

Golden Steel Inc. v Sanford Estate, LLC
2020 NY Slip Op 31972(U)
May 22, 2020
Supreme Court, Queens County
Docket Number: 703343/19
Judge: Leonard Livote
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FILED

SHORT FORM ORDER

5/26/2020

11:20 AM

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: Honorable Leonard Livote IAS TERM, PART 33
Acting Supreme Court Justice

**COUNTY CLERK
QUEENS COUNTY**

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Golden Steel Inc.

Index No: 703343/19

Plaintiff(s),

-- against --

Motion Date: 12/17/19

Sanford Estate, LLC and

Seq. No: 1

Jiashu Xu, a/k/a Chris Xu,

Defendant(s).

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The following papers numbered 1 to 9 were read on this motion by defendants for an order to dismiss the complaint pursuant to CPLR §3211(a) (7).

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits.....	1 - 4
Answering Affirmations, Affidavits and Exhibits.....	5 - 7
Reply Affirmations, Affidavits and Exhibits.....	8 - 9
Other.....	

Upon the foregoing papers, the motion is granted in part and denied in part.

This is an action for breach of contract and fraudulent conveyance, along with other causes of action in connection with a supplemental agreement (as described below) to the lease agreement for the premises located at 34-01 College Point Blvd., Flushing, NY 11354.

Golden City Iron Work Inc. ("Golden City") entered into a lease agreement (the "Lease") with Sanford on or about August 1, 2013 for a five-year term to commence from August 1, 2013 and to end on July 31, 2018. Pursuant to the Lease, Sanford as the landlord leased to the tenant Golden City the premises located at 34-01 College Point Blvd., Flushing, NY 11354 (the "Premises"). On or about October 1, 2013, Golden City assigned the lease to the Plaintiff Golden Steel with Sanford's consent.

In November 2016, Sanford desired to sell the Premises to 3401 CP Holdings LLC ("CP Holdings"). In order not to delay Sanford's selling plan, Sanford induced Plaintiff to enter into an amendment to lease ("Amendment to Lease") and a supplemental agreement ("Agreement") on or about November 16, 2016. The Amendment to Lease entitled the new owner of the Premises to terminate the Lease before the lease term upon 120 days prior notice, and in consideration of such amendment, the parties simultaneously entered into the Agreement.

Pursuant to the Agreement, if the new owner of the Premises decides to terminate the lease agreement before July 31, 2018, Defendants shall lease a 10,000 square feet property located at 125-12 31 Avenue, Flushing, NY 11354 (the "New Premises") to the Plaintiff for the remaining term of the Lease, with the same monthly rent as the Lease. In the event Sanford was unable to provide the above-mentioned New Premises to the Plaintiff after the new owner of the Premises sent the notice to evict the Plaintiff, and Plaintiff was therefore required to relocate the Premises itself, as per the Agreement, Sanford shall pay damages to the Plaintiff in the amount of \$50,000.00 per month commencing from the date the Plaintiff vacates the Premises to July 31, 2018. Defendant XU, as Sanford's managing member signed the Agreement.

To induce Plaintiff to enter into the Amendment to Lease and Agreement, Defendant XU represented to Plaintiff that he owned the New Premises and had authority and right to lease the New Premises to Plaintiff. Upon information and belief, on November 18, 2016, Sanford conveyed the Premises to the new owner, CP Holdings, for a sales price in the amount of \$21,000,000.

In December 2016, CP Holdings sent a termination notice to Golden Steel, and declared the Lease to expire on May 1, 2017. On or about June 1, 2017, CP Holdings commenced a holdover proceeding to evict Golden Steel in the Civil Court of the City of New York, County of Queens (the "L/T Court").

On or about July 7, 2017, Golden Steel served a letter, along with CP Holdings' holdover proceeding, notice of termination and Agreement, upon the Defendants, requesting the Defendants to perform the Agreement by either relocating Plaintiff Golden Steel to the New Premises or paying \$50,000.00 per month to Golden Steel as damages, commencing from the date on which Golden Steel removed from the Premises to July 31, 2018. Defendants failed to perform the obligations under the Agreement.

By the L/T Court's order dated July 13, 2017, Golden Steel

was obligated to vacate the Premises by September 30, 2017. On or about July 14, 2017, Golden Steel served a follow-up letter, along with CP Holdings' holdover proceeding, notice of termination, Agreement, and court's order dated July 13, 2017, upon the Defendants, requesting the same relief as stated in the letter dated July 7, 2017. However, Defendants again failed to perform the obligations under the Agreement.

Pursuant to the L/T Court's order dated July 13, 2017, Plaintiff Golden Steel vacated the Premises on or about September 30, 2017, and suffered damages including but not limited to the cost of renovation fees, relocation fees, rental difference between the old lease agreement and new lease agreement, and huge interference with and loss of business resulting from the relocation. Although Golden Steel requested several times to the Defendants before the vacatur, Defendants failed to relocate Golden Steel to the New Premises as promised. Since Sanford was unable to provide the New Premises to Golden Steel, Sanford was required to pay \$50,000.00 per month to Golden Steel as damages for ten months, commencing from October 1, 2017 to July 31, 2018, in a total amount of \$500,000.00.

Although Golden Steel made several demands to Sanford and XU for the damages stated in the Agreement, both Sanford and XU failed to perform the obligations required by the Agreement.

Plaintiff commenced this action alleging breach of contract, fraud, violations of the Debtor and Creditor Law, piercing of the corporate veil, unjust enrichment, and punitive damages.

"On a motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Rabos v. R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 2012 N.Y. Slip Op 07974, 2012 WL 5870676 [2nd Dept 2012]). Where, as here, the defendant has submitted evidence in support of the motion, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275).

The first cause of action alleges breach of contract. Defendants argue that this claim must be dismissed because defendants were not the owners of the "New Premises" located at 125-12 31st Avenue, Flushing, NY 11354. This assertion is irrelevant to the breach of contract claim.

"A fraud-based cause of action is duplicative of a breach of contract claim "when the only fraud alleged is that the defendant was not sincere when it promised to perform under the contract" (*First Bank of the Ams. v. Motor Car Funding*, 257 A.D.2d 287, 291, 690 N.Y.S.2d 17 [1999]). A fraud-based cause of action may lie, however, where the plaintiff pleads a breach of a duty separate from a breach of the contract (*id.*). Thus, where the plaintiff pleads that it was induced to enter into a contract based on the defendant's promise to perform and that the defendant, at the time it made the promise, had a "preconceived and undisclosed intention of not performing" the contract, such a promise constitutes a representation of present fact collateral to the terms of the contract and is actionable in fraud (*Deerfield Communications Corp. v. Chesebrough-Ponds, Inc.*, 68 N.Y.2d 954, 956, 510 N.Y.S.2d 88, 502 N.E.2d 1003 [1986] [internal quotation marks omitted]; see *First Bank of the Ams.*, *supra*)."

(*Manas v VMS Assoc., LLC*, 53 AD3d 451, 453-54 [1st Dept 2008]). The complaint sufficient alleges a "preconceived and undisclosed intention of not performing." Accordingly, the complaint sufficiently alleges a fraud claim.

The third through seventh causes of action allege violations of the Debtor and Creditor Law. The complaint adequately alleges violations of these statutes.

The eighth cause of action alleges unjust enrichment. The unjust enrichment claim is duplicative of the cause of action to recover damages for breach of contract (*Cooper, Bamundo, Hecht & Longworth, LLP v Kuczinski*, 14 AD3d 644, 645 [2d Dept 2005]). Accordingly, it must be dismissed.

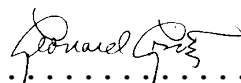
To state a cause of action under the doctrine of piercing the corporate veil, the "plaintiff must allege facts that, if proved, indicate that the shareholder exercised complete domination and control over the corporation [or LLC] and 'abused the privilege of doing business in the corporate [or LLC] form to perpetrate a wrong or injustice.'" (*Board of Managers of Beacon Tower Condominium v. 85 Adams Street, LLC*, 136 A.D.3d 680, 682 [2d Dep't. 2016]). The complaint adequately alleges these elements.

There is no separate cause of action for punitive damages (*Brandenberg v Blue Cross and Blue Shield of Greater New York*, 78 AD2d 534, 534 [2d Dept 1980]). Accordingly, this cause of action is dismissed.

Accordingly, the motion is granted to the extent that the eighth cause of action for unjust enrichment, and the tenth cause of action for punitive damages are dismissed. The motion is otherwise denied.

This constitutes the Order of the Court.

Dated: May 22, 2020


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Leonard Livote, A.J.S.C.

FILED

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**COUNTY CLERK
QUEENS COUNTY**