Suverant LLC v Brainchild, Inc.
2019 NY Slip Op 31154(U)
April 19, 2019
Supreme Court, New York County
Docket Number: 650746/2018
Judge: O. Peter Sherwood
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49
--X
SUVERANT LLC,

Plaintiff,

-against-

BRAINCHILD, INC., BRAINCHILD COMPANY INC., BRAINCHILD & CO. INC., BRAINCHILD HOLDINGS LLC, BRAINCHILD, KVK-TECH, INC., THE ARRIVALS LLC, THE ARRIVALS or ARRIVALS NY, KALYAN VEPURI a/k/a KAL VEPURI, JOHN AND JANE DOES 1-10, and DOE ENTITIES 1-10

Defendants.
--X

DECISION AND ORDER
Index No.: 650746/2018

Motion Sequence No.: 001

O. PETER SHERWOOD, J.:

I. FACTS

As this is a motion to dismiss, these facts are taken from the Verified Complaint (Complaint, NYSCEF Doc. No. 1).

Defendants are a group of companies and an individual (Kalyan [Kal] Vepuri) which are alleged to be alter egos, comingling funds and conducting business without observing corporate formalities. Vepuri is the founder, principal, and owner, wholly or largely, of the entities. He controls all of the entities. Those entities are:

Brainchild, Inc.	Brainchild Company, Inc.	Brainchild & Co, Inc.
Brainchild Holdings LLC	Brainchild	KVK-Tech, Inc.
The Arrivals LLC	The Arrivals or Arrivals NY	

(together, Brainchild Entities). The Brainchild Entities are primarily in the apparel sale business using the brand names Brainchild, Arrivals, and Arrivals NY.

Plaintiff is in the business of high-end apparel manufacturing. The Arrivals is an outerwear brand. Plaintiff has been selling made-to-order apparel to The Arrivals since 2015. Plaintiff custom-made garment patterns for Brainchild Entities' orders and had the garments made in Turkey. Until October 2016, defendants paid plaintiff a 50% deposit on orders upon confirmation of the order. The balance would be paid on satisfactory delivery. In October 2016, the parties renegotiated the terms, with defendants seeking more flexible terms.

On October 23, 2016, the parties agreed defendants would commit to order at least 1500 units of outerwear in 2017, and plaintiff would accept a 100,000 deposit with a revolving structure, net 90 days (Complaint, ¶ 34). However, when it came time to place the orders, defendants demanded even better terms. In February 2017, the parties agreed defendants would increase their orders, including items to be made in China. Defendants would pay no deposit, and invoiced amounts would come due 60 days after transmission of the invoices (*id.* at ¶35). Between March and October of 2017, defendants sent plaintiff several purchase orders, exceeding the minimum number of units. The goods were delivered and the defendants invoiced for the goods (*id.* at ¶¶ 36-47). Defendants did not object to the goods but failed to pay. The parties agreed that plaintiff would hold back delivery of 388 units of a "Moya" jacket until defendants became current on payments and agreed to a payment schedule. Defendants defaulted on that payment schedule.

On November 27, 2017, plaintiff's counsel sent defendants a demand letter for a total of $1,317,822.95, with almost $900,000 of that being overdue. The parties started negotiating a new payment schedule, with defendants seeking immediate shipment of 108 Moya jackets and delivery of the patterns used for defendants' orders. On December 18, 2017, the parties agreed on a revised payment plan for the outstanding $1,460,000. The plan provided for an initial payment, delivery of the jackets and patterns, and then the remaining payments. Defendants made the initial payment, plaintiff turned over the patterns and the jackets, but defendants failed to make further payments (*id.* at ¶¶55-57).

Now, defendants have represented that they do not intend to pay the outstanding balance because they have been taken over by a senior lender, who has forbidden them to become current on their obligations (*id.* at ¶ 67).

Plaintiff asserts eight causes of action:

1) Breach of Contract for failure to pay invoices for goods ordered pursuant to the Feb 2017 agreement
2) Goods Sold and Delivered
3) Account Stated- plaintiff regularly provided statements of account for the goods purchased. Defendants have not objected to the statements and only made partial payment
4) Quantum Meruit/Unjust Enrichment
5) Breach of Implied Covenant of Good Will and Fair Dealing
6) Fraud/Fraudulent Inducement for negotiating with no intent to make payment
7) Declaratory Judgment that defendants are alter egos and jointly and severally liable

8) Tortious Interference with Contract against Senior Lender- as far as defendant claims that this senior lender has stopped them from making payments.

II. ARGUMENTS

A. Defendants' Arguments to Dismiss

Defendants claim that several of the entity defendants do not actually exist, namely, Brainchild, Inc.; Brainchild Company Inc.; Brainchild; The Arrivals; and Arrivals NY. These are fictional entities and, according to defendants "[i]t is not clear if any of these corporate names is a duly registered d/b/a" (NYSCEF Doc. No. 45 at n. 1). "Brainchild Holdings LLC and KVK are wholly unrelated companies that have nothing to do with the allegations in this action" *(id.)*. The only entity with which plaintiff did business was Brainchild & Company, Inc. (Memo at 1).

Defendants argue claims two through six are quasi-contract and tort claims and are duplicative of the breach of contract claim. They arise from the same facts and seek the same damages. Plaintiff does not allege any independent duty or other allegations to support tort or quasi-contract claims. Further, as far as plaintiff claims defendants negotiated the October 2017 (or subsequent) agreement with an intent not to pay, such an allegation is not enough to convert a breach of contract claim into a fraud claim (Memo at 6-7). The alter ego claim should be dismissed as well because plaintiff provides only conclusory allegations that KVK, Vepuri and the other entities are alter egos. No factual allegations of domination or control are alleged. Neither is a party to the contracts, and KVK is a generic drug manufacturer which has no involvement with the goods at issue here.

The breach of contract claim should be dismissed because plaintiff has failed to allege when the payments purportedly were due, the amount due, and whether the deadline for payment had passed (*id.* at 9).

Regarding the tortious interference claim (eighth cause of action) which is pled conditionally, this claim should fail because plaintiff has failed to allege breach of the contract between plaintiff and defendants, and also the senior lender's knowledge of that contract, and that it lacked a justification for inducing a breach.

B. Plaintiff's Opposition

Plaintiff has alleged the details of 13 invoices for defendants' 2017 orders, with their due dates, and asserted the lack of payment (Opp at 4-5). Plaintiff has also alleged subsequent agreements to pay outstanding debts which agreements were breached. Plaintiff has included specific allegations against each entity and the individual, Vepuri, who negotiated the contracts at issue. Vepuri now seeks to hide behind corporate names which purportedly do not exist (*id.* at 6). There is no heightened pleading standard here, and plaintiffs have sufficiently alleged breach of contract.

The allegations regarding alter ego implicating all of the defendants are sufficient. It is unclear with which entity or entities plaintiff contracted, but each defendant has a clearly described connection with the agreements and is a proper defendant (*id.* at 7). The allegations also sufficiently support the argument that the entities and Vepuri were alter egos, operating as a single enterprise (*id.* at 7). "Defendants repeatedly communicated with Plaintiff as representatives of 'Brainchild' or 'Arrivals', issued Purchase Orders by 'Arrivals' which instructed Plaintiff to make invoices billable to Brainchild & Co. c/o KVK-Tech, Inc., KVK-Tech, Inc. apparently approved and made and sent payments for The Arrivals brand, and Defendants also made payments by checks apparently drawn from the account of Brainchild" (*id.* at 8). In negotiation for a payment plan, defendants' counsel insisted that Brainchild, Inc. be the only obligor (*id.*). Brainchild, Inc. signed the agreement but the partial payment apparently originated from "Brainchild Company, Inc.". Defendants previously made payments by check drawn on the account of "Brainchild" with an address of "13 East 16th Street, Floor 6, New York, New York 10013". According to social media platform and database crunchbase.com, "Brainchild Holdings LLC manages Kal Vapuri's operating companies" and claims ownership of The Arrivals brand. Regarding KVK-Tech, Inc., a purported generic drug manufacturer, defendants' purchase orders ask that invoices be made billable to "Brainchild & Co. c/o KVK-Tech, Inc." with KVK-Tech, Inc. having initiated wire transfers to pay for goods manufactured by plaintiff for The Arrivals. Finally, Verpuri is the "Founder of Brainchild & Co. and of The Arrivals." He is the person with final say over all business decisions concerning The Arrivals and over all business decisions concerning The Arrivals and Brainchild. The registered address of Brainchild Holdings is his home (*see id.* pp.8-10).

Plaintiff maintains the allegations about the Brainchild Entities are not conclusory. They are sufficient to allege a defendant dominated the other defendants and that such domination was used to commit a fraud or wrong. The defendants commingled funds, shared personnel and an address, operate as one from Vepuri's home, and are interreliant (*id.* at 11). Vepuri is the common connection among them. He/they used the domination of the other entities to damage plaintiff by failing to pay, and by damaging plaintiff's relationships with its vendors. Alter ego is a fact specific analysis, not suitable for resolution on a motion to dismiss (*id.* at 12). Defendants have previously said that the relevant counterparty was Brainchild, Inc. Defendants now claim that entity does not exist and Brainchild & Company, Inc. is the correct entity. As far as defendants point out that KVK, a drug manufacturer has no business related to this dispute, plaintiff points out that KVK received invoices for the apparel, so was somehow involved. Discovery is needed.

Plaintiff argues the unjust enrichment claim should survive in the alternative to the breach of contract case, especially since it is unclear with which entity the plaintiff contracted and plaintiff has alleged that all defendants received the goods. To the extent a defendant may not have been a party to the contracts but received goods from plaintiff, the unjust enrichment claim is not duplicative (*id.* at 15). Further, plaintiff seeks damages different from those sought for breach of contract, including damages for turning over the patterns.

Plaintiff argues the fraud claim can exist alongside a breach of contract claim because plaintiff has alleged a special relationship between it and the defendants. Defendants were plaintiff's biggest customer for several years, and had established a relationship of trust, which can support a higher duty than a mere contractual obligation (*id.* at 16). Plaintiff has also sought more than contract damages for this claim.

As to the good faith and fair dealing claim, plaintiff has alleged the defendants' misrepresentations, including about the identity of the counterparty and the quantity of goods the defendants would pay for, damaged plaintiff beyond contract damages (*id.* at 17).

To the extent plaintiff failed to allege in the complaint that the senior lender had knowledge of plaintiff's contract with defendants, plaintiffs have now clarified that allegation in counsel's affirmation (*id.*). While the senior lender may have an economic justification for the interference, that is not yet clear, and it is unknown if a loan had been called, or if defendants do not have the funds to pay both (*id.*). Since the senior lender has not been identified yet, and no facts are known about its situation or motivation, this claim should survive (*id.* at 18).

C. Defendants' Reply

Defendants concede plaintiff has cured any defects in the breach of contract claim against Brainchild & Company, Inc (Reply at 4, NYSCEF Doc. No. 47). However, the claim should be dismissed as to the other defendants, who were not parties to the contract.

Regarding the second through sixth claims, defendants reiterate the arguments above. As there is no dispute as to the existence of a contract, plaintiff may not alternatively plead quasi-contract or tort claims, including an unjust enrichment claim (*id.* at 6). The breach of good faith and fair dealing claim is also duplicative, as there is no heightened duty here (*id.* at 7). The fraud claim also fails, as plaintiff's allegations that Brainchild was a long-time and large customer do not create a separate duty (*id.*). Further, plaintiff has not pled a fraudulent statement. While Brainchild's name was misspelled, several spellings were used, so it was unreasonable to rely on any one spelling of the name (*id.* at 8). Nor did plaintiff allege it relied on the misspelling, or any detriment that arose from that reliance. The fraud claim should be dismissed.

The alter ego claims should be dismissed because the elements of the theory of liability must be pled, even though it is pre-discovery (*id.* at 9). The complaint here only contains conclusory allegations of alter ego liability. Plaintiff has not pled facts to support the conclusion that any domination or control of defendant entities defrauded or damaged plaintiff (*id.* at 10). Plaintiff was not defrauded at all. This is a straightforward breach of contract action. As far as there is confusion about Brainchild's name, plaintiff failed to perform basic due diligence before doing business, and failed to require a contractual representation about the counterparty, indicating the information was not relevant, so cannot be the basis of a fraud claim (*id.*). Further, the allegations are insufficient to show domination and control. The allegations only show common ownership, a shared mailing address, and employees of different entities seeking help from each other before entering into the contract. Similar facts, with the addition of intermingling of funds and dominance of decision making, were insufficient to support alter ego claims (*id.* at 11, citing *Cornwall Mgt. Ltd. v Kambolin,* 140 AD3d 507, 507 [1st Dept 2016]).

Even with the additional allegations, the tortious interference claim fails because plaintiff has failed to allege the purported senior lender lacked a justification for inducing a breach of the contract. The senior lender is entitled to be paid first, and so to act as it is alleged to have done (Reply at 12). Plaintiff has failed to allege the interference was tortious or motivated by malice (*id.*).

III. DISCUSSION

On a motion to dismiss a plaintiff's claim pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see, Campaign for Fiscal Equity v State,* 86 NY2d 307, 317 [1995]; *219 Broadway Corp. v*

Alexander's, Inc., 46 NY2d 506, 509 [1979]). Rather, the court is required to "afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference [citation omitted]. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). The court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010]).

Defendants do not seek to dismiss the breach of contract claim as to Brainchild and Company, Inc. Defendants do seek to dismiss it as to all other defendants, arguing they either do not exist, or otherwise are not liable as alter egos or otherwise. Imposition of alter-ego liability requires plaintiff to demonstrate the remaining defendants' "'complete domination of the corporation in respect to the transaction attacked' and 'that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury'" (*Baby Phat Holding Co., LLC v Kellwood Co.*, 123 AD3d 405, 407 [1st Dept 2014], quoting *Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 141 [1993]). Conclusory claims of domination are insufficient. While defendants argue plaintiff has failed to plead a fraud, defendants do not dispute plaintiff has properly pled it was wronged and injured by at least one defendant.

Regarding domination and control, defendants rely on *Cornwall Mgt. Ltd. v Kambolin* (140 AD3d 507 [1st Dept 2016]). In *Cornwall Mgt*, the allegations were held insufficient because the plaintiff failed to allege actions taken by the alleged alter ego entities in connection with the specific loans at issue and the injury to the plaintiff, or a lack of corporate formalities or undercapitalization (*id.* at 507). Here, plaintiff has similarly failed to make specific allegations of actions taken by the other entities to control Brainchild and Company, Inc. or any of the other Brainchild Entities. However, the question is not whether a plaintiff has alleged a claim, but whether it can. The defendant entities are alleged to have used various names, sometimes interchangeably. The contract (*see* NYSCEF Doc. No. 44) states it is between plaintiff and Brainchild Inc d/b/a Brainchild, and it is signed by counsel on behalf of Brainchild. Accordingly, Brainchild Inc is a proper defendant. As far as defendants argue Brainchild Inc does not exist, they have not presented documentary evidence to that effect. The dispute over the proper counterparty makes the contract ambiguous. An entity just named "Brainchild" and defendant entity KVK-Tech, Inc. are alleged to have made payments on the counterparty's debts, so may be proper counterparties. The entities which made payments previously, and subsequently did not, may be deemed to be controlling the counterparty with respect to the transaction.

The entities are run out of Vepuri's home and he is alleged to have comingled funds (*see* Opp at 10). He makes all business decisions for the entities. The only defendant for whom sufficient allegations have not been made is Brainchild Holdings LLC, which is not alleged to have done anything in relation to these transactions or the contract. The motion to dismiss this claim is granted as to Brainchild Holdings LLC, and is otherwise denied.

As there is a contract, the claim for goods sold and delivered (second cause of action) is duplicative, and shall be dismissed. Plaintiff does not attempt to defend this claim.

Regarding the claim for an account stated (third cause of action), "an account stated is an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and balance due" (*Jim-Mar Corp. v Aquatic Constr.*, 195 AD2d 868, 869 [3d Dept 1993]). The agreement can be express (*Ross v Sherman*, 57 AD3d 758, 759 [2d Dept 2008]), or "may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (*Am. Express Centurion Bank v Cutler*, 81 AD3d 761, 762 [2d Dept 2011]). "[R]eceipt and retention of plaintiff's accounts, without objection within a reasonable time, and agreement to pay a portion of the indebtedness, [gives] rise to an actionable account stated, thereby entitling plaintiff to summary judgment in its favor" (*Shea & Gould v Burr*, 194 AD2d 369, 370-71 [1st Dept 1993] [citation and internal quotation marks omitted]). This claim is properly stated and will survive as an alternative, especially given the dispute over the proper counterparty to the contract.

As to the claims of *quantum meruit*/unjust enrichment, "unjust enrichment is a quasi contract theory of recovery, and 'is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned'" (*Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 408 [1st Dept 2011], *affd.* 19 NY3d 511 [2012], quoting *IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009]). In order to plead a claim for unjust enrichment, the plaintiff must allege "that the other party was enriched, at plaintiff's expense, and that 'it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered'" (*Georgia Malone & Co.*, 86 AD3d at 408, quoting *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). To make out a *prima facie* case for *quantum meruit*, plaintiff must establish (1) the performance of services in good faith, (2) acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services (*Freedman v Pearlman*, 271 AD2d 301, 304 [1st Dept 2000]). Affording the pleadings a liberal construction and providing plaintiff the benefit of every possible inference (*see ECBI*, 5NY3d at 19), the allegations that plaintiff may have delivered goods to an entity other than its counterparty, if they are not alter egos, the *quantum meruit* claim should survive as an alternative to the breach of contract action.

As to the breach of the covenant of good faith and fair dealing claim, it is well settled that within every contract is an implied covenant of good faith and fair dealings (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002]; *Dalton v Educ. Testing Serv.*, 87 NY2d 384, 389 [1995]). The implied covenant "embraces a pledge that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract" (*511 W. 232nd Owners Corp.*, 98 NY2d at 153 [internal quotation marks omitted]; *see also 6243 Jericho Realty Corp. v AutoZone, Inc.*, 71 AD3d 983, 984 [2d Dept 2010]; *Moran v Erk*, 11 NY3d 452, 457 [2008]). A breach of the covenant is a breach of the contract itself (*see Boscoral Operating, LLC v Nautica Apparel, Inc.*, 298 AD2d 330, 331 [1st Dept 2002]). The covenant of good faith and fair dealing is breached when a party acts in a manner that, although not expressly forbidden by the contractual provision, would deprive the other party of the benefits of the agreement (*see 511 W. 232nd Owners Corp.*, 98 NY2d at 153; *Sorenson v Bridge Capital Corp.*, 52 AD3d 265, 267 [1st Dept 2008]).

The covenant encompasses any promises that a reasonable person in the position of the promisee would be justified in understanding were included (*see 511 W. 232nd Owners Corp.*, 98 NY2d at 153; *Ochal v Tel. Tech. Corp.*, 26 AD3d 575, 576 [3d Dept 2006]). However, the obligations imposed by an implied covenant of good faith and fair dealing are limited to obligations in aid and furtherance of the explicit terms of the parties' agreement (*see Trump on Ocean, LLC v State*, 79 AD3d 1325, 1326 [3d Dept 2010]). The covenant cannot be construed so broadly as to nullify the express terms of a contract, or to create independent contractual rights (*see Phoenix Capital Invs. LLC v Ellington Mgt. Group, L.L.C.*, 51 AD3d 549, 550 [1st Dept 2008]; *767 Third Ave. LLC v Greble & Finger, LLP*, 8 AD3d 75, [1st Dept 2004]; *SNS Bank, N.V. v Citibank, N.A.*, 7 AD3d 352, 355 [1st Dept 2004]; *Fesseha v TD Waterhouse Inv. Servs., Inc.*, 305 AD2d 268, [1st Dept 2003]). To establish a breach of the implied covenant, the Plaintiff must allege facts that tend to show that the Defendants sought to prevent performance of the contract or to withhold its benefits from the Plaintiff (*see Aventine Inv. Mgmt., Inc. v Can. Imperial Bank of Communications Inc.*, 265 AD2d 513, 514 [2d Dept 1999]).

This claim is duplicative of the breach of contract cause of action. Plaintiff has not alleged defendants sought to deprive it of the benefit of its bargain. Plaintiff merely alleges defendants failed to pay, which is a breach of the terms of the contract. This claim fails.

Regarding the sixth cause of action, "in a fraudulent inducement claim, the alleged misrepresentation should be one of then-present fact, which would be extraneous to the contract and involve a duty separate from or in addition to that imposed by the contract . . . and not merely a misrepresented intent to perform" (*Hawthorne Group v RRE Ventures*, 7 AD3d 320, 323-24 [1st Dept 2004] [citations omitted]; *see also J.M. Bldrs. & Assoc., Inc. v Lindner*, 67 AD3d 738, 741 [2d Dept 2007] ["[a] present intent to deceive must be alleged and a mere misrepresentation of an intention to perform under the contract is insufficient to allege fraud"]). Representations of opinion, even as to matters of fact, are not representations for this purpose and are not actionable unless guaranteed (*see Lanzi v Brooks*, 54 AD2d 1057 [1976], *affd* 43 NY2d 778 [1977]; *Mun. Metallic Bed Mfg. Corp. v Dobbs*, 253 NY 313 [1930]). Here, the alleged misrepresentation relates to defendants' intention to perform on the contracts. Therefore, this claim fails.

The declaratory judgment claim is effectively an independent claim for piercing of the corporate veil, which "does not constitute a cause of action independent of that against the corporation: rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners" (*Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 141 [1993]). Accordingly, this claim shall be dismissed.

As to the tortious interference with a contract claim against Doe individual or entity, to prove a claim for tortious interference with contract, the plaintiff must show: (1) the existence of a valid contract; (2) defendant's knowledge of the contract; (3) defendants' intentional procurement of the third-party's breach without justification; (4) actual breach of the contract; and (5) damages caused by breach of the contract (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 424 [1996]); *Kronos, Inc. v AVX Corp.*, 81 NY2d 90 [1993]).

Plaintiff has alleged the existence of a valid contract, that the senior lender knew about the contract, procured the breach and caused plaintiff damage. The parties dispute whether there was a justification, or whether the lack of a justification is properly pled. Providing the plaintiff the benefit of every inference, and as information about this lender is totally within the defendants' control, this claim survives.

Accordingly, it is hereby

ORDERED that the motion of defendants to dismiss the complaint (motion sequence number 001) is GRANTED to the extent that the Second (Goods Sold and Delivered), Fifth (Breach of Implied Covenant of Good Faith and Fair Dealing), Sixth (Fraud/Fraudulent Inducement) and Seventh (Declaratory Judgment) causes of action are hereby DISMISSED, and is otherwise DENIED; and it is further

ORDERED that the Motion to Dismiss is GRANTED as to Brainchild Holdings LLC and the complaint is hereby DISMISSED as to Brainchild Holdings LLC; and it is further

ORDERED that all counsel for the respective parties shall appear at a preliminary conference on Tuesday, June 11, 2019 at 10:30 AM in Part 49, Courtroom 252, 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.

DATED: April 19, 2019

ENTER,

O.P.

O. PETER SHERWOOD J.S.C.