

**Farview Fashion Inc. v New Waves Apparel Group,  
Ltd.**

2020 NY Slip Op 31484(U)

May 18, 2020

Supreme Court, New York County

Docket Number: 159904/2018

Judge: James Edward d'Auguste

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM
Justice
INDEX NO. 159904/2018
FARVIEW FASHION INC., ANHUI GARMENTS IMP. & EXP. CO., LTD., MOTION DATE N/A
Plaintiff, MOTION SEQ. NO. 001

- v -

NEW WAVES APPAREL GROUP, LTD., ARMOND WANG, WINONA WANG DECISION + ORDER ON MOTION
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23 were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

The instant action arises out of a dispute between plaintiff Anhui Garments Imp. & Exp. Co., LTD ("Anhui") and defendant New Waves Apparel Group Ltd. ("New Waves"). Defendants Armond Wang and Winona Wang are officers and directors of New Waves. Plaintiff Farview Fashion Inc. (Farview) is identified in the complaint as a wholly owned subsidiary of Anhui.

On April 16, 2016, Anhui and New Waves entered into sublease under which Anhui occupied a portion of New Wave's office space located at 525 Seventh Avenue, New York, New York ("the premises"). NYSCEF Doc. No. 1. Plaintiffs allege that on February 20, 2018, defendants locked out plaintiffs from the premises as a form of self-help eviction. Id.

Plaintiffs assert five causes of action: (i) wrongful eviction by all defendants, (ii) breach of contract by New Waves for not returning the security deposit paid by Anhui, (iii) breach of contract by New Waves for locking plaintiffs out of the premises, (iv) fraud against New Waves alleging

that New Waves did not have the authority to enter into a sublease, and (v) fraudulent misrepresentation against all defendants .

Defendants move the Court pursuant to CPLR 3211(a)(7) for (i) dismissal of the first cause of action as against individual defendants Armond and Winona Wang, (ii) dismissal of the first cause of action to the extent it seeks punitive damages, (iii) dismissal of the fifth cause of action against all defendants and (iv) dismissal of plaintiff, Farview as a party to the complaint.

The first branch of the defendants' motion is granted. The complaint fails to sufficiently plead facts in support of individual liability against Armond or Winona Wang. A shareholder of a corporation is generally shielded from personal liability for a corporation's actions unless a plaintiff has alleged facts that, if proved, indicate that the shareholder "abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice." *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 142 (1993). Here, the complaint is devoid of any specific allegations that either of the Wangs disregarded or abused the privilege of doing business to perpetrate a wrong in their individual capacity.

The second branch of the motion is also granted. New York Courts generally decline to issue punitive damages where transactions are private and there is not a high degree of moral turpitude. *See e.g. Mountain Cr. Acquisition LLC v. Intrawest US Holdings, Inc.*, 96 A.D.3d 633 (1st Dept. 2012); *Steinhardt Group v. Citicorp*, 272 A.D.2d 255. Rather, courts have held that in order to recover punitive damages the movant must show egregious tortious conduct that was "part of a pattern of similar conduct directed at the public generally." *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308 (1995); *Rocanova v. Equitable Life*, 83 N.Y.2d 603, 613 (1994). Here, there is nothing alleged that indicate a pattern of egregious conduct directed at the public generally

that would warrant punitive damages. Rather, plaintiffs merely allege a breach of an alleged sublease and a wrongful eviction from a commercial property.

The third branch of the motion is granted. In order to establish a cause of action for fraud a plaintiff must allege that the defendant knowingly misrepresented a material fact with the purpose of inducing the plaintiff's justifiable reliance, and that such reliance caused damage to the plaintiff. *Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 421 (1999). Additionally, a plaintiff asserting a fraud claim must allege each element with particularity and support them with allegations of fact that detail with specificity the circumstances of the alleged fraud, including specific dates. CPLR 3016(b). Here, plaintiffs merely state that misrepresentations were made as to defendants' ability to sublet and the size of the space rented. However, the complaint fails to identify in detail who specifically made the misrepresentations, how they were made, to whom, and the dates the alleged misrepresentations. Rather, the allegations state with generality that Armond and Winona Wang made the misrepresentations. Accordingly, the third branch of the motion is granted.

The fourth branch of the motion is also granted. Each of the first four causes of action stems from the alleged sublease, the alleged breach of the sublease, and actions allegedly taken between the sublessor and sublessee. Anhui and New Games entered into a sublease on April 16, 2016. There are no facts alleged that give rise to Farview's standing as a plaintiff. Farview is not alleged to have been a party to the sublease. Indeed, as the New York Department of State lists Farview Fashion, Inc. as incorporating on July 20, 2016, three months after the parties executed the alleged sublease, Farview was not even a legal entity in existence as of the date of the allegedly breached sublease.

Submit Order directly to Part 55 at [jszellan@nycourts.gov](mailto:jszellan@nycourts.gov) to include change in caption to reflect that Farview, Armond Wang and Winona Wang are dismissed from the case.

This constitutes the decision and order of the Court.



5/18/2020

DATE

JAMES EDWARD D'AUGUSTE, 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