

TPG Architecture, LLP v Cotter
2012 NY Slip Op 32023(U)
February 21, 2012
Sup Ct, NY County
Docket Number: 104626/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C. Justice

PART 46

Index Number : 104626/2011

TPG ARCHITECTURE LLP

VS.

COTTER, JOSEPH

SEQUENCE NUMBER : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

to/for _____

No(s). 1-2

No(s). 3

No(s). _____

Upon the foregoing papers, It is ordered that ~~this motion is~~ :

The court denies defendant's motion to dismiss the amended complaint or for a more definite statement in plaintiff's pleading, pursuant to the accompanying decision. C.P.L.R. 33 3024(a), 3211(a)(2) and (7).

FILED

AUG 01 2012

NEW YORK
COUNTY CLERK'S OFFICE

FILED

AUG 01 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/21/12

Lucy Billings, J.S.C.

LUCY BILLINGS

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x

TPG ARCHITECTURE, LLP, and TPG LONG
ISLAND, LLC,

Index No. 104626/2011

Plaintiffs

- against -

DECISION AND ORDER

JOSEPH COTTER and LYNNE M. WARD,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

Plaintiffs adequately plead claims of defendants' participation in fraudulent conveyances from iPark Holdings LLC, which unjustly enriched defendants. In sum, Plaintiffs allege that iPark Holdings, having received plaintiffs' architectural services, and defendants, iPark Holdings' co-owners, having received plaintiffs' bills for those services, divested iPark Holdings of its sole asset and divided the proceeds between defendants without paying iPark Holdings' debt to plaintiffs. Although iPark Holdings may have received fair market value for the asset sold, iPark Holdings received nothing, and defendants exchanged nothing, according to plaintiffs, for iPark Holdings' distribution of the sale's proceeds to defendants. As plaintiffs further allege, defendants used their total control over iPark Holdings to divert to themselves the proceeds that, in part, iPark Holdings owed to plaintiffs. Defendants carried out this conveyance, moreover, after plaintiffs had commenced an action against iPark Holdings for payment of the debt.

FILED

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These alleged facts set forth claims that defendants violated New York Debtor and Creditor Law (DCL) §§ 273, 273-a, and 276, by engaging in conveyances to themselves, without their payment of fair consideration to the transferor and rendering it insolvent, while plaintiffs maintained a pending claim on which they recovered a judgment against the transferor. See DCL §§ 270, 271(1), 272. Claims pursuant to DCL §§ 273 and 273-a do not require pleading or proof of actual intent to defraud the creditor. Atsco Ltd. v. Swanson, 29 A.D.3d 465 (1st Dep't 2006); Wall St. Assoc. v. Brodsky, 257 A.D.2d 526, 528 (1st Dep't 1999); Matter of Steele, 85 A.D.3d 1375, 1376-77 (3d Dep't 2011); Fischer v. Sadov Realty Corp., 34 A.D.3d 632, 633 (2d Dep't 2006). A claim pursuant to DCL § 273 requires pleading and proof only that the conveyance (1) was without fair consideration and (2) depleted iPark Holdings of its assets. 320 W. 13th St., LLC v. Wolf Shevack, Inc., 85 A.D.3d 629 (1st Dep't 2011); Wall St. Assoc. v. Brodsky, 257 A.D.2d at 528; Matter of Steele, 85 A.D.3d at 1376-77; Murin v. Estate of Schwalen, 31 A.D.3d 1031, 1032, 1034-35 (3d Dep't 2006). A claim pursuant to DCL § 273-a requires pleading and proof that (1) plaintiffs already had sued iPark Holdings when it conveyed its assets; (2) the conveyance was without fair consideration; and (3) iPark Holdings has failed to pay the judgment in plaintiffs' favor. 320 W. 13th St., LLC v. Wolf Shevack, Inc., 85 A.D.3d 629; Constitution Realty v. Oltarsh, 309 A.D.2d 714, 715 (1st Dep't 2003); Coyle v. Lefkowitz, 89 A.D.3d 1054, 1056-57 (2d Dep't 2011); Kreisler Borg

Florman Gen. Constr. Co., Inc. v. Tower 56, LLC, 58 A.D.3d 694, 695 (2d Dep't 2009).

Plaintiffs' allegations that defendants, while plaintiffs' action against iPark Holdings was pending, conveyed to themselves, through their total control of iPark Holdings, the proceeds of its sale of its property, without consideration to iPark Holdings and leaving it insolvent, satisfies both DCL § 273 and DCL § 273-a. The alleged (1) close relationship between iPark Holdings and defendants, (2) irregular conveyance, out of the ordinary course of business, (3) lack of consideration, (4) knowledge of the debt to plaintiff, and (5) consequent inability of iPark Holdings to pay the debt also raise an inference of defendants' fraudulent intent, sustaining plaintiffs' claim under DCL § 276. 320 W. 13th St., LLC v. Wolf Shevack, Inc., 85 A.D.3d 629; Atsco Ltd. v. Swanson, 29 A.D.3d at 465-66; Shisgal v. Brown, 21 A.D.3d 845, 847 (1st Dep't 2005); Wall St. Assoc. v. Brodsky, 257 A.D.2d at 529. More particular facts, such as the details of iPark Holdings' liquidating transfers to each defendant, may be gleaned through demands for a bill of particulars and disclosure. E.g., Shisgal v. Brown, 21 A.D.3d 847; Serio v. Rhulen, 24 A.D.3d 1092, 1094-95 (3d Dep't 2005). See Pludeman v. Northern Leasing Sys., Inc., 10 N.Y.3d 486, 492-93 (2008); Oster v. Kirschner, 77 A.D.3d 51, 55 (1st Dep't 2010).

These facts also state a claim for unjust enrichment: that defendants were enriched at plaintiffs' expense, and it is inequitable and unconscionable to allow defendants to retain the

enrichment. Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d at 182; Georgia Malone & Co., Inc. v. Rieder, 86 A.D.3d 406, 408 (1st Dep't 2011); Abacus Fed. Sav. Bank v. Lim, 75 A.D.3d 472, 473 (1st Dep't 2010). Although plaintiffs originally provided the benefits of plaintiffs' services to iPark Holdings, it, through defendants, then conveyed the fruits of those services and benefits to defendants.

Finally, while defendant Ward raises the defense of lack of personal jurisdiction over her, she does not dispute keys facts on which jurisdiction rests. She carried out the conveyance that plaintiffs allege was fraudulent in New York and thus committed an alleged tort in New York. C.P.L.R. § 302(a)(2); SPCA of Upstate N.Y. v. American Working Collie Assn., 18 N.Y.3d 400, 403 (2012); CIBC Mellon Trust Co. v. HSBC Guyerzeller Bank AG, 56 A.D.3d 307, 308-309 (1st Dep't 2008). See Pramer S.C.A. v. Abaplus Intl. Corp., 76 A.D.3d 89, 97 (1st Dep't 2010); PT. Bank Mizuho Indonesia v. PT. Indah Kiat Pulp, 25 A.D.3d 470 (1st Dep't 2006). Plaintiffs' claims against her arise from the various business transactions she carried out in New York. C.P.L.R. § 302(a)(1). Specifically, during 2001 through 2006 she worked in New York on iPark Holdings' behalf, hiring plaintiffs to perform architectural services to improve iPark Holdings' sole asset, real property in Lake Success, New York, and executing the contract to sell that property to an entity in New York. These continuous and purposeful activities, all closely related to the parties' business together, confer jurisdiction over Ward under

C.P.L.R. §§ 301 and 302(a). Fischbarg v. Doucet, 9 N.Y.3d 375, 380, 384-85 (2007); LaMarca v. Pak-Mor Mfg. Co., 95 N.Y.2d 210, 216-17 (2000); Kaczorowski v. Black & Adams, 293 A.D.2d 358 (1st Dep't 2002); Colucci & Umans v. 1 Mark, Inc., 224 A.D.2d 243 (1st Dep't 1996). See SPCA of Upstate N.Y. v. American Working Collie Assn., 18 N.Y.3d at 404-405; Pramer S.C.A. v. Abaplus Intl. Corp., 76 A.D.3d at 95-96; Copp v. Ramirez, 62 A.D.3d 23, 30-31 (1st Dep't 2009); PT. Bank Mizuho Indonesia v. PT. Indah Kiat Pulp, 25 A.D.3d at 470-71.

For each of the above reasons, the court denies defendants' motion to dismiss the amended complaint or for a more definite statement in plaintiffs' pleading. C.P.L.R. § 3211(a)(2) and (7). As currently pleaded, the amended complaint specifies claims for a fraudulent conveyance and for unjust enrichment as delineated above and requires no more particularized statements within the pleading itself. See C.P.L.R. § 3024(a); DCL §§ 273, 273-a. Plaintiffs' allegations relating to the requirements for personal jurisdiction over defendant Ward are largely undisputed and provide ample bases for jurisdiction over her. C.P.L.R. §§ 301, 302(a)(1) and (2).

DATED: February 21, 2012

FILED *Lucy Billings*
 LUCY BILLINGS, J.S.C.
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