

Ove Arup & Partners P.C. v 130-134 Holdings, LLC
2018 NY Slip Op 32866(U)
November 7, 2018
Supreme Court, New York County
Docket Number: 652523/2018
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN PART **IAS MOTION 45**

Justice

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INDEX NO. 652523/2018

OVE ARUP & PARTNERS P.C.,

MOTION DATE 10/9/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

130-134 HOLDINGS, LLC, SY GHASSEMI, JONATHAN GHASSEMI

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for DISMISS

Upon the foregoing documents:

This is a breach of contract claim asserted by Ove Arup & Partners P.C., (“Ove Arup”) against 130-134 Holdings LLC, a purportedly defunct limited liability company (the “LLC”) and its principals and officers Sy Ghassemi and Jonathan Ghassemi (the “Individual Defendants”).

The Individual Defendants seek to dismiss the claims against them on the grounds that they are not parties to the contract allegedly breached by LLC; that the complaint’s “conclusory” allegations that they are alter egos of LLC (and therefore liable for LLC’s alleged breach) are insufficient to state a claim against them; and that the claims against them for account stated and quantum meruit should be dismissed because they are duplicative of or supplanted by the claim for breach of contract.

For the following reasons, the Individual Defendants’ motion to dismiss is granted.

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Breach of Contract

It is undisputed that the Individual Defendants are not parties to the contract that allegedly was breached by LLC. The purported basis for asserting claims against the Individual Defendants is that they are alter egos of LLC such that it is permissible to pierce the corporate veil to hold them liable for LLC's alleged breach of contract. In its Complaint, Ove Arup alleges that the Individual Defendants were the sole owners, managers, and officers of LLC, and that they "dominated and controlled every aspect of [LLC's] business operations." (Complaint, NYSCEF 2 at ¶6.) In addition, Ove Arup asserts that LLC was "voluntarily cancelled and ceased to exist" in November 2016, five months after Over Arup sought collection of amounts owed under the contract.

In its opposition to the motion to dismiss, but not in the Complaint, Ove Arup asserts that the Individual Defendants did not disclose to Ove Arup that they intended to cease operating LLC and it "appears" they formed LLC "in order to mislead Plaintiff (and perhaps others) into providing services with no intention of paying for those services. (NYSCEF 8, at 4.) The Complaint does not, however, contain allegations of any communications with either of the Individual Defendants or as to their involvement, if any, in the contract at issue.

Conclusory allegations of ownership and "domination" are not sufficient, on their own, to pierce the corporate veil. *See, e.g., Saivest Empreendimentos Imobiliarios E. Participacoes, Ltda. v. Elman Investors, Inc.*, 117 A.D.3d 447, 450 (1st Dep't 2014); *Albstein v. Elany Contracting Corp.*, 30 A.D.3d 210, 210 (1st Dep't 2006). To make out a case for liability on the theory of piercing the corporate veil based on an alter ego theory, the complaining party must, above all, establish that the owners of the entity, through their domination of it, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the

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party asserting the claim such that a court in equity will intervene. *Tap Holdings, LLC v. Orix Finance Corp.*, 109 A.D.3d 167, 173 (1st Dep't 2013). Although there are some suggestions in the briefing that there may be additional facts and circumstances that could bear on this question, those facts are not alleged in the Complaint. Therefore, Plaintiff's claims against the individual defendants are dismissed without prejudice.

Plaintiff shall have 30 days to file a motion to amend the complaint should it desire to do so.

Quantum Meruit

Ove Arup's claim for quantum meruit is not sustainable for reasons independent of its failure to properly allege alter ego. "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." *Clark-Fitzpatrick, Inc. v. Long Island R. Co.*, 70 N.Y.2d 382, 388 (1987) (citations omitted). "[A] quasi-contractual obligation is one imposed by law where there has been no agreement or expression of assent, by word or act, on the part of either party involved. The law creates it, regardless of the intention of the parties, to assure a just and equitable result." *Id.* (emphasis in original) (quoting *Bradkin v. Leverton*, 26 N.Y.2d 192, 196 (1970)). Here, Ove Arup claims that LLC breached the relevant contract. Ove Arup's concern that it requires this alternative quasi-contract theory because the Individual Defendants may dispute the existence of an express agreement is alleviated by the Individual Defendants' explicit representation that they "do not dispute the existence of the Contract" as entered into between LLC and Plaintiff (Reply Aff. In Support of Motion to Dismiss, NYSCEF 11 at 2.) (emphasis in original).

Plaintiff's claim for quantum meruit against the Individual Defendants is dismissed.

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Account Stated

Finally, Ove Arup's claim for an account stated as against the individual defendants is also dismissed. Just as the Court found the conclusory nature of Plaintiff's veil-piercing allegations to be fatal to Plaintiff's breach of contract claim against the Individual Defendants, dismissal of the account stated claim is likewise warranted. The Court finds no reason, based on the existing pleadings, to bypass the LLC with which Plaintiff is in contractual privity. See *Russo v. Heller*, 80 A.D.3d 531, 532 (1st Dep't 2011) (dismissing account stated claim against entity's alleged principal, owner and officer "as, without veil-piercing, plaintiff has not identified any basis for bypassing [the entity] and asserting" an account stated claim "directly against [the principal, owner and officer]").

Moreover, as there is no dispute as to the existence of a valid contract between LLC and Plaintiff, the claim for account stated seeks the same damages as breach of that contract, warranting dismissal. See *D & S Restoration, Inc. v. Wenger Construction Co., Inc.*, 160 A.D.3d 924, 926 (2d Dep't 2018) ("[T]he dismissal of the causes of action to recover damages for unjust enrichment and for an account stated was proper since the damages the plaintiff seeks to recover are pursuant to an existing and valid contract.").

The claim for account stated as against the Individual Defendants is dismissed.

Therefore, it is ordered that:

ORDERED that the motion of defendants Sy Ghassemi and Jonathan Ghassemi to dismiss the complaint is Granted; and it is further


ORDERED that plaintiff shall have 30 days to file a motion to amend the complaint; and it is further

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ORDERED that counsel for defendants Sy Ghassemi and Jonathan Ghassemi shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/suptctmanh).

11/7/2018
DATE


HON. JOEL M. COHEN
J.S.C.
JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE