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_____AD3d_____ Argued - December 12, 2025

ANGELA G. IANNACCI, J.P.
PAUL WOOTEN
DEBORAH A. DOWLING
JAMES P. MCCORMACK, JJ.

2024-11225 DECISION & ORDER

AB International Investments, LLC, respondent,
v GFE NY, LLC, doing business as Global Funding Experts, et al., defendants, White Road Capital, LLC, doing business as GFE Holdings, doing business as GFE, doing business as Global Funding Experts, et al., appellants.

(Index No. 711174/23)

Fowler White Burnett, P.A. (Juan C. Zorrilla, pro hac vice, and Allegaert Berger & Vogel LLP, New York, NY [Partha P. Chattoraj], of counsel), for appellants.

Jacobowitz Newman Tversky LLP, Cedarhurst, NY (Gabriel S. Rosenberg and Evan M. Newman of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract and for declaratory relief, the defendants White Road Capital, LLC, doing business as GFE Holdings, doing business as GFE, doing business as Global Funding Experts, East Hudson Capital, LLC, Boris Musheyev, and Viacheslav Eliyayev appeal from an order of the Supreme Court, Queens County (Laurentina S. McKetney Butler, J.), entered August 14, 2024. The order denied those defendants' motion pursuant to CPLR 3211(a) to dismiss the amended complaint insofar as asserted against them.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying those branches of the motion of the defendants White Road Capital, LLC, doing business as GFE Holdings, doing business as GFE, doing business as Global Funding Experts, East Hudson Capital, LLC, Boris Musheyev, and Viacheslav Eliyayev which were pursuant to CPLR 3211(a) to dismiss the second, third, and fifth causes of action insofar as asserted against them and so much of the fourth cause of action as sought to impose a constructive trust insofar as asserted against the defendant East Hudson Capital, LLC, and substituting therefor a provision granting those branches of the motion; as so modified, the order is affirmed, without costs or disbursements.

The plaintiff commenced this action, inter alia, to recover damages for breach of contract and for declaratory relief relating to an agreement that it entered into with GFE NY, LLC, doing business as Global Funding Experts (hereinafter GFE). The amended complaint alleged, among other things, that the defendant White Road Capital, LLC, doing business as GFE Holdings, doing business as GFE, doing business as Global Funding Experts (hereinafter White Road), was liable for certain alleged wrongful acts of GFE as an alter ego of GFE, including the diversion of funds due to the plaintiff under the agreement to the defendant East Hudson Capital, LLC (hereinafter East Hudson), an alleged affiliate of GFE and White Road, and that the defendants Boris Musheyev and Viacheslav Eliyayev participated in the wrongful acts alleged. The amended complaint asserted causes of action against GFE and White Road alleging breach of contract (first cause of action), for an accounting (fifth cause of action), and for declaratory relief (sixth cause of action), causes of action against GFE, White Road, Musheyev, and Eliyayev alleging breach of fiduciary duty (second cause of action) and conversion (third cause of action), and a cause of action against GFE, White Road, and East Hudson alleging unjust enrichment and to impose a constructive trust (fourth cause of action), among others.

Prior to filing an answer, White Road, East Hudson, Musheyev, and Eliyayev (hereinafter collectively the defendants) moved pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them. In an order entered August 14, 2024, the Supreme Court denied the defendants' motion. The defendants appeal.

The Supreme Court improperly denied the defendants' motion solely on the procedural grounds that the defendants failed to annex the amended complaint to their initial moving papers and made certain omissions in the caption contained in the defendants' notice of motion, which the parties did not raise or litigate (*see Ambroise v United Parcel Serv. of Am., Inc.*, 143 AD3d 929, 930). CPLR 2001 permits a court, at any stage of an action, to disregard a party's mistake, omission, defect, or irregularity if a substantial right of a party is not prejudiced (*see Sensible Choice Contr., LLC v Rodgers*, 164 AD3d 705, 706-707). Here, not only was the amended complaint electronically filed and available to the court and the parties, but the amended complaint was submitted by the plaintiff in opposition to the motion and by the defendants in reply, and the plaintiff did not assert that it was prejudiced by the defendants' omission (*see 225 ADC Realty Corp. v Popular Jewelry Corp.*, 222 AD3d 510, 510; *Sensible Choice Contr., LLC v Rodgers*, 164 AD3d at 706-707). Moreover, to the extent the variation between the caption appearing on the defendants' notice of motion and the amended complaint constituted a defect in form (*see* CPLR 2101[c], [f]; 2214[a]), the plaintiff did not assert that it was prejudiced by the variation (*see Ambroise v United Parcel Serv. of Am., Inc.*, 143 AD3d at 930). Under such circumstances, the court should have determined the defendants' motion on the merits. However, since the parties litigated the merits of the defendants' motion in the Supreme Court and fully briefed those issues on appeal, we will consider the merits of the motion in the interest of judicial economy rather than remitting the matter for the court to do so (*see Hall v Nassau County*, 248 AD3d 35; *Ambroise v United Parcel Serv. of Am., Inc.*, 143 AD3d at 931).

"In considering a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint, the court must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Blooming Home Realty, LLC v Infinity Holdings Northeast, LLC*, 228 AD3d 815, 816, quoting *Sokol v Leader*, 74 AD3d 1180, 1181; *see Leon v Martinez*, 84 NY2d 83, 87-88).

Contrary to the defendants' contention, they are not entitled to dismissal pursuant to CPLR 3211(a)(7) of so much of the amended complaint as sought to hold White Road liable for the alleged wrongful acts of GFE under an alter ego theory. "'To survive a motion to dismiss the complaint, a party seeking to pierce the corporate veil must allege facts that, if proved, establish that the party against whom the doctrine is asserted (1) exercised complete domination over the corporation with respect to the transaction at issue, and (2) through such domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the plaintiff such that a court in equity will intervene'" (*Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d 995, 997-998, quoting *Olivieri Constr. Corp. v WN Weaver St., LLC*, 144 AD3d 765, 766; *see Tabchouri v Hard Eight Rest. Co., LLC*, 219 AD3d 528, 532). Additionally, "'[t]he corporate veil will be pierced to achieve equity, even absent fraud, when a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego'" (*Board of Trustees, Sheet Metal Workers' Natl. Pension Fund v Allure Metal Works, Inc.*, 209 AD3d 712, 713, quoting *Olivieri Constr. Corp. v WN Weaver St., LLC*, 144 AD3d at 767; *see Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d at 998; *Tabchouri v Hard Eight Rest. Co., LLC*, 219 AD3d at 532). "[A] fact-laden claim to pierce the corporate veil is unsuited for resolution on a pre-answer, pre-discovery motion to dismiss" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47; *see Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d at 998). Here, the amended complaint adequately pleaded allegations that GFE had been so dominated by White Road such that White Road could be called GFE's alter ego, including allegations that GFE and White Road shared a common ownership, that both GFE and White Road conducted business under the name "Global Funding Experts" and that White Road held itself out as being one and the same as GFE, and that GFE and White Road commingled assets, including the monies due to the plaintiff under the subject agreement (*see Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d at 998; *Archival, Inc. v 177 Realty Corp.*, 220 AD3d 909, 911; *Board of Trustees, Sheet Metal Workers' Natl. Pension Fund v Allure Metal Works, Inc.*, 209 AD3d at 714).

Moreover, contrary to the defendants' contention, they are not entitled to dismissal pursuant to CPLR 3211(a)(7) of so much of the fourth cause of action as alleged unjust enrichment insofar as asserted against East Hudson. "'Unjust enrichment lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties'" (*Bedford-Carp Constr., Inc. v Brooklyn Union Gas Co.*, 219 AD3d 1293, 1295, quoting *Columbia Mem. Hosp. v Hinds*, 38 NY3d 253, 275). "The elements of a cause of action to recover for unjust enrichment are (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Berkovits v Berkovits*, 190 AD3d 911, 917 [internal quotation marks omitted]; *see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182). "'Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated'" (*Makransky v Makransky*, 242 AD3d 977, 980, quoting *Nasca v Greene*, 216 AD3d 648, 650). Here, the amended complaint adequately pleaded allegations that East Hudson was unjustly enriched at the plaintiff's expense (*see City of Long Beach v Agostisi*, 221 AD3d 776, 779).

However, the defendants are entitled to dismissal pursuant to CPLR 3211(a)(7) of so much of the fourth cause of action as sought to impose a constructive trust insofar as asserted against East Hudson. "'To obtain the remedy of a constructive trust, a party is generally required to establish four factors, or elements, by clear and convincing evidence: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment flowing from the breach of the promise'" (*Blank v Acker*, 241 AD3d 1517, 1520, quoting *Daniels v Ruggiero*, 230 AD3d 563, 565). Here, the amended complaint failed to plead allegations of a confidential or fiduciary relationship between the plaintiff and East Hudson (*see Berejka v Huntington Med. Group, P.C.*, 235 AD3d 821, 824; *Olden Group, LLC v 2890 Review Equity, LLC*, 209 AD3d 748, 753) or that the plaintiff made a transfer in reliance on a promise made by East Hudson (*see City of Long Beach v Agostisi*, 221 AD3d at 780; *Kalmon Dolgin Affiliates, Inc. v Tonacchio*, 110 AD3d 848, 851).

The defendants are also entitled to dismissal pursuant to CPLR 3211(a)(7) of the second, third, and fifth causes of action insofar as asserted against them on the ground that they were duplicative of the cause of action alleging breach of contract (*see Crawford v Integrated Asset Mgt. Servs., LLC*, 236 AD3d 750, 752; *Gordon v Vladislav Tsirkin CPA & Co., LLC*, 229 AD3d 450, 451; *Board of Mgrs. of Brightwater Towers Condominium v FirstService Residential N.Y., Inc.*, 193 AD3d 672, 674).

Accordingly, the Supreme Court should have granted those branches of the defendants' motion which were pursuant to CPLR 3211(a)(7) to dismiss the second, third, and fifth causes of action insofar as asserted them and so much of the fourth cause of action as sought to impose a construct trust insofar as asserted against East Hudson.

The parties' remaining contentions need not be reached in light of our determination.

IANNACCI, J.P., WOOTEN, DOWLING and MCCORMACK, JJ., concur.

ENTER:

Darrell M. Joseph
Clerk of the Court