

Park Ins. Co. v Dadex, Inc.
2020 NY Slip Op 31806(U)
June 10, 2020
Supreme Court, New York County
Docket Number: 654467/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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PARK INSURANCE COMPANY,

INDEX NO. 654467/2019

Plaintiff,

MOTION DATE 10/18/2019,
10/24/2019

- v -

MOTION SEQ. NO. 001 003

DADEX, INC, KAMRAN KIRMANI, NURIDE
TRANSPORTATION GROUP, LLC, GETT CARS, LLC,
NYC GREEN TRANSPORTATION GROUP, LLC, GROUP
68, INC

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 37, 39, 45, 48, 49, 50, 56, 57

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 38, 46, 52, 53, 54, 55, 58

were read on this motion to/for DISMISS.

This action concerns an alleged contract between Plaintiff Park Insurance Co. and Defendant Dadex, Inc. (“Dadex”) by which Plaintiff agreed to provide insurance services for “a substantial number of vehicles” in Dadex’s fleet of automobiles in exchange for Dadex’s promise to pay “insurance premiums, certain collateral and escrow payments, and make certain deductible payments” (NYSCEF 14, ¶¶ 13-14 [Verified Compl.]). Dadex additionally agreed to make “certain monthly payments” to Plaintiff, but Plaintiff alleges that Dadex refused to pay for the insurance services rendered (*see id.* ¶ 14). Plaintiff alleges that it relied upon, and performed services under, the agreement it executed with Dadex (*see id.* ¶ 31 [alleging those parties signed a contract]).

Plaintiff asserts the following claims: an account stated against Dadex for the unpaid balance of \$1,745,564.05 for which Plaintiff alleges Dadex received invoices without protest (First Cause of Action); breach of contract against Dadex to recover \$1,745,564.05 for services rendered under the agreement (Second Cause of Action); unjust enrichment against Dadex for \$1,745,564.05 (Third Cause of Action); quantum meruit against Dadex to recover \$1,745,564.05 pursuant to Dadex's "promise" (Fourth Cause of Action); and "pierce the corporate veil" against all Defendants for \$1,745,564.05 (Fifth Cause of Action).

In Motion 001, Defendants Dadex, Kamran Kirmani ("Kirmani"), and Gett Cars, LLC ("Gett") (collectively, "Dadex Defendants") move to dismiss the First, Third, Fourth, and Fifth causes of action in the complaint pursuant to CPLR 3211 (a) (7).¹ In Motion 003, Defendants NuRide Transportation Group, LLC ("NuRide"), NYC Green Transportation Group, LLC ("NYC Green"), and Group 68, Inc. ("Group 68") (collectively, "NuRide Defendants") move to dismiss the entire complaint pursuant to CPLR 3211 (a) (1) and (a) (7).

In both Motions 001 and 003, Plaintiff cross-moves to amend the verified complaint to assert, rather than a single "pierce the veil" claim, the following separate claims for breach of contract against: Kirmani, as alter ego of Dadex (Proposed Fifth Cause of Action); Kirmani, as alter ego of nonparty/proposed new party "Get Cars Group, LLC" (Proposed Sixth Cause of Action); and against the remaining Dadex and NuRide Defendants as alter egos of Kirmani and Dadex (Proposed Seventh Cause of Action) (*see* NYSCEF Doc. 49 [proposed amended complaint]).²

¹ The Dadex Defendants submitted an attorney affirmation with legal arguments, rather than a memorandum of law. Counsel are reminded that such affirmations are not permitted under this Court's rules.

² In its proposed amended complaint, Plaintiff further seeks to recover, for all claims, an increased sum of \$2,352,108.18. Plaintiff's cross motions are discussed in Section 3, *infra*.

DISCUSSION

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. [The court] accept[s] the facts as alleged in the complaint as true, [and] accord[s] plaintiff[] the benefit of every possible favorable inference” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994] [internal citation omitted]). However, bare legal conclusions and “factual claims which are either inherently incredible or flatly contradicted by documentary evidence” are not “accorded their most favorable intendment” (*Summit Solomon & Feldman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995]).

Dismissal under subsection (a) (1) is warranted where the documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law” (*Leon*, 84 NY2d at 88). “Judicial records[] . . . would qualify as ‘documentary,’ as should the entire range of documents reflecting out-of-court transactions, such as contracts, deeds, wills, mortgages, and even correspondence. To qualify as ‘documentary,’ the paper’s content must be ‘essentially undeniable and . . . , assuming the verity of [the paper] and the validity of its execution, will itself support the ground on which the motion is based (*Amsterdam Hosp. Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 432-433 [1st Dept 2014] [quotation marks and citation omitted]).

1. Dadex Defendants’ Motion to Dismiss (Motion 001)

The Dadex Defendants contend that the First, Third, and Fourth Causes of Action must be dismissed as duplicative of the Second Cause of Action for breach of contract. Plaintiff responds that it may properly raise its equitable claims against Dadex in the alternative to the breach of contract claim.

Here, Plaintiff alleges that it executed a written agreement to provide insurance services to Dadex, which Dadex signed. Dadex does not dispute the existence of a written agreement or the validity of any such agreement. Each of Plaintiff's equitable claims seek identical relief for the cost and/or value of the work it performed *under the agreement*. Accordingly, the First, Third, and Fourth Causes of actions are dismissed against Dadex as duplicative of the contract claim (*see Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790-791 [2012] ["An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract . . . claim."], citing *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 [1987]; *see also Hagman v Swenson*, 149 AD3d 1, 7 [1st Dept 2017] [dismissing as duplicative account stated, quantum meruit, and unjust enrichment claims as "defendants do not dispute the existence of the . . . contract, or that the contract covers the issues at hand"] [citations omitted]; *Norex Petroleum Ltd. v Blavatnik*, 48 Misc 3d 1226(A) [Sup Ct, NY County 2015] [dismissing equitable claim arising from the written agreement], *judgment entered sub nom. Norex Petroleum Ltd. v Blavatnik, et al.* [Sup Ct, NY County 2015], and *affd, appeal dismissed* 151 AD3d 647 [1st Dept 2017]).

Plaintiff's Fifth Cause of Action, entitled "Pierce Corporate Veil Against All Defendants," is, foremost, not a recognized cause of action. Piercing the corporate veil is a theory of liability, not a valid claim in its own right. In any event, Plaintiff's veil-piercing allegations are inadequate to state a claim. The allegations in the Verified Complaint consist of the following: (a) upon information and belief, Kirmani is a principal and owner or part-owner of all Defendants (including, of course, the Dadex Defendants); (b) upon information and belief, Kirmani is "the alter ego of Defendants"; (c) "Many of [the Defendants] were created very close in time and, on information and belief, were used as tools by . . . Kirmani to evade the law and . .

. creditors of each entity”; (d) upon information and belief, the Defendants each share “common ownership, board of directors, addresses and locations, employees, and banking information”; and (e) Kirmani “should not be able to use his alter ego shell companies and corporations to evade credits, commit such fraud and unlawful conduct, and cause substantial damages to Plaintiff” (*see* NYSCEF 14, ¶¶ 18-23).

“[A] plaintiff who attempts to pierce the corporate veil and hold a corporate officer or owner liable for an obligation of, or a wrong committed by, the corporation must show complete domination of the corporation and that ‘the [individual], through [his] domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against [the plaintiff]’ ” (*Doe v Bloomberg, L.P.*, 178 AD3d 44, 50 [1st Dept 2019], quoting *Matter of Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 142 [1993]).

Plaintiff fails to adequately plead allegations sufficient to establish veil-piercing liability against Defendants (*e.g. Art Capital Bermuda Ltd. v Bank of N.T. Butterfield & Son Ltd.*, 169 AD3d 426, 427-428 [1st Dept 2019] [dismissing complaint on the basis that plaintiff did “not allege particularized facts showing that (the defendant) did business in his individual capacity . . . without regard to formality and to suit his immediate convenience” or plead particularized facts demonstrating abuse of the corporate form]).

Here, Plaintiff does not allege at all, or alleges with only conclusory, speculative assertions, that Kirmani dominated or exerted dominion over the Defendants; specifically, Plaintiff asserts that some of the various Defendant entities share business addresses and “banking information,” but not, for instance, that he directed their actions. Plaintiff also does not adequately allege that Kirmani or the Defendants actually abused the corporate form in connection with the underlying insurance agreement or its alleged breach, for instance, by

undercapitalizing Dadex, comingling funds, or otherwise inappropriately abusing their forms as separate entities. Thus, even if Plaintiff had sufficiently alleged that Kirmani “dominated” the Defendants, Plaintiff has not alleged that such domination corresponded to “some showing of a wrongful or unjust act toward plaintiff,” such as underfunding Dadex to force it to breach the agreement with Plaintiff or to personally benefit from the alleged breach (*see e.g. Matter of Morris*, 82 NY2d at 141-142 [“While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business, such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required.”]).

Accordingly, the Fifth Cause of Action is dismissed against the Dadex Defendants. Plaintiff’s cross motion is addressed in Section 3, *infra*.

2. NuRide Defendants’ Motion to Dismiss (Motion 003)

The NuRide Defendants seek dismissal of the Fifth Cause of Action (piercing the corporate veil), the only claim raised against them in the Verified Complaint.

For the reasons stated above in Section 1, *supra*, the Fifth Cause of Action is dismissed. Setting aside the fact that “Pierce the Corporate Veil” is not a separate claim in New York, Plaintiff has failed to adequately identify particular facts to support its conclusory/speculative assertions that the NuRide Defendants are all alter egos of Kirmani (or Dadex).

Because the Court finds that Plaintiff fails to adequately plead its Fifth Cause of Action, the Court need not address the documentary evidence submitted by the NuRide Defendants in support of their motion seeking dismissal under CPLR 3211 (a) (1).

3. Plaintiff's Cross Motion to Amend the Complaint (Both Motions)

Plaintiff seeks leave to amend its Verified Complaint to add, among other things, individual claims for breach of contract against Defendants, collectively (NuRide, Gett, NYC Green, and Group 68), and against Kirmani as the alter egos of Dadex and (nonparty) "Get Cars Group, LLC" under a veil-piercing theory of liability. Plaintiff has not submitted with its proposed amended complaint a document clearly showing the changes made to the original Complaint (for instance, by submitting a redline copy or demonstrating the changes in an affirmation) in contravention of CPLR 3025 (b) (*see Cafe Lughnasa Inc. v A & R Kalimian LLC*, 176 AD3d 523, 524 [1st Dept 2019]).

In any event, while Plaintiff's proposed amended complaint corrects the procedural error of asserting veil-piercing as an independent claim for relief, Plaintiff still does not adequately allege facts to support piercing the corporate veil to reach either Kirmani, individually as the purported "dominating" owner or officer, or the various "shell companies," including Dadex, NuRide, Gett, NYC Green, Group 68, and the would-be new Defendant "Get Cars Group, LLC" ("Get Cars") (*e.g. Art Capital Bermuda Ltd.*, 169 AD3d at 427-428 [1st Dept 2019] [dismissing complaint where the plaintiff did "not allege particularized facts showing that (the defendant) did business in his individual capacity . . . without regard to formality and to suit his immediate convenience" or plead particularized facts demonstrating abuse of the corporate form]).

With regard to the Dadex Defendants and NuRide Defendants, Plaintiff does not sufficiently plead allegations to support its veil-piercing breach of contract claims (*see generally* NYSCEF Doc. 53 [proposed amended compl.]). Specifically, Plaintiff's proposed amended allegations are conclusory and speculative in asserting that Kirmani, individually, or any of the Dadex/NuRide Defendants are alter egos of, or were dominated by, Dadex and/or Kirmani or

that any such domination or alter-ego activity had any bearing on the alleged breach of the insurance contract underlying this action. Plaintiff again does not, for instance, allege in the proposed amended complaint that the Defendants comingled funds, were undercapitalized, or otherwise abused the corporate form.

Plaintiff seeks to interpose a claim for breach of contract against Kirmani “as alter ego of Get Cars” on the basis that Plaintiff and Get Cars entered into a separate agreement, signed by Kirmani as “Managing Member,” for insurance services. Plaintiff further asserts that Get Cars is a fictitious, unregistered/nonexistent entity and, thus, Kirmani is liable for Get Cars’s breach of contract (*id.* ¶¶ 58-60; *see also* NYSCEF Doc. 48 [Plaintiff’s attorney’s affirmation asserting the same]). The Dadex Defendants, however, submit a printed page from the publicly-available New York Division of Corporations “Entity Information” for “GETCARS GROUP, LLC,” an active New York company (*see* NYSCEF Doc. 57; *see also Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 133 [1st Dept 2014] [noting the Court is not procedurally precluded from considering documentary evidence when a party moves to dismiss pursuant to CPLR 3211 (a) (7), but not (a) (1), where the document eliminates an element of the claim]). Further, the Court may take judicial notice of Get Car’s active entity listing within the New York State’s public Division of Corporations’s “Entity Information” entry, which bears the same business address for Get Cars as that which Plaintiff alleges in its proposed amended complaint.

While Plaintiff might have a breach of contract claim against Get Cars as an entity, Plaintiff has not adequately alleged facts demonstrating that Kirmani is liable for Get Cars’s alleged breach. That is, Plaintiff alleges only that Get Cars does not exist in New York but does

not allege particularized facts to warrant the permitting the proposed veil-piercing claim to proceed as against Kirmani as Get Cars's alter ego.

Because Plaintiff's veil-piercing allegations in its proposed amended complaint do not adequately plead facts to sustain its proposed causes of action seeking to recover from the Defendants as alter egos of each other and/or Kirmani, those prongs of Plaintiff's cross motions are dismissed (*see Art Capital Bermuda Ltd.*, 169 AD3d at 427-428). Likewise, Plaintiff has failed to cure the deficiencies identified in Section 1, *supra*, with regard to its equitable claims, in its proposed amended complaint. Therefore, the cross motions to amend the Verified Complaint are denied as futile.

* * * * *

The Court has considered the parties' remaining arguments and, to the extent that they are properly before the Court, finds that they are unpersuasive, without merit, or otherwise do not require an alternative result.

Accordingly, it is

ORDERED that Motion Sequence Number 001 to dismiss the Verified Complaint is **granted**, and the First, Third, Fourth, and Fifth Causes of Action are dismissed as against Defendants Dadex, Inc., Kamran Kirmani, and Gett Cars, LLC; it is further

ORDERED that Plaintiff's cross motion to amend the Verified Complaint (Motion Seq. No. 001) is **denied**; it is further

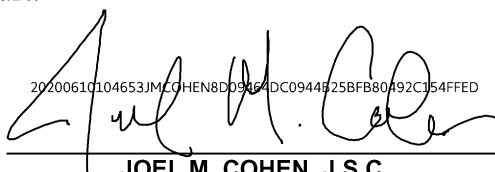
ORDERED that Motion Sequence Number 003 to dismiss the Verified Complaint is **granted**, and the Verified Complaint is dismissed as against Defendants NuRide Transportation Group, LLC, NYC Green Transportation Group, LLC, and Group 68, Inc.; it is further

ORDERED that Plaintiff's cross motion to amend the Verified Complaint (Motion Seq. No. 003) is **denied**; it is further

ORDERED that Defendant Dadex, Inc. shall answer the Verified Complaint (containing only the surviving Second Cause of Action) within 20 days of the Court's entry of this Decision and Order on NYSCEF; and it is further

ORDERED that Plaintiff and Dadex, Inc. shall appear for a preliminary conference on July 17, 2019 at 10:00 AM (the parties shall contact the Court a week prior to the conference to address whether the appearance will be in Court or by teleconference).

This constitutes the Decision and Order of the Court.

<u>6/10/2020</u> DATE	 20200610104653JMC0HEN8D09494DC0944825BFB80A92C154FFED JOEL M. COHEN, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED ☐ GRANTED ☐ DENIED ☐ SETTLE ORDER ☐ INCLUDES TRANSFER/REASSIGN	☒ NON-FINAL DISPOSITION ☒ GRANTED IN PART ☐ OTHER ☐ SUBMIT ORDER ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE
APPLICATION:		
CHECK IF APPROPRIATE:		