pearson, as successor and/or assignee of Ascent, failed to pay commissions to Modern Spaces and improperly terminated the Agreement without Cause. Plaintiff also asserts alternative claims for breach of contract and unjust enrichment/quantum meruit seeking \$3,350,148.75, together with costs and fees.

Plaintiff now moves for leave to amend the summons and complaint to include allegations and causes of action against Zhidong Wu (“Tom Wu”) and Jasper Wu (together

the “Wu Parties”) the agents of Pearson, in their personal capacities, pursuant to CPLR § 3025(b). Specifically, plaintiff seeks to 1) modify the alternative cause of action for unjust enrichment/quantum meruit against Ascent and Pearson to instead allege only unjust enrichment against Ascent, Pearson, and the Wu Parties, 2) add a cause of action for tortious interference with a contract against the Wu Parties, and 3) modify the cause of action for contractual attorneys’ fees against Ascent and Pearson to include the Wu Parties.

In moving to supplement the complaint, plaintiff alleges the Wu Parties are personally liable for unjust enrichment if they acted in their personal, rather than corporate, capacity. Alternatively, plaintiff alleges that if the Wu Parties were acting as officers of Pearson or any other corporate entity, then the corporate veil should be pierced because the Wu Parties exercised complete domination of the corporate form and used the corporate form to harm Modern Spaces.

“Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Y.A. v Conair Corp.*, 154 AD3d 611, 612 [1st Dept 2017]). “A party opposing leave to amend ‘must overcome a heavy presumption of validity in favor of [permitting amendment]’” (*O’Halloran v Metro. Transp. Auth.*, 154 AD3d 83, 86 [1st Dept 2017], quoting *McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]).

Defendant Pearson opposes this motion, claiming surprise and prejudice and arguing plaintiff’s motion should be denied under the doctrine of laches, as the emails provided by Modern Spaces as evidence for the motion are several years old and have been in possession of Modern Spaces since the filing of this action.

The Court finds the doctrine of laches is inapplicable here, as Pearson has not demonstrated the requisite showing of prejudice if the amendment is permitted. It is early in the litigation process and depositions have yet to be conducted. “Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (*Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 959 [1983] [internal citation and quotation marks omitted]). Pearson’s conclusory allegation that “the timeline of events reveals that Plaintiff’s proposed amendment is the product of bad faith, and only made to hurt Pearson financially and in its financial and business pursuits” is insufficient to demonstrate the necessary showing of prejudice (*see* NYSCEF Doc. No. 103, p. 4-5).

A claim for veil piercing is not a standalone claim as the “attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners” (*Morris v New York State Dept. of Tax’n & Fin.*, 82 NY2d 135, 141 [1993]). Because a decision to pierce the corporate veil in any given instance will depend on the attendant facts and equities, there are no definitive rules governing the varying circumstances when the power may be exercised (*see Morris v State*, 82 NY2d at 141). “Generally, . . . piercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*id.*). “Evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance” (*TNS Holdings v MKL Sec. Corp.*, 92 NY2d 335, 339 [1998]). New York law disfavors disregard

of the corporate form. New York courts also reject veil-piercing allegations that are “unaccompanied by allegations of consequent wrongs” (*Cobalt Partners, L.P. v GSC Capital Corp.*, 97 AD3d 35, 40 [1st Dept 2012]). Factors that have persuaded courts to find a dominated corporation “include the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity. No one factor is dispositive” (*Fantazia Int'l Corp. v CPL Furs New York, Inc.*, 67 AD3d 511, 512 [1st Dept 2009]).

Plaintiff alleges the Wu Parties have an ownership interest in Pearson, as do the principals of Ascent, and the Wu Parties continued to request that Modern Spaces perform and provide services pursuant to the Agreement after Pearson's acquisition of the Property (*see* NYSCEF Doc. No. 90, ¶¶ 7-8). Plaintiff also provides emails to show the Wu Parties attempted to renegotiate the terms of the Agreement with Modern Spaces to obtain more favorable terms for Pearson (*see* NYSCEF Doc. No. 93). Plaintiff alleges the Wu Parties' proposed new terms were “unfairly biased,” including “the demand that Modern Spaces pay up to \$10,000 to furnish each model unit,” and that “Mr. Wu wanted to, among other things, include his own furniture in marketing the Units[...].” (*see* NYSCEF Doc. No. 90 ¶¶ 12-14). Plaintiff further alleges Pearson engaged Nest Seekers International (“Nest Seekers”) to usurp Modern Spaces as the Property's exclusive marketing and sales agent after Pearson attempted to terminate the Agreement once renegotiation of the Agreement fell through (*see*

NYSCEF Doc. Nos. 90, ¶ 17 and 96, p. 3). Moreover, plaintiff alleges the Wu Parties knew they were causing Pearson to breach the Agreement because the Wu Parties negotiated Nest Seekers to pay the Wu Parties' attorney's fees in this action (*see* NYSCEF Doc. No. 96, p. 3).

At this early juncture, plaintiff sufficiently sets forth allegations that would tend to establish, if true, that the Wu Parties dominated and controlled Pearson and that such domination was used to improperly terminate the Agreement and deprive Modern Spaces of its alleged owed commission fees. Plaintiff further alleges the Wu Parties personally benefitted by negotiating for Nest Seekers to pay their attorney's fees in this action and has alleged other self-dealing. Plaintiff's allegations suggest a theory of veil-piercing that is not patently devoid of merit on its face. "To use domination and control to cause another entity to breach a contractual obligation for personal gain is certainly misuse of the corporate form to commit a wrong" (*Cobalt Partners, L.P. v GSC Cap. Corp.*, 97 AD3d 35, 41 [1st Dept 2012]).

Plaintiff also seeks to supplement the complaint with a cause of action for tortious interference with a contract against the Wu Parties. To prove a claim for tortious interference with contract, the plaintiff must show 1) the existence of a valid contract; 2) defendant's knowledge of the contract; 3) defendant's intentional procurement of the third-party's breach without justification; 4) actual breach of the contract; and 5) damages caused by breach of the contract (*see Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996]).

Plaintiff's amended complaint alleges the Agreement was a valid and enforceable contract between Modern Spaces and Ascent and/or Pearson (NYSCEF Doc. No. 88, ¶ 53), and that the Wu parties had knowledge that the Agreement was a valid and enforceable

contract between Modern Spaces and Ascent and/or Pearson (NYSCEF Doc. No. 88, ¶ 54). The Wu Parties were alleged to be aware of the Agreement because Modern Spaces CEO Eric Benaim's affidavit alleges that subsequent to Pearson's acquisition of the Property, the Wu Parties continued to request that Modern Spaces perform and provide services pursuant to the agreement (NYSCEF Doc. No. 90, ¶ 8). As to the final three elements, plaintiff's amended complaint and Modern Spaces CEO Eric Benaim's affidavit allege that the Wu Parties intentionally induced Ascent and/or Pearson to breach the Agreement, that the Wu Parties caused Pearson to engage Nest Seekers as the Property's exclusive sales and marketing agent, despite the existence of the Agreement, and that the Wu Parties' actions deprived Modern Spaces of the benefits of the Agreement (*see* NYSCEF Doc. No. 88, ¶ 56, 58, and 61 and NYSCEF Doc. No. 90, ¶ 15, 17, 18). The cause of action for tortious interference with contract against the Wu Parties is also not patently devoid of merit on its face.

Pearson claims prejudice as the "new filings against the Wu Parties personally and maliciously and improperly alleging the inappropriate use of a corporate entity's status for impermissible and deceptive purposes is damaging Pearson's business reputation and jeopardizing existing contractual agreements and financing opportunities" (NYSCEF Doc. No. 99). However, there is no indication that the discovery necessary to clarify the issue of ownership and whether the Wu Parties procured the breach of the Agreement would be onerous and too prejudicial to permit the amendment (*see Henry v Split Rock Rehab. & Health Care Ctr., LLC*, 205 AD3d 540, 540 [1st Dept 2022] ["Simply because defendants may be exposed to greater liability or may be required to spend more time in the preparation of their case does not constitute prejudice to defendants"]).

Accordingly, it is hereby ORDERED that the motion to amend is granted and plaintiff may amend the complaint to 1) modify the alternative cause of action for unjust enrichment/quantum meruit against Ascent and Pearson to instead allege only unjust enrichment against Ascent, Pearson, and the Wu Parties, 2) add a cause of action for tortious interference with a contract against the Wu Parties, and 3) modify the cause of action for contractual attorneys' fees against Ascent and Pearson to include the Wu Parties; and it is further

ORDERED that the supplemental summons and amended complaint, in the form annexed to the moving papers (NYSCEF Doc. Nos. 88-89), shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended verified complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that all defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the action shall bear the following caption:

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LI CITY VENTURES LLC d/b/a MODERN SPACES,

Plaintiff,

Index No. 155577/2022

- against -

ASCENT DEVELOPMENT, LLC, PEARSON JV, LLC,
ZHIDONG WU a/k/a TOM WU, and JASPER WU,

Defendants.

-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant to this Order; and it is further

ORDERED that service of this order upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (see section J).¹

This constitutes the decision and order of the Court.

4/11/2024

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

¹ The *Protocol* is accessible at the "E-Filing" page on the court's website:
<https://ww2.nycourts.gov/courts/ljd/supctmanh/index.shtml>.