

**Laxmi Diamond PVT Ltd. v Doppelt & Greenwald
Diamonds**

2008 NY Slip Op 31180(U)

April 15, 2008

Supreme Court, New York County

Docket Number: 0601537/2007

Judge: Joan Madden

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

PRESENT: **HON. JOAN A. MADDEN**
J.S.C.

PART 11

Index Number : 601537/2007
LAXMI DIAMOND PVT LTD.
vs
DOPPELT & GREENWALD DIAMONDS
Sequence Number : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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 *is determined in accordance with the annexed decision and order.*

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

FILED
APR 23 2008

NEW YORK COUNTY CLERK'S OFFICE

Dated: April 15, 2008

J
HON. JOAN A. MADDEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X

LAXMI DIAMOND PVT LTD.,

Plaintiff,

INDEX NO. 601537/07

-against-

DOPPELT & GREENWALD DIAMONDS and
BRIAN GREENWALD,

Defendants.

-----X

JOAN A. MADDEN, J.:

In this action for damages for breach of contract and an account stated, plaintiff Laxmi Diamond Pvt Ltd (“Laxmi”) moves for an order pursuant to CPLR 3212 granting it summary judgment against defendants in the amount of \$70,090.50. Defendants oppose the motion, arguing that defendant Brian Greenwald is not personally liable, and that the underlying transaction was not done with the unincorporated business named in the caption, Doppelt & Greenwald Diamonds, but with a New York corporation, Doppelt & Greenwald Diamonds, LLC, which is not a party to this action.

Plaintiff’s Director, Nitin Gajera, submits an affidavit stating that plaintiff is in the business of selling diamonds, and that in or around November 2005, it provided diamonds to defendants and defendants accepted the diamonds without objection. The parties do not dispute that the order totaled \$145,310.00, plaintiff was paid \$75,291.50, and a balance is due and owing

in the amount of \$70,090.50.¹

Plaintiff is moving for summary judgment against the two defendants named in the complaint, the entity Doppelt & Greenwald Diamonds, and Brian Greenwald, personally. The only disputed issue is the person or entity liable for the balance. In support of the motion, plaintiff submits the affidavit of its Director, Nitin Gajera, who states that “Doppelt & Greenwald never disclosed to Laxmi that it was an LLC or corporation. At all times, Laxmi understood that it was [an] entity with no limited liability and that Brian Greenwald was liable along with Doppelt & Greenwald for the diamonds purchased from Laxmi.”

Defendant Brian Greenwald submits an affidavit in opposition stating that “the transaction was not done with Doppelt & Greenwald Diamonds, an unincorporated business, but with Doppelt & Greenwald Diamonds, LLC, a New York corporation.” Addressing Gajera’s statement as to Greenwald’s personal involvement in the transaction, Greenwald responds that “[w]hat is critical here is that there was never an indication that I would be personally responsible. . . . [T]here is no document either signed or unsigned by me that indicates that I would be personally responsible. . . . At no time did I personally guarantee payment for this transaction. I am the president of Doppelt & Greenwald Diamonds, LLC. All dealings that I may have had with the Plaintiff were in my capacity as an employee/officer of Doppelt & Greenwald Diamonds, LLC.”

It is well settled that when an agent acts on behalf of a disclosed principal, the agent will not be personally liable for breach of contract absent clear and explicit evidence of the agent’s

¹In his affidavit in opposition to plaintiff’s motion for summary judgment, defendant Brian Greenwald does not dispute that the transaction occurred and does not dispute the amount plaintiff claims is due and owing.

intent to be personally bound. See Savoy Record Co. v. Cardinal Export Corp., 15 NY2d 1, 4 (1964); Worthy v. New York City Housing Authority, 21 AD3d 284 (1st Dept 2005); News America Marketing, Inc. v. Lepage Bakeries Inc., 16 AD3d 146 (1st Dept 2005). However, where the agent enters into a contract for an undisclosed or partially disclosed principal, a third-party may proceed directly against the agent, the principal or both. See J.P. Endeavors v. Dushaj, 8 AD3d 440 (2nd Dept 2004); Kucker Kraus & Bruh, LLP v. Warwick, 289 AD2d 63 (1st Dept 2001); Unger v. Travel Arrangements, Inc., 25 AD2d 40 (1st Dept 1966). The law imposes no duty on plaintiff, as the third-party, to inquire or conduct an investigation to obtain actual knowledge whether the defendant with whom it was dealing was in fact an agent for a disclosed principal. See Rothschild Sunsystems, Inc. v. Pawlus, 129 AD2d 933 (3rd Dept), app den 70 NY2d 610 (1987); Tarolli Lumber Co. V. Andreassi, 59 AD2d 1101 (4th Dept 1977); Rafner v. Toplis & Harding, Inc.; 25 AD2d 826 (1st Dept 1966). Absent appropriate disclosure by the agent, the agent may be held personally liable on the contract. See Kucker Kraus & Bruh, LLP v. Warwick, *supra*.

Based on uncontroverted sworn statements from plaintiff's Director Gajera and supporting documents, plaintiff has established that it is entitled to judgment as a matter of law against defendant Greenwald, personally. Gajera specifically states that Doppelt & Greenwald never disclosed to Laxmi that it was an LLC or corporation and that it was Laxmi's understanding that Doppelt & Greenwald was an "entity with no limited liability," and that Brian Greenwald and Doppelt & Greenwald were both liable for the diamonds purchased from Laxmi. Cf Kaszirer Diamonds, Ltd. v. Zohar Creations, Ltd., 146 AD2d 492 (1st Dept 1989) (nowhere in

the papers did plaintiff actually deny knowledge of defendant's corporate existence, or assert that in dealing with the agent, it did not know that it was also dealing with his principal, the corporation). Gajera's affidavit is supported not only by Laxmi's invoice which lists the name of the "buyer" as "M/S. Doppelt and Greenwald Diamonds," but also by the defendant entity's stationery, which has a letterhead printed with the name "Doppelt and Greenwald Diamonds."

Greenwald's carefully crafted affidavit does controvert plaintiff's proof. While defendants assert that this was a "corporate transaction" and that Greenwald never provided a personal guaranty, they submit no competent evident regarding the material fact at issue, as to whether Greenwald disclosed that he was an agent for a disclosed principle. In his affidavit, Greenwald simply states that his dealings with plaintiff were in his "capacity as an employee/officer of Doppelt & Greenwald Diamonds, LCC." Noticeably absent from Greenwald's affidavit is statement that during the course of his dealings with plaintiff, he affirmatively informed plaintiff that he was acting in such capacity, as an agent for a disclosed principal. Rather, the documentary evidence suggests just the contrary, as Greenwald's March 1, 2007 letter to "vendors" acknowledging an "outstanding debt" is typed on stationery printed with the company name, "Doppelt & Greenwald Diamonds," without the use of the "LLC." While in the typed portion of the letter, Greenwald refers to his company as "Doppelt & Greenwald Diamonds, LLC," those references best are misleading in light of the printed name on the letterhead which does not contain the "LLC." In any event, that letter was written well after the parties' transaction.

Thus, in the absence of competent evidence showing or suggesting that Greenwald disclosed to plaintiff that he was acting in his capacity as an agent for Doppelt & Greenwald

Diamonds, LLC, Greenwald is personally liable and plaintiff is entitled to judgment as a matter of law against him. See Continental Manor II Condominium Homeowners Ass'n v. Depew, 277 AD2d 340 (2nd Dept 2000); Nico Construction Co., Inc. v. Dorn, 214 AD2d 355 (1st Dept 1995); Kucker Kraus & Bruh, LLP v. Warwick, *supra*; New England Marine Contractors, Inc. v. Martin, 156 AD2d 804, 805 (3rd Dept 1989).

However, summary judgment is denied as to the co-defendant named in the caption, Doppelt & Greenwald Diamonds. Plaintiff submits a document from the New York Department of State, Division of Corporations, showing the entity, Doppelt & Greenwald Diamonds LLC, as registered. In light of this documentary proof, it appears the entity named in the caption, Doppelt & Greenwald Diamonds, is nonexistent, and as a nonexistent entity, it cannot acquire rights or assume liabilities, and is not a properly named party to this action. See Kiamesha Development Corp. v. Guild Properties, Inc., 4 NY2d 378, 389 (1958); Rubenstein v. Mayor, 41 AD3d 826 (2nd Dept 2007); Farrell v. Housekeeper, 298 AD2d 488 (2nd Dept 2002). Under these circumstances, plaintiff has until May 15, 2008 to make a motion to amend the caption, to add "LLC" to the existing defendant's name, or to add Doppelt & Greenwald Diamonds, LLC as a separate defendant, or the complaint will be dismissed as to it. On or before May 15, 2008, plaintiff shall submit proof that it has made the motion.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted only to the extent that plaintiff Laxmi Diamond Pvt Ltd is entitled to judgment against defendant Brian Greenwald, and the Clerk is directed to enter judgment in favor of plaintiff Laxmi Diamond Pvt Ltd and against defendant Brian Greenwald in the amount of \$70,090.50, together with interest as

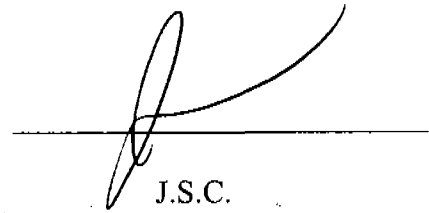
computed by the Clerk, and costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the motion is held in abeyance until May 15, 2008 as to defendant Doppelt & Greenwald Diamonds, and on or before May 15, 2008, plaintiff shall submit proof that it is moving to amend the caption, and absent such proof the complaint will be dismissed as to said defendant.

The court is notifying the parties by mailing copies of this decision and order.

DATED: April 15, 2008

ENTER:


J.S.C.

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APR 23 2008
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