

Senderoff v Torossian
2019 NY Slip Op 31693(U)
June 12, 2019
Supreme Court, New York County
Docket Number: 656370/2018
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 656370/2018

DOUGLAS SENDEROFF and PARK AVENUE AESTHETIC
SURGERY, P.C.,

MOTION DATE 06/11/2019

Plaintiffs,

MOTION SEQ. NO. 001

- v -

RONN TOROSSIAN and 5W PUBLIC RELATIONS LLC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for

DISMISS

ORDER

Upon the foregoing documents, it is

ORDERED that the motion to dismiss is granted and the complaint in its entirety is dismissed against defendant Ronn Torossian, and it is further

ORDERED that the claims against defendant Ronn Torossian are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Ron Torossian dismissing the claims made against him in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion to dismiss is granted and the first, third, fourth, fifth, sixth and seventh causes of action of the complaint as against the remaining defendant, and the first cause of action for breach of contract to the extent that it is brought by plaintiff Douglass Senderoff are dismissed; and it is further

ORDERED that such defendant is directed to serve an answer to the complaint within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 331, 60 Centre Street, New York, New York, on September 24, 2019, at 9:30 AM.

DECISION

Defendants are correct that the documentary evidence in the form of the agreement dated June 13, 2018 between the corporate parties to this action refutes plaintiffs' claims of privity of contract between the individual plaintiff and either defendant, and therefore, such claim on behalf of plaintiff Douglas Senderoff must be dismissed. See C.I.T. Financial Corp. v Hartford Fire Ins. Co., 41 AD2d 528 (1st Dept. 1973).

Nor does the complaint sufficiently plead a corporate piercing or other theory of liability as against the individual defendant, who the agreement shows signed the contract as a

corporate officer and not as an individual. See Brasseur v Speranza, 21 AD3d 297, 299 (1st Dept. 2005).

Likewise, this court agrees with defendants that the claims sounding in fraud, as misrepresentations, merely repeat assertions that defendant breached the agreement, and so lack merit. J. F. Morgan Knitting Mills v Reeves Bros., Inc., 243 AD2d 422 (2d Dept. 1997).

With respect to the negligent misrepresentation cause of action, the complaint does not allege facts that suggest any special privity-like relationship between the parties, and therefore is insufficient pled. Mandarin Trading Ltd. V Wildenstein, 16 NY2d 173 (2011).

As to the cause of action for unjust enrichment, the contract attached to the complaint establishes the existence of a contract, so no quasi contract facts are alleged. See Schultz v Gershman, 66 AD3d 426 (1st Dept. 2009) and EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 23 (2005).

Finally, the assertions of a violation of General Business Law § 349 set forth in the complaint lack merit. Plaintiff's allegations that that defendant failed to deliver the public relations services to it as promised under the contract do not make a "threshold showing that . . . [such

failure] was consumer oriented, that is, it ...[had] a broad impact on consumers at large". See U.W. Marx, Inc. v Bonded Concrete, Inc., 7 AD3d 856, 858 (3d Dept. 2004).

6/12/2019

DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE