

DAE Assoc., LLC v Meyer
2018 NY Slip Op 30676(U)
April 16, 2018
Supreme Court, New York County
Docket Number: 651500/2015
Judge: Andrea Masley
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NYSCEF DOC. NO: 57
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

RECEIVED NYSCEF: 04/16/2018

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DAE ASSOCIATES, LLC d/b/a DANESE GALLERY,

Index No.: 651500/2015

Plaintiff,

Motion Seq. No.: 002

-against-

Decision and Order

JAMES A. MEYER, FRED DORFMAN, DORFMAN
PROJECTS, LLC, RONNIE MEYERSON, RONNIE
MEYERSON, INC., KASUMI SONOYAMA, "JOHN
DOES" 1-10, and "ABC CORPS." 1-10,

Defendants.

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MASLEY, J.:

Plaintiff DAE Associates, LLC d/b/a Danese Gallery (Gallery) alleges that defendants collaborated to sell it a stolen painting (the Painting) by the artist Jasper Johns (Artist). Defendants Fred Dorfman and Dorfman Projects, LLC (DPLLC) (collectively, Dorfman Defendants) now move to dismiss the Gallery's complaint pursuant to CPLR 3211 (a) (3), (a) (5), and (a) (7).

Background

The following allegations are taken from the Gallery's January 15, 2016 complaint,¹ except where otherwise noted.

This action arises from the May 20, 2010 sale to the Gallery of the Painting, which was procured through theft. (Complaint [Compl.] ¶¶ 2, 70.)² As revealed by an investigation of the Federal Bureau of Investigation (FBI), the Artist's former assistant, defendant James A. Meyer, stole unpublished works by the Artist during the course of Meyer's employment; then, through a series of intermediaries, Meyer and the Dorfman

¹ Summons with notice was filed on May 4, 2015.

² By order of Justice Oing, dated November 9, 2016, this action was consolidated for the purpose of only discovery with a related action, *Golkin, et al. v DAE Assoc.*, bearing index number 653079/2015.

Defendants spread news of their possession of the Artist's work to be sold. (*Id.* ¶¶ 36, 69.) According to the complaint, the Gallery purchased the Painting on April 15, 2010 from the Dorfman Defendants for \$600,000 (See Dorfman Defendants' exhibit [ex.] A.)

The Artist hired Meyer as a studio assistant in 1985; in that capacity, Meyer had unrestricted access to the Artist's studio, artworks, and artwork records. (Compl. ¶¶ 27-28.) Meyer maintained a ledger containing a description and inventory number for each completed work, and files for completed and/or unfinished works not authorized for release into the market by the Artist. (*Id.*)

Dorfman is an art dealer engaged in and "acting as an intermediary in the sale of art on the secondary market," and the sole shareholder of DPLLC. (*Id.* ¶¶ 10, 12.) In 2003, Dorfman approached Meyer and proposed to sell the Artist's completed but unreleased artworks, as well as works discarded or unfinished and not intended for sale. (*Id.* ¶ 30.) Beginning in 2006, Meyer delivered stolen works to Dorfman, who promoted the works to intermediaries in the art marketplace, including defendants Ronnie Meyerson, Ronnie Meyerson, Inc. (collectively, Meyerson Defendants), and Katsui Sonoyama. (*Id.* ¶ 32.)

In March 2010, the Gallery learned, through those intermediaries, that the Painting was available for sale (*Id.* ¶ 44-48.) On April 2, 2010, the Gallery informed an art consulting firm that the Gallery had an opportunity to purchase the Painting on the condition that the Painting could not be returned to the marketplace for a period of eight years; it could be only consigned back to the Gallery during that time (*Id.* ¶ 48.) The Gallery found buyers for the Painting, Perry and Donna Golkin (Purchasers).³ (*Id.* ¶ 60.)

³ The related action, which remains pending—*Golkin, et al. v DAE Assoc.*, bearing index no. 653079/2015—involves the Purchasers' claims against the Gallery.

The Gallery agreed to sell the Painting to the Purchasers, conditioned upon the Purchasers' agreement to keep the Painting private—that is, not loaned to any person or institution, or returned to the market unless consigned back to the Gallery—for a period of eight years.⁴ (*Id.* ¶ 104.)

In an invoice from Dorfman to the Gallery, dated April 15, 2010, the Gallery was charged \$600,000 for the Painting; the invoice also states: "Dorfman Projects will arrange commission due to . . . Sonoyama on this sale." (*Id.* ¶ 52; *see ex. A.*) On April 16, 2010, the Gallery executed an agreement with Dorfman—who signed on behalf of "Fred Dorfman, Inc."⁵—for the sale of the Painting (Dorfman Contract). (Ex. D.) The Dorfman Contract, on "Dorfman Projects" letterhead, states:

[The Gallery's principal,] RENATO DANESE, the buyer of the original work of art certified to be the work of Jasper Johns, hereafter referred to as the artist, and identified as the attached Artwork (hereinafter "the Artwork") and the subject of a separate invoice between the parties transferring title to, and warranties concerning the Artwork, agrees that he is subject to the written understanding that Purchaser will keep the Artwork private and will not sell or loan the Artwork to anyone or any institution within the first seven (7) years fo his ownership.*

* This agreement amended with approval of Dorfman Projects to include the following: Should the Purchaser wish to sell the above mentioned work of Jasper Johns within the seven-year time period, he may do so only by exclusive consignment to Danese Gallery. You would immediately be informed of the work's availability, and we acknowledge you and/or your client's financial interest in its resale. The same requirements for confidentiality stipulated in the original agreement would apply." (Ex. D.)

On April 24, 2010, Dorfman vouched for the authenticity of the Artist's signature on the Painting, and stated that he would provide the Gallery with the Painting's registry

⁴ The contract provision in the agreement between the Purchasers and the Gallery, however, contains only a seven-year privacy period.

⁵ Dorfman's signature is dated May 8, 2010.

number; subsequently, the Gallery was provided with an affidavit of Meyer, dated May 7, 2010. (Compl. ¶¶ 60-62.) Meyer stated that he received the Painting directly from the Artist in 2007, and that it is an authentic work recorded in the Artist's archives. (*Id.*) Meyer further stated that he was the rightful owner of, and had the unfettered right to sell, the Painting. (*Id.* ¶¶ 38, 62.)

On May 12, 2010, the Purchasers paid the Gallery \$898,218.75 for the Painting; the next day, the Gallery paid \$600,000 to the "Dorfman Defendants," and \$50,000 to the Meyerson Defendants. (*Id.* ¶ 66.) The Purchasers then received the Painting. (*Id.* ¶ 67.)

The Gallery learned of the FBI's investigation of Meyer on January 19, 2013, and Meyer was subsequently indicted for various crimes for his role in the theft and sale of works by the Artist. (*Id.* ¶¶ 70-72.) Meyer admitted that he stole the Painting and "professed the [Dorfman Defendants]' complicity." (*Id.* ¶ 72.)

The Gallery's Causes of Action

On January 15, 2016, the Gallery filed its complaint, raising eight causes of action, by which it seeks an order: (1) awarding declaratory relief, pursuant to CPLR 3001, as to the parties' respective rights and obligations regarding the Painting (against all defendants); (2) awarding contribution in the event that the Purchasers obtain a judgment against the Gallery in the related *Golkin* action (against all defendants); (3) rescinding the Dorfman Contract based on unjust enrichment (against all defendants); (4) rescinding the Dorfman Contract based on mutual mistake that Meyer was the rightful owner of the Painting (against all defendants); and (5) rescinding the Dorfman Contract based on the Gallery's unilateral mistake that Meyer was the rightful owner of the Painting (against the Dorfman Defendants).

The Gallery further seeks an award of damages (6) under UCC §§ 2-312 and 2-313 (1), as well as under New York Arts and Cultural Affairs Law (ACAL) § 13.01, against the Dorfman Defendants for breach of the following express warranties: (a) Meyer received the Painting from the Artist as a gift; (b) Meyer was the rightful owner of the Painting; and had the right to sell it; and (c) the Painting was recorded in the Artist's archive with an assigned inventory number. The Gallery also seeks damages as against the Dorfman Defendants for: (7) fraud and fraudulent concealment; and (8) violation of General Business Law (GBL) § 349.

The Dorfman Defendants now move to dismiss the complaint pursuant to CPLR 3211 (a) (3), (a) (5), and (a) (7).⁶

Discussion

On a motion to dismiss under CPLR 3211, "the pleading is afforded a liberal construction. . . . [and the Court] accepts 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." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].) Dismissal pursuant to CPLR 3211 (a) (1) is appropriate where "the documentary proof disproves an essential allegation of the complaint, . . . even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action." (*Kolchins v Evolution Mkts., Inc.*, 128 AD3d 47, 58 [1st Dept 2015].)

1. Statute of limitations as a preliminary matter

The Dorfman Defendants argue that the second through the seventh causes of

⁶This action was with JHO Roth for settlement purposes, and returned to Part 48 in December 2017, resulting in the delay in issuing this decision.

action should be dismissed as against them on the basis that the four-year limitation period under UCC § 2-725 expired prior to commencement of this action. The Gallery responds that those claims are timely because this court previously ruled, in the *Golkin* action, that the seven-year privacy condition in the contract between the Purchasers and the Gallery constitutes a promise of future performance such that the extended limitation period under subsection (2) of UCC § 2-725 applies. (See 650379/2015, NYSCEF Doc. Nos. 54, 56 [7/13/16 order and so-ordered transcript (Oing, J.)].) The Gallery cites no case law in support of its argument; it identifies only this court's July 13, 2016 order in the *Golkin* action denying the Gallery's motion to dismiss the Purchasers' amended complaint on statute of limitation grounds, and argues that the Dorfman Defendants cannot "re-litigate" that issue. (See *id.*)

This court's July 13, 2016 order in the *Golkin* action concerns a completely different contract—entered into by the Purchasers and the Gallery for the purchase of the Painting (Purchasers' Contract). The court found in *Golkin* that the Purchasers' Contract contained an explicit provision requiring the Gallery to perform in the future; specifically, that agreement contained not just the seven-year privacy provision, but also a 10-year guarantee that the Gallery would rescind the Purchasers' Contract and refund the sale if it was shown not to have had marketable title. Thus, the Purchasers' Contract contained an explicit warranty that "extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." (UCC § 2-725 [2]; 650379/2015, 7/13/16 order and transcript.)

In neither this action nor the *Golkin* action (which are consolidated for discovery only) does the Gallery allege or provide documentary evidence demonstrating that the

Dorfman Defendants were aware that the Gallery would include the rescision /refund provision. In any event, the Dorfman Contract at issue in this action does reference the privacy provision, but does not contain any explicit warranty of good title or guarantee to rescind/refund the Gallery if title is found to have been unmarketable.

Accordingly, the four-year statute of limitations under UCC § 2-725 (1) applies, and the four-year limitation period accrued upon delivery of the Painting to the Gallery in May 2010.

Further, contrary to the Gallery's arguments, the doctrine of equitable tolling does not apply to state claims in New York. (*E.g. Jang Ho Choi v Beautri Realty Corp.*, 135 AD3d 451, 452 [1st Dept 2016].) Even if equitable tolling were available, the Gallery has not alleged that it was prevented from filing within the limitation period "in some extraordinary way." (*O'Hara v Bayliner*, 89 NY2d 636, 646 [1997], *cert denied* 522 US 822 [1997].)

Likewise, the doctrine of equitable estoppel does not extend the four-year limitation period provided under the UCC because the Gallery does not allege that it reasonably relied on any "subsequent and specific actions . . . [that] somehow kept [it] from timely bringing suit." (*Zumpano v Quinn*, 6 NY3d 666, 674 [2006].) The Gallery alleges only that the Dorfman Defendants "took affirmative steps following the sale to prevent the discovery of their fraud." (Compl. ¶ 104.) That conclusory allegation is insufficient to preclude the Dorfman Defendants' statute of limitations defense. The Gallery fails to allege that the Dorfman Defendants made any statement to, or took any action towards, the Gallery after the May 2010 sale and tender of the Painting. (*Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 491-492 [2007] ["(A) plaintiff may not rely on the same act that forms the basis for the claim--the later fraudulent misrepresentation must

be for the purpose.”.)

2. *Breach of warranty claim (sixth cause of action)*

As the four-year limitation period applies to the Gallery’s breach of warranty claim under UCC §§ 2-312 and 2-313 (1), those prongs of its sixth cause of action are dismissed against the Dorfman Defendants as untimely.

Further, the Gallery’s breach of warranty claim under ACAL § 13.01 is also dismissed as against the Dorfman Defendants. The Gallery alleges that all of the parties to this action are art merchants. (Compl. ¶¶ 10, 27, 29, 30, 31, 44, 45.) The ACAL regulates express warranties between art merchants and “laypeople after purchasing fine art from art merchants.” (*Christie’s Inc. v SWCA, Inc.*, 22 Misc 3d 380, 387 [Sup Ct, NY County, 2008].) The Gallery admits in its complaint that all of the parties to this action are art merchants, and does not make any allegations of a principal-agent relationship. (See compl. ¶¶ 10, 27, 29, 30, 31, 44, 45, 98-107.) Thus, the Gallery’s ACAL prong of its breach of warranty claim is dismissed against the Dorfman Defendants.

3. *Unjust enrichment (third cause of action)*

The Gallery alleges that all defendants “received substantial monies in connection with the sale of [the Painting],” and request that the Dorfman Contract be rescinded, or that “adequate damages” be awarded to the Gallery. (Compl. ¶¶ 82-84.) The Dorfman Defendants move to dismiss the unjust enrichment claim as time barred.

An unjust enrichment claim is that which alleges that the defendant has obtained a benefit that in “equity and good conscience” should be paid to the plaintiff. (See *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal quotation marks omitted].) Such claims are “available only in unusual situations when the defendant has

not breached a contract nor committed a recognized tort, but circumstances create an equitable obligation running from the defendant to the plaintiff.” (*Maya NY, LLC v Hagler*, 106 AD3d 583, 584–85 [1st Dept 2013].)

Initially, this claim is precluded inasmuch as a valid and enforceable written contract governing the Gallery’s purchase of the Painting, the Dorfman Contract, precludes recovery “in quasi contract for events arising out of the same subject matter.” (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987].)

In any event, though there is no specific statute of limitations for an unjust enrichment cause of action, the limitation period applied to such a claim is generally that which guides the contractually-based cause of action with which the equitable claim shares a factual predicate. (See *Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [1st Dept 2013] [applying six-year limitation period for breach of contract claim to unjust enrichment claim where both claims “are based upon the same facts and pleaded in the alternative”].)

Here, the Gallery’s unjust enrichment claim is based on identical facts to its contractual/breach of warranty claims, and, thus, the four-year limitation period under the UCC applies, rendering this claim untimely.

Accordingly, the third cause of action is dismissed against the Dorfman Defendants.

4. *Mutual and unilateral mistake (fourth and fifth causes of action)*

The Dorfman Defendants argue that the Gallery’s mutual and unilateral mistake claims arise from its contract claims and should be dismissed as untimely under UCC § 2-725 (1).

Initially, the Gallery’s mutual mistake claim is dismissed for failure to state a

cause of action. The claim is not adequately plead in that there are no allegations in the complaint to establish that the Dorfman Defendants were mistaken as to the title of the Painting; indeed, the Gallery's allegations refute its claim for mutual mistake in that the Gallery asserts the Dorfman Defendants were complicit in misrepresenting that it had marketable title. Thus, the fourth cause of action is dismissed against the Dorfman Defendants.

However, the court rejects the Dorfman Defendants' argument that the Gallery's unilateral mistake cause of action is barred by the four-year limitation period.

"A unilateral mistake may give rise to reformation [of the contract] where the other party takes advantage of an error only it has noticed under circumstances constituting fraud." (*Resort Sports Network Inc.*, 67 AD3d 132, 136 [1st Dept 2009].) Where the alleged mistake, accepted as true at the pleading stage, caused such a calamitous misunderstanding that there was no meeting of the minds, there was, thus, no contract. Here, plaintiff alleges unilateral mistake coupled with fraud on the part of the Dorfman Defendants, which is sufficient to survive a motion to dismiss. Under CPLR 213 (6), a six-year limitation period, which accrues at the time of the alleged mistake, applies to this claim; accordingly, the Gallery's fifth cause of action is timely raised.

5. *Fraud/fraudulent concealment claim (seventh cause of action)*

The Dorfman Defendants contend that the fraud claim is time-barred under the four-year limitation period because the claim arises from the same facts as the breach of warranty claim. Alternatively, they argue that the fraud claims are duplicative of the Gallery's breach of warranty claim.

A party cannot extend its period in which to raise contract claims by raising incidental fraud claims; however, where a plaintiff raises fraud claims that are distinct

from its contract claims, the two claims need not share the same period of limitation. (See *Cabrini Med. Ctr. v Desina*, 64 NY2d 1059, 1061-1062 [1985].) Here, the Gallery's fraud claim is not merely incidental to its breach of warranty claim; thus, the fraud claim is timely raised within the six-year limitation period provided under CPLR 213.

The Gallery alleges that the Dorfman Defendants fraudulently induced it to purchase, and sell on consignment, the Painting by knowingly providing Meyer's affidavit containing misrepresentations as to the title and marketability of the Painting (Compl. ¶ 113.) The Gallery further alleges that the Dorfman Defendants were aware that the Painting was a stolen artwork, and that Meyer's affidavit was drafted "knowing that Purchaser will rely on the representations contained" in the affidavit to decide whether to purchase the Painting. (*Id.*)

Whereas the Gallery's breach of warranty claim focuses on the implicit representations of the Painting's title and marketability, the fraud claim focuses on the improper use of the false statements to consummate the sale of the Painting. (See *Batas v Prudential Ins. Co. of Am.*, 281 AD2d 260, 261 [1st Dept 2001] [finding a plaintiff's fraud claim not duplicative of contract claim where defendants allegedly misrepresented facts to "induce potential subscribers to obtain defendant's health policies."].) Thus, the Gallery's fraud claim is "separate and distinct" from the contract claim. (See *Rosen v Spanierman*, 894 F2d 28, 35 [2d Cir 1990] [buyer allowed to proceed with breach of contract and fraudulent inducement claims in transaction involving fake painting].) Accordingly, the motion is denied with respect to the seventh cause of action, which was timely brought within the applicable six-year limitation period.

6. *Contribution claim (second cause of action)*

The Dorfman Defendants argue that the contribution claim sounds in fraud, and, therefore, must be dismissed as barred by the four-year limitation period. For the reasons stated above in the section addressing the fraud claim, the contribution claim is timely. Further, the court notes that dismissal of this claim would be premature as the *Golkin* action, upon which the Gallery's contribution claim is based, remains pending.

7. *GBL claim (eighth cause of action)*

The Gallery's GBL § 349 claim is dismissed against the Dorfman Defendants as untimely. A cause of action alleging that a defendant violated GBL § 349, which prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service," is subject to a three-year limitation period under CPLR 214 (2). (*Corsello v Verizon N. Y., Inc.*, 18 NY3d 777, 788 [2012].)

Contrary to the Gallery's argument that the three-year limitation period accrued when the fraud was discovered, the limitation period for GBL § 349 claims accrues when the plaintiff has been injured by the alleged deceptive practice. (*Id.* at 789.) Here, even if the necessary elements of a GBL § 349 claim are met, the injury occurred upon tender of the Painting to the Gallery, more than three years prior to commencement of this action.

8. *Declaratory judgment claim (first cause of action)*

The Dorfman Defendants seek dismissal of the first cause of action on the basis that the Gallery's second through eighth causes of action are each time barred. Because the Gallery's unilateral mistake, fraud/fraudulent inducement, and contribution claims are not untimely, the motion is denied with respect to the first cause of action for a declaratory judgment.

9. *DPLLC as defendant entity*

The Dorfman Defendants move to dismiss the complaint as against DPLLC on the basis that documentary evidence establishes that DPLLC was not formed until May 2013, three years after the underlying transaction occurred; rather, the Dorfman Contract was executed by Dorfman on behalf of Fred Dorfman, Inc., an entity formed in 1976. (See exs. B-C.) The Gallery responds that DPLLC "is a mere continuation of its predecessor," Fred Dorfman, Inc., and, therefore, successor liability should be imposed on DPLLC.

The evidence establishes that DPLLC did not exist at the time of the sale, and the entity Fred Dorfman, Inc. is not a named defendant in this action. Other documentary evidence submitted by the Dorfman Defendants includes the April 15, 2010 invoice from Dorfman to the Gallery, which states that "Dorfman Projects will arrange commission due to . . . Sonoyama," but instructs the Gallery to "make check payable to Fred Dorfman Inc." (Ex. A.) Additionally, the Dorfman Contract, signed by Dorfman for Fred Dorfman, Inc. on May 8, 2010, is printed on "Dorfman Projects" letterhead, but does not identify "Dorfman Projects" as a LLC or any other form of business entity.

A non-existent entity lacks capacity to enter into contracts, and a subsequently formed corporation is not bound by the terms of the pre-incorporation contract "unless the obligation is assumed in some manner by the corporation after it comes into existence by adopting, ratifying, or accepting it." (*Pak v Jet Lag Productions, Inc.*, 2016 NY Slip Op 30386[U], *12 [Sup Ct, NY County 2016].)

The Gallery does not allege in its complaint that the Dorfman Contract was entered on DPLLC's behalf. (See *e.g.* compl. ¶ 119 [alleging that DPLLC is liable for

fraud because “Dorfman perpetrated the fraud in his capacity as principal of Dorfman Projects.”].) The Gallery’s allegations regarding DPLLC are refuted by the documentary evidence that the entity did not exist until three years after the sale. Further, the Gallery does not allege or put forth evidence that, once formed, DPLLC adopted, ratified, or accepted the Dorfman Contract.

Contrary to the Gallery’s arguments in opposition to this motion, successor liability does not attach to DPLLC under the “mere continuation” exception, which can be applied “where the predecessor corporate entity continued as a mere shell corporation.” (*Hayden Capital USA, LLC v Northstar Agri Indus., LLC*, 2012 WL 1449257, at *8, 2012 US DIST LEXIS 58881 [SD NY Apr. 23, 2012, 11-CIV-592(DAB)]; see *NTL Capital, LLC v Right Track Rec., LLC*, 73 AD3d 410, 411 [1st Dept 2010].) The Gallery’s argument that DPLLC is the “alter ego” of Fred Dorfman, Inc. is misguided; it has not alleged any facts from which it can be inferred that DPLLC is a “mere continuation” of Fred Dorfman, Inc.—indeed, the Gallery does not make a single allegation as to Fred Dorfman, Inc.—or that there was a de facto merger of Fred Dorfman, Inc. and DPLLC. (See *Fitzgerald v Fahnestock & Co., Inc.*, 286 AD2d 573, 574 [1st Dept 2001] [discussing de facto merger doctrine].)

Accordingly, the complaint is dismissed in its entirety as against DPLLC.

10. *Dorfman as individual defendant*

The Dorfman Defendants argue that the contract and quasi contract claims—the Gallery’s third through sixth causes of action—against Dorfman must be dismissed because he did not enter the Dorfman Contract in his individual capacity; rather, he signed the Dorfman Contract as a corporate officer of Fred Dorfman, Inc. They further contend that the Gallery fails to allege that its injuries resulted from Dorfman’s abuse of

the business entity form.

The Gallery responds that it alleges facts sufficient to pierce the corporate veil of DPLLC to attach personal liability on Dorfman, the sole member of DPLLC.

Inasmuch as the complaint is dismissed as against DPLLC for the reasons stated above, there is no basis upon which the Gallery can pierce the veil of DPLLC to reach Dorfman individually. As previously noted, Fred Dorfman, Inc. is not a party to this action.

Although a party transacting on behalf of a non-existent entity is personally liable under the consummated pre-formation contract, the documentary evidence demonstrates that the Dorfman Contract and April 2010 invoice were executed by Dorfman on behalf of Fred Dorfman, Inc., not DPLLC. (See *Pak*, 2016 NY Slip Op 30386[U], *19.)

Thus, the Gallery's third, fourth, fifth, and sixth causes of action, sounding in contract and quasi contract, are dismissed as against Dorfman.

Accordingly, it is

ORDERED that the motion of defendant Dorfman Projects, LLC to dismiss the complaint is granted, and the complaint is dismissed in its entirety as against defendant Dorfman Projects, LLC, with costs and disbursements to that defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of that defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the motion of defendant Fred Dorfman to dismiss the complaint is granted, and the third, fourth, fifth, sixth, and eighth causes of action are dismissed against that defendant; and it is further

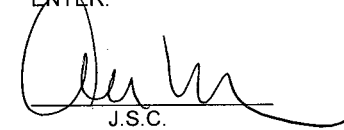
ORDERED that defendant Fred Dorfman is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the parties are directed to appear at 60 Centre Street, Room 242, for a preliminary conference on Thursday, May 17, 2018, at 10:30 a.m.

Dated: 4/16/18

ENTER:



J.S.C.

HON. ANDREA MASLEY
J.S.C.