Guangzhou Honhu Enters. Mgt. Ltd. v Parigi Group, LTC
2020 NY Slip Op 30821(U)
March 19, 2020
Supreme Court, New York County
Docket Number: 651488/2016
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS 15

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GUANGZHOU HONHU ENTERPRISES MANAGEMENT LTD,

Plaintiff,

- v -

PARIGI GROUP, LTC, PARIGI LILY, LLC, HARTSTRINGS, LLC, PARIGI MMS HOLDINGS, LLC, MORRIS SROUR, MARCO SROUR, ESTHER STELLA JMAL A/K/A ESTHER JAML, JOYCE SROUR, PARIGI ENTERPRISES-WHOLESALE, LLC, PARIGI ENTERPRISES-RETAIL, LLC, PRG NOUVEAU, LLC, HARRY TAWIL, and SAUL TAWIL,

Defendants.

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INDEX NO. 651488/2016

MOTION SEQ. NO. 3 and 4

DECISION + ORDER ON MOTION

Melissa Anne Crane, JSC

Motions sequence #003 and #004 are consolidated for disposition.

This debt collection case has become unduly complicated because of unnecessary motion practice on the part of both sides. Accordingly, there shall be no further motions without prior conference with the court. In addition, any future memoranda of law must contain a table of contents.

In motion #003, all defendants seek an order, pursuant to CPLR § 3211(a)(1) and CPLR § 3211(a)(7), dismissing the Amended Complaint. Meanwhile, also on motion #3, plaintiff Guangzhou Honhu Enterprises Management Ltd cross moves to amend to add claims for alter ego, successor liability, de facto merger and violation of debtor creditor law (DCL) section 273-

a. Plaintiff also seeks to drop its causes of action for breach of fiduciary duty and constructive trust (*see* EDOC 160). Inexplicably, despite moving to drop these two claims, plaintiff opposed the dismissal of the claim for constructive trust in its papers and argued against the dismissal of its claim for breach of fiduciary duty at the oral argument on this motion.

In motion #004, Plaintiff seeks an order awarding it partial summary judgment against Hartstrings, LLC, Parigi MMS Holdings, LLC, Parigi Enterprises-Wholesale, LLC, Parigi Enterprises-Retail, LLC (collectively, with Parigi Group, Ltd., referenced herein as "Parigi Group"), Morris Srour, Marco Srour, and Esther Stella Jmal (collectively, the "Srours") and PRG Nouveau, LLC ("PRG") on plaintiff's causes of action for violation of Debtor Creditor Law § 273-a and 273. However, plaintiff makes this motion before the court has granted leave to amend its complaint and before defendants have answered.

PROCEDURAL HISTORY

On September 28, 2018, this Court entered an order awarding summary judgment on Plaintiffs' cause of action for breach of contract against Parigi Group, Ltd. based upon Parigi Group's breach of a promissory note and failure to pay the sum of $731,036.31 for children's garments (collectively, the "Goods") that Plaintiff manufactured and delivered to Parigi between April 2015 and December 2015. Additionally, for reasons stated on the record of September 28, 2018, the court granted the Plaintiff permission to amend the complaint and add additional parties (NY St Cts Elec Filing ["NYSCEF"] Doc. 210, p. 8, ¶ 30; NYSCEF Doc. 131-2).

On October 1, 2018, the court extended the Note of Issue filing deadline to February 28, 2019 and this court determined that Plaintiff stated viable causes of action for fraud, and violation of Debtor Creditor Law §§ 273, 274, 275, and 276 against Parigi Group, Ltd., Parigi Lilly, LLC, Hartstrings, LLC, Parigi Enterprises-Retail, LLC (collectively "Parigi"), Mr. Marco

Srour (President of Parigi Group) ("Marco"), Mr. Morris Srour ("Morris"), Mrs. Stella "Esther" Jmal ("Esther"), Joyce Srour ("Joyce"), PRG Nouveau, LLC, Harry Tawil, and Saul Tawil (collectively, the "Defendants") (NYSCEF Doc. 132; NYSCEF Doc. 173, p. 2; NYSCEF Doc. 210, p. 8, ¶ 29). Additionally, the Court granted summary judgment to Plaintiff against Parigi Group, Ltd. for breach of contract (NYSCEF Doc. 132; NYSCEF Doc. 173, p. 2). Subsequently on October 9, 2018, Plaintiff amended its complaint. Then, on October 26, 2018 and November 28, 2018, Defendants requested and received two extensions to answer Plaintiff's amended complaint (NYSCEF Doc. 148-9). On December 17, 2018, Defendants filed a Motion to Dismiss.

On February 28, 2019, Plaintiff filed a NOI and Certificate of Non Readiness on the NOI deadline (NYSCEF Doc. 210, p. 9, ¶ 34). On May 8, 2019, this court held an Inquest Hearing and awarded Plaintiff a judgment against Parigi Group, Ltd., in the amount of $731,537.31 together with interest from January 20, 2016 at a rate of 9% per annum in the amount of $218,439.04, together with costs and disbursements in the sum of $1,379.50 (total award to Plaintiff $951,355.85) (NYSCEF Doc. 195). Subsequently, on September 4, 2019, the court vacated the Note of Issue and extended it to December 31, 2019. On January 14, 2020, the court granted a final Note of Issue extension to March 15, 2020. On March 15, 2020, plaintiff filed the Note of Issue.

BACKGROUND

Parigi Group, Ltd. manufactured and sold children's clothing through their wholesale (Parigi Enterprises Wholesale, LLC and Parigi MMS Holdings LLC) and retail (Hartstrings LLC and Parigi Enterprises-Retail, LLC) entities (collectively the "Parigi Group" or "Parigi") under various brands. The Parigi Group's entities all shared a bank account (NYSCEF Doc. 106, 49,

10). Mr. Marco Srour (President of Parigi Group) ("Marco"), Mr. Morris Srour ("Morris"), and Mrs. Stella "Esther" Jmal ("Esther") (collectively the "Srours") are siblings who own the Parigi Group and all of its entities 37.5%, 37.5%, and 25% respectively. The Srours handled Parigi Group's sales, design, and production.

In 2010 Parigi Group, Ltd., Parigi MMS Holdings LLC, Parigi Enterprises Wholesale, LLC, Parigi Enterprises-Retail, LLC entered into a Financing and Security Agreement ("Credit Agreement") with the CIT Group/Commercial Services, Inc. ("CIT") for a revolving line of credit secured by personal guarantees from each of the Srours individually, and by each of the Parigi Group's entities' respective business inventory (NY St Cts Elec Filing ["NYSCEF"] Doc No. 210, p. 2; NYSCEF Doc. 141, Financing and Security Agreement).

In the beginning of 2015, after Parigi Group lost its Puma license, Parigi Group started having trouble covering its expenses (NYSCEF Doc. 106, p. 92:17-9, 97:21-5, Marco Srour Deposition). Between February 2015 and October 10, 2015, Parigi Group sent various purchase orders to Plaintiff and subsequently received the Goods from Plaintiff (NYSCEF Doc. 210, p. 3, ¶9). Then, in April 2015, CIT required Parigi Group to increase its capitalization and provide CIT $3.8 million to hold as additional capital (the "Srour's Personal Guarantee") (NYSCEF Doc. 210, p. 3, ¶7).

On July 20, 2015 CIT put Parigi Group on notice that it would terminate the Credit Agreement as of September 30, 2015 and that all obligations would be due in cash (NYSCEF Doc. 114). Nevertheless, CIT extended the Parigi Group's Credit Agreement termination date five times, with the final termination date being April 30, 2016 (NYSCEF Doc. 115).

Sometime in 2015, Parigi Group became insolvent and, Mr. Finkelstein informed the banks that Parigi Group intended to file for bankruptcy due to its "tremendous liabilities"

(NYSCEF Doc. 106, p. 92:14-6, Marco Srour Deposition; NYSCEF Doc. 166, p. 24, William Finkelstein Deposition). On or about November 2, 2015, Parigi Group acknowledged its failure to pay for the Goods and entered into an agreement ("Promissory Note") with Plaintiff to pay $907,674.18 over time (NYSCEF Doc. 210, p. 3, ¶12). Parigi Group made an initial $176,136.87 payment to Plaintiff, but failed to pay anything else. Accordingly, a debt of $731,036.31 remains (NYSCEF Doc. 210, p. 3-4, ¶12).

On January 19, 2016, the Srours and Mr. Harry S. Tawil ("Mr. Tawil") formed PRG Nouveau, LLC ("PRG") (NYSCEF Doc. 116). On March 21, 2016, after Parigi Group defaulted on the Promissory Note, Plaintiff filed suit against Parigi Group to recover the outstanding balance related to the Goods (NYSCEF Doc. 1). Subsequently, on April 26, 2016, Mr. Tawil and his father, Mr. Saul Tawil (collectively the "Tawils"), the Srours, and Parigi Group entered into a "Joint Venture Agreement/PRG Nouveau" (the "PRG Joint Venture"), which was an amended agreement regarding the formation of PRG. This deal had a closing date of April 30, 2016 ("Closing") (NYSCEF Doc. 83, PRG Joint Venture). Under the PRG Joint Venture, PRG assumed some of Parigi Group's liabilities in exchange for Parigi Group transferring its license agreements (DKNY, Roxy, Lucky, Reebok, LRG, Nicole Miller, Penguin, and the trademark "Hartstrings" [including derivatives and sub-brands]) valued at $4,800,000 (NYSCEF Doc. 83, p. 3330, 3326, PRG Joint Venture). Parigi's debt to Plaintiff was part of what the PRG Joint Venture excluded. (NYSCEF Doc. 83, p. 3345). Parigi did not notify its suppliers, including Plaintiff, that they were selling off their inventory at seventy-three percent of cost (NYSCEF Doc. 77, p. 28, Deposition of Morris Srour).

On or before Closing, the Tawils arranged for Samsung C&T America, Inc. ("Samsung") to lend PRG, directly or indirectly, up to $5,000,000[1] (the "Samsung Loan") and purchase Parigi Group's entire existing inventory for 73% of its $11,348,000 book value (Parigi Group's original cost was $15,548,000) (NYSCEF Doc. 83, p. 3, 6, PRG Joint Venture; NYSCEF Doc. 81; NYSCEF Doc. 210, p. 5, ¶ 16). Additionally, under the PRG Joint Venture, the Srours were responsible for contributing $6,300,000 as follows: (i) $3,800,000 upon the earlier release of CIT's side collateral by December 31, 2016; and, (ii) $2,500,000 on the Srour's receipt of a tax refund by December 31, 2016, whereby Srour "assigns to PRG all right, title and interest that Srour has to the Srour Tax Refund…" (NYSCEF Doc. 83, p. 3). The "Srour Loan" "is the difference between (i) the total amount of capital contributions and loans made by Srour (not to exceed $6,300,000), minus (ii) $1,300,000. The Srour Loan will be repaid after repayment by PRG of the Samsung Loan, but prior to" specified distributions[2] (NYSCEF Doc. 83, p. 3).

The PRG Joint Venture also included employment contracts for Marco, Morris, and Esther to:

> "work full time as officers of PRG for as long as he or she…is a Member…[and] works full time at PRG he or she shall be paid an annual salary of $400,000 and shall be entitled to such insurance, benefits and perquisites as set forth on Exhibit C-2…(i) [they] shall each be paid a reduced annual salary equal to $200,000 until December 31, 2016 provided that [PRG's] projections for 2017 indicate that the Samsung Loan will be repaid in full, [PRG] is profitable and that [PRG] can bear the payment of such additional salary and still maintain a cash balance at the end of 2017 of at least $1 million, (any deferred amount [i.e.: the difference between $400,000 (prorated) and the amount actually paid] to be paid in 2017) and (ii) Tawil's salary shall be reduced to $200,000 during 2016, with any deferred amount (i.e.: the difference between $400,000 and the amount actually paid) to be paid in 2017." (NYSCEF Doc. 83, p. 4, ¶ Employment).

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[1] The Samsung Loan terms were as follows: "$2,500,000 repayable by December 31, 2016; and $2,500,000 by December 31, 2017. Tawil shall be solely responsible for the interest accrued on the Samsung Loan… As of the [contract] date…the Samsung Loan equals $853,645.09, and the remaining obligation of Tawil to arrange is up to $4,146,354.91." (NYSCEF Doc. 116, p. 4)

[2] see NYSCEF Doc. 83, p. 3, ¶ Distributions.

Prior to Closing, on April 4, 2016, Marco and Gila Srour's federal tax lien for $360,602.09 was settled (NYSCEF Doc. 100). Then, in or around April 2016, just prior to or around Closing, Parigi defaulted on its Promissory Note to Plaintiff (NYSCEF Doc. 168, p. 4).

Sometime in 2016, Parigi ceased doing business (NYSCEF Doc. 168, p. 18-9, Marco Srour Deposition). On April 18, 2016, Samsung assumed Parigi's inventory that CIT had rights to under the Credit Agreement (the "Inventory") through the deal that Tawil arranged on behalf of PRG (NYSCEF Doc. 83, p. 4-5, Joint Venture Agreement: Samsung Financing; NYSCEF Doc. 106, p. 98-100, Marco Srour Deposition; NYSCEF Doc. 138). Under this deal, PRG was Samsung's "Selling Agent" for the Inventory (NYSCEF Doc. 106, p. 98-100, Marco Srour Deposition; NYSCEF Doc. 138). As Samsung's Selling Agent, PRG sold the Inventory at a profit and received commissions from Samsung (NYSCEF Doc. 83, p. 4-5, Joint Venture Agreement: Samsung Financing; NYSCEF Doc. 106, p. 98-100, Marco Srour Deposition; NYSCEF Doc. 138). Once the Inventory was transferred from CIT to Samsung, it was not physically moved from the Hatsboro warehouse that Parigi previously leased (NYSCEF Doc. 85, p. 17, Marco Srour Deposition). Then, Marco Srour sold "[f]resh new merchandise" on behalf of PRG and Samsung (NYSCEF Doc. 106, p. 102-3, Marco Srour Deposition).

On September 28, 2018, this Court entered an order awarding summary judgment in favor of Plaintiff against Parigi Group, Ltd. based upon its breach of a promissory note and failure to pay the sum of $731,036.31 for the Goods that Plaintiff manufactured and delivered to Parigi between April 2015 and December 2015. Additionally, for reasons stated on the record of September 28, 2018, the court granted the Plaintiff permission to amend the complaint and add additional parties (NYSCEF Doc. 210, p. 8, ¶ 30; NYSCEF Doc. 131-2).

On March 27, 2019, TD Bank provided Parigi's bank records ("Bank Records") from April 2015 (NYSCEF Doc. 182). The Bank Records establish that from April 2015, while Parigi was insolvent, through June 2017, the Srours made approximately $1.5 million in wire transfers (the "Parigi Wire Transfers") out of one of Parigi's bank accounts to the Srours, their immediate family members, and their personal creditors; approximately $200,000 of which was transferred after Plaintiff filed this lawsuit (NYSCEF Doc. 182-3). The Parigi Wire Transfers included: $412,500 of transfers to Melanie Srour, Marco's ex-wife, who had no interest in Parigi and whom Marco owed $1.7 million dollars; $36,000 of transfers to the Srour's mother, Leila Srour; $28,000 of transfers to Esther's son, Issac Jmal; $74,789 of transfers to Morris' son, Teddy Srour; and $90,000 to Ferrari Financial Services for Marco's personal cars that had no connection with the Parigi business (NYSCEF Doc. 106, p. 27-8, 76-7; NYSCEF Doc. 182-3). Additionally in May and June of 2017, $110,000 was wired to Marco and his current wife, Gila Srour. Marco testifies that this was part of Parigi's winding down process, because he was advised by his tax advisor to transfer the remaining funds in Parigi's bank account to his personal account with the understanding that the funds would continue to be used for Parigi's business expenses, including accounting and legal fees (NYSCEF Doc. 210, p. 10-1, ¶ 43). Further, PRG owned and used the trademark Hartstrings sometime in 2017 (NYSCEF Doc. 106, p. 175, ¶ 7-14). In November 2017, PRG signed over the Hartstrings license to Marco as the sole owner (NYSCEF Doc. 106, p. 175, ¶ 17-25; p. 177, ¶ 13-23). Currently Marco is trying to go into business under the name Hartstrings, but has not yet formed a new company (NYSCEF Doc. 106, p. 175-6).

BREACH OF CONTRACT CLAIM

Defendants seek to dismiss Plaintiff's Amended Complaint pursuant to CPLR §3211(a)(1) and CPLR §3211(a)(7), claiming that Plaintiff does not specify which Parigi entity was responsible for performing under the purported contract, and that "Parigi Group" is defined to include all the Parigi Entities (NYSCEF Doc. 151, p. 3). Prior to this motion, on 9/28/2018 (EDOC 132), this court already determined that plaintiff stated a valid claim for breach of contract, because it awarded summary judgment to plaintiff against Parigi. In awarding summary judgment, this court necessarily determined Parigi and Plaintiff had a valid contract; plaintiff performed by delivering the Goods to Parigi; and Parigi failed to pay for the Goods. Additionally, the Promissory Note dated November 2, 2015 is between Plaintiff and "Parigi Group, Ltd., and each of its affiliates, with an address at 112 West 34th Street, New York, NY 10120 (collectively "Parigi")." Thus, Plaintiff may define Parigi Group to include all the Parigi Entities, especially given the interrelationship between them. Also, given the discussion below, allowing plaintiff to assert claims based on alter ego, dismissing the breach of contract claim at this time is unwarranted.

COMMON LAW FRAUD CLAIM

Defendant claims Plaintiff's common law fraud claim lacks specificity and is duplicative of breach of contract (NYSCEF Doc. 151, p. 3). CPLR 3016(b) states, "where a cause of action or defense is based upon a misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

Contrary to defendants' position, plaintiff has sufficiently alleged a shell game scheme to defraud plaintiff utilizing interconnected entities. Specifically, plaintiff alleges that, to avoid their debt to plaintiff, after this lawsuit was filed, the Parigi defendants and the Srours transferred the bulk of the inventory each Parigi Group entity held, including the Goods, to PRG at less than fair

market value. Again, PRG was a company that the Srour defendants had formed with the Tawil defendants. Meanwhile, Parigi conveniently retained its liabilities, including the debt to plaintiff. Meanwhile, the Srours used assets of Parigi that they did not transfer to pay off their own personal debts, including IRS liens. The Sours then had Parigi use the money it obtained from PRG from the discounted sale of its inventory, to pay off a loan to CIT Bank NA that the Srours had personally guaranteed.

PRG then resold the inventory at a profit. PRG continued to do business with the same retailers and vendors as the Parigi Group, and continues to be managed by the Srours while using the same general business operation (see *Fitzgerald v Fahnestock & Co.*, 286 AD2d 573 [1st Dept 2001]). Thus, plaintiff certainly has alleged with particularity an elaborate scheme to defraud it and keep Parigi judgement proof. That plaintiff may not know which role specifically each individual defendant played is immaterial at this juncture because that information is within the exclusive purview of the defendants.

CONVERSION CLAIM

Plaintiff alleges that the sale proceeds received from the Retail Stores on the Goods, not the Goods themselves, were converted by the Srours to pay off debts, including but not limited to personal IRS Tax Liens (see NYSCEF Doc. 99-101) instead of using the proceeds to satisfy its debt to Plaintiff. This is simply not conversion, especially as plaintiff sold the goods to Parigi and, therefore, no longer had a superior right to possession. Extending plaintiff's theory to its logical conclusion, any failure to pay for goods would turn into a conversion claim. Accordingly, the court dismisses plaintiff's claim for conversion with prejudice.

UNJUST ENRICHMENT

To plead a claim of unjust enrichment, a plaintiff must show "that (1) the other party was enriched, (2) at that party's expense, and (3) that 'it is against good conscience to permit [the other party] to retain what is sought to be recovered'" (*Citibank, N.A. v. Walker*, 12 AD3d 480, 481 [2d Dept 2004]). Although privity is not required for an unjust enrichment claim (*Sperry v. Crompton Corp*., 8 N.Y.3d 204, 215, 831 N.Y.S.2d 760, 863 N.E.2d 1012 [2007]), a claim will not lie unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part *(see Mandarin Trading v Wildenstein*, 16 N.Y.3d 173, 182, 919 N.Y.S.2d 465, 944 N.E.2d 1104).

> "Unjust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract not committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff… An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim. Typical cases [of unjust enrichment] are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled to." (*Corsello v. Verizon N.Y., Inc.*, 19 N.Y.3d 777, 790 [2012])

Here, Plaintiff's cause of action for unjust enrichment (paragraphs 77-81) merely duplicates plaintiff's cause of action for breach of contract. It is otherwise insufficient for failure to describe a connection or relationship between the parties that could have caused reliance or inducement on plaintiff's part. Accordingly, the court dismisses this claim (*see Georgia Malone & Co., Inc v Rieder,* 86 AD3d 406, 408 (1st Dep't 2011).

BREACH OF CONSTRUCTIVE TRUST CLAIM

In its cross motion, plaintiff requests that the court remove its cause of action for a constructive trust. Then, inexplicably, in its memorandum in opposition and in support of its cross motion, plaintiff opposes the dismissal of its cause of action for constructive trust. Rather than trying to make sense of this irreconcilable difference in this already convoluted motion, the court grants the relief plaintiff has asked for, and dismisses the cause of action for constructive

trust, without prejudice. For the same reason, the court dismisses plaintiff's claim for breach of fiduciary duty.

CONSTRUCTIVE FRAUD UNDER DEBTOR CREDITOR LAW (DCL) § 273, 274, 275, AND 278 CLAIM

New York's Debtor and Creditor Law ("NYDCL") deems fraudulent a conveyance made without "fair consideration." Under DCL § 273 a transfer is a fraudulent conveyance if the transferor is insolvent or will be rendered insolvent by the transfer in question. DCL § 274 states that:

> "Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent"

DCL § 275 states that:

> "Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors."

DCL § 276 provides that:

> "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors"

Additionally, pursuant to DCL § 276-a, a defendant will be liable for reasonable attorney's fees if found liable for violating DCL § 276.

Plaintiff may rely on "badges of fraud" to support evidence of actual intent. These are circumstances so commonly associated with fraudulent transfers "that their presence gives rise to an inference of intent" (*Pen Pak Corp. v. LaSalle Natl. Bank*, 240 A.D.2d 384, 386 [2nd Dept.

1997], quoting *MFS/Sun Life Trust High Yield Series v. Van Dusen Airport Servs. Co.*, 910 F Supp 913, 935; *Matter of Shelly v. Doe*, 249 A.D.2d 756 [3rd Dept. 1998]). Badges of fraud include "(1) the close relationship among the parties to the transaction, (2) the inadequacy of consideration, (3) the transferor's knowledge of the creditor's claims, or claims so likely to arise as to be certain, and the transferor's inability to pay them, and (4) the retention of control of property by the transferor after the conveyance" (*Pen Pak Corp. v. LaSalle Nat. Bank of Chicago*, 240 A.D.2d 384, 386 [2nd Dept. 1997]).

The Appellate Division has consistently held that, a transfer of property to an insider or their related entities or immediate family members for inadequate consideration, while the transferring party still maintains an interest in the transferred property, constitutes *prima facie* evidence of intent with regard to liability under DCL § 276 (*see 5706 Fifth Avenue., LLC v. Louzieh*, 108 A.D.3d 589, 590 [2nd Dept. 2013] *citing NPR, LLC v. Met Fin Magt. Inc.*, 63 A.D.3d 1128, 1129 [2009]; *Dempster v. Overview Equities*, 4 A.D.3d 495, 498 [2004] [close relationship between the parties to the transaction, inadequate consideration, and the transferee's retention of the benefit of the property following the transfer was sufficient to set aside the subject conveyance pursuant to DCP § 276, and for an award of attorney's fees pursuant to DCL § 276-a]).

Also, when an insider of a company transfers assets of the company to another entity in which the insider has an interest, the transfer is presumed to be fraudulent (*see Wimbledon Fin. Master Fund, Ltd. v. Bergstein*, 2017 NY Slip Op 31505[U] 9-10 [NY County Supreme, July 2017] [defendant on both sides of the transaction resulting in retaining control of property "leave no material question that the subject conveyances were made with the intent to defraud…"]; *Stavroulakis v. Pelakanos*, 2018 NY Slip Op 50180[U] 36-38 [NY County Supreme Feb. 2018]

[holding that participating in the creation of a new company and subsequently transferring all of the former company's assets into the new company gives rise to claims for breach of fiduciary duty and amount to constructive fraudulent conveyances under DCL § 273 and § 273-a; *North Hill Funding of N.Y., LLC v. Amincor Other Assets, Inc.*, 2016 NY Slip Op 32638[U], 16-17 ["In addition, the transfer fails to satisfy the "good faith" requirement when a corporate insider participates in both sides of the transfer and when the insiders control the transfer, "the transfer will be deemed to have been made in bad faith if made to a creditor's detriment" [*112 West 34th St. Co., LLC v. Shamah*, 45 Misc 3d 1213[A], 2014 NY Slip Op 51554[U], 3[Sup Ct, NY County 2014])(168, 13-4). Bad faith is established if the purpose of the transfer is to give a corporate insider preference over other creditors (*see Matter of Bernasconi v. Aeon, LLC,* 105 A.D. 3d 1167, 1169 [3rd Dept. 2013]). Further, payments against an insider's debts to the detriment of other creditors are considered fraudulent conveyances (*see HBE Leasing Corp. v. Frank*, 48 F3d 623, 634-5 [2d Cir 1995]; *In re Trinsum Group Inc.,* 460 BR 379, 391 [SD NY 2011]).

Here, after Parigi defaulted on the Promissory Note to Plaintiff, the Srours and Tawils established PRG and orchestrated the transfer of the Goods to PRG at a huge discount. PRG then carried on Parigi's business and was essentially identical Parigi, except that Tawil had 50% ownership of PRG, while the Srours held the other 50%. Even though Tawil was not a principal in Parigi, the Srours were controlling principals in both Parigi and PRG at the time of the transfer. Considering (1) Parigi's debts to plaintiff, (2) that the Srours used the proceeds remaining with Parigi to pay off debts where they would be personally liable thereby stripping Parigi of its remaining assets, and (3) the transfer left Parigi with its liabilities including the debt to plaintiff, plaintiff has stated a claim under all of the aforementioned sections of the DCL.

THE CROSS MOTION

The court grants plaintiff's cross motion to amend to add claims for alter ego, successor liability, de facto merger and violations of DCL section 273-a. Here, plaintiff has alleged that after Parigi Group defaulted on its Promissory Note and became a defendant in this lawsuit, the Srours and the Tawils orchestrated the bulk transfer to PRG of all of Parigi Group's assets, including $15,548,000, in inventory for $4 Million less than what Parigi Group paid for it. Moreover, none of Parigi's liabilities transferred to PRG. Without its assets, Parigi Group was unable to satisfy the debts it retained. This is sufficient to allege a lack of fair consideration for the transfer.

The facts alleged state that the Srours were involved and part of the ownership of PRG, Parigi ceased doing business after the transfer of its assets to PRG while PRG continued to do business with the same retailers and vendors as the Parigi group, continued to be managed by the Srours and use the same general business operations. The allegations also establish *prima facie* that the Srours and the Tawils transferred all of Parigi's assets to PRG in April 2016 right after this lawsuit was filed. These allegations satisfy DCL 273-a.

MOTION SEQUENCE #4

That part of motion sequence 4 seeking vacatur of the NOI was already granted at oral argument and is now moot. In the remainder of the motion, Plaintiff seeks seeking an Order for partial summary judgment on Plaintiff's Alter Ego Liability/ Liability of Successor Corporation — De Facto Merger and violation of Debtor Creditor Law § 273-a and 273 causes of action against PARIGI LILY, LLC, HARTSTRINGS, LLC, PARIGI MMS HOLDINGS, LLC, PARIGI ENTERPRISESWHOLESALE, LLC, PARIGI ENTERPIRSES-RETAIL, LLC (collectively, with Parigi Group, Ltd., referenced herein as "Parigi"), MORRIS SROUR, MARCO SROUR, and ESTHER STELLA JMAL (collectively, the "Srours") and PRG

NOUVEAU, LLC ("PRG"). The motion is denied without prejudice as it is premature. Plaintiff has leave to re-make a motion for summary judgment within 120 days of filing its NOI. The parties are forewarned that the court will NOT entertain successive motions for summary judgment any further.

Accordingly, it is

ORDERED THAT defendant's motion to dismiss (motion #3) is granted as to plaintiff's claim for conversion and is otherwise denied; and it is further

ORDERED THAT plaintiff's cross motion (motion #3) to add claims for alter ego and successor liability, defacto merger and violation of DCL 273-a, and to drop claims for constructive trust and breach of fiduciary duty is granted in its entirety; and it is further

ORDERED THAT plaintiff's motion for partial summary judgment (motion seq. # 4) is denied without prejudice as premature.

Dated: March 19, 2020.
New York, NY

HON. MELISSA A. CRANE, J.S.C.