

**Swansea v Gasser**

2007 NY Slip Op 30250(U)

March 19, 2007

Supreme Court, New York County

Docket Number: 0106913

Judge: Rosalyn H. Richter

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

PRESENT: ROSALYN RICHTER  
*Justice*

PART 24

Erna Swanson

INDEX NO.

106913/06

MOTION DATE

\_\_\_\_\_

MOTION SEQ. NO.

1

MOTION CAL. NO.

\_\_\_\_\_

- v -

Klemens Gasser

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

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MAR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

*See Annexed decision*

Dated: 3/19/07

Rosalyn Richter  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

HON. ROSALYN RICHTER

[\* 1]

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 24

-----X  
ENA SWANSEA,

Plaintiff,

-against-

DECISION & ORDER  
Index No. 106913/2006  
Motion Seq. 1

KLEMEMS GASSER, TANJA GRUNERT,  
KLEMENS GASSER & TANJA GRUNERT, INC.,  
524 WEST 19<sup>TH</sup> STREET CORP., and  
524 WEST 19<sup>TH</sup> STREET LLC,

Defendants.  
-----X

**RICHTER, J.:**

Plaintiff Ena Swansea, a professional artist, alleges that defendants owe her \$140,000 from sale proceeds of her paintings. She brought four causes of action against the defendants: breach of contract, unjust enrichment, conversion and fraudulent conveyance. Defendants subsequently filed a motion to dismiss and plaintiff cross moved for summary judgment. In addition to other relief, the decision issued by this Court on December 8, 2006, granted defendants' request to dismiss the fraud cause of action. Plaintiff's cross motion for summary judgment was denied.

The December 8th decision also converted to summary judgment a portion of defendants' motion that sought to dismiss all causes of action against Klemens Gasser and Tanja Grunert (hereinafter "movant defendants"). The defendants argued that only Klemens Gasser & Tanja Grunert, Inc. could be held liable since Mr. Gasser and Ms. Grunert were individual officers of the corporation. As required upon conversion of the motion, the Court gave notice so that

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NEW YORK  
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additional evidence from the parties on this limited issue could be submitted. None of the parties submitted additional evidence for the Court's consideration.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Medical Ctr.*, 64 N.Y.2d 851, 853 (1985). Defendant Gasser has met his burden, but defendant Grunert has not.

Mr. Gasser submits an affidavit in support of his motion in which he explains that he is an officer of Klemens Gasser & Tanja Grunert, Inc. He states, "The Gallery Corporation *alone* operates the art gallery and conducts business with its clients and artists. Neither I nor any of the other defendants do so in our individual capacities. Neither I nor any of the other defendants ever personally made any agreements or conducted any business as individuals with [the plaintiff] (emphasis in original)." Mr. Gasser has met his prima facie burden of showing that he cannot be held personally liable since he is an officer of the corporation. In response, plaintiff fails to submit proof from someone with personal knowledge that the corporate veil should be pierced or to show that Mr. Gasser agreed to be responsible for the corporate contract. Her only proof submitted is a conclusory allegation within her affidavit that an email sent by Ms. Grunert was meant to bind Mr. Gasser individually. Accordingly, plaintiff's causes of action against Mr. Gasser must be dismissed.

Ms. Grunert, on the other hand, does not submit an affidavit in support of her position that she cannot be held personally liable for these causes of action. In support of her motion, she submits only Mr. Gasser's affidavit. C.P.L.R. § 3212 explains that "a motion for summary judgment shall be supported by affidavit" by someone with personal knowledge. Mr. Gasser's

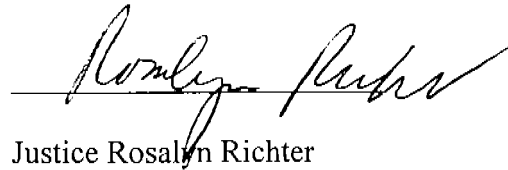
affidavit does not explain Ms. Grunert's role in the corporation or the basis of his knowledge that Ms. Grunert did not act within her individual capacity. Accordingly, Ms. Grunert did not meet her burden for summary judgment and the causes of action alleged against her are not dismissed.

ORDERED, that Klemens Gasser's motion for summary judgment is granted and all causes of action against him are dismissed; and it is further

ORDERED, that Tanja Grunert's motion for summary judgment is denied.

This shall constitute the decision of the Court.

March 19, 2007

  
Justice Rosalyn Richter

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