

**Hangzhou Tienen Textile Co. Ltd. v PCA Textiles & Apparel/Teld Tex L.L.C.**

2020 NY Slip Op 32349(U)

July 17, 2020

Supreme Court, New York County

Docket Number: 654809/2019

Judge: Tanya R. Kennedy

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 63

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HANGZHOU TIANEN TEXTILE CO. LTD.,

Index No. 654809/2019  
Mot. Seq. No. 001

Plaintiff,

- against -

PCA TEXTILES & APPAREL/TELD TEX LIMITED  
LIABILITY COMPANY, and WILLIAM THOMPSON,

Defendants.

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**HON. TANYA R. KENNEDY, J.S.C.:**

Defendant William Thompson (“Thompson”), moves to dismiss the complaint insofar as asserted against him, pursuant to CPLR 3211(a)(5) and (7).<sup>1</sup> Plaintiff Hangzhou Tianen Textile Co. Ltd., (“Hangzhou”) cross moves to amend the complaint, pursuant to CPLR 3025(b).

**FACTUAL AND PROCEDURAL BACKGROUND**

Defendant Thompson is the sole owner of PCA Textiles & Apparel/Teld Tex Limited Liability Company (“PCA”) (Complaint, NYSCEF Doc. No. 5, ¶4). PCA is a New Jersey domestic business limited liability company that maintained an address at 214 West 39th Street, Room 301, New York, New York 10018 (*id.*, ¶3). Plaintiff is a foreign business corporation that owns and operates textile factories at Yuanwu Road, Xiaoshan, Hangzhou City, Zhejiang Province, China (*id.*, ¶¶2, 5).

In December 2011, PCA started to order textiles and goods from Hangzhou (*id.*, ¶6). During the business relationship, PCA placed approximately thirty-eight (38) orders with

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<sup>1</sup> The notice of motion mistakenly lists CPLR 3211(a)(1) as opposed to CPLR 3211(a)(5) since the arguments for dismissal are based upon CPLR 3211(a)(5) and (7).

Hangzhou, totaling \$2,086,518.11 (*id.*, ¶7). Hangzhou fulfilled, shipped, and delivered the goods to PCA, which PCA accepted (*id.*, ¶6). PCA remitted payment of \$1,675,621.67, leaving a remaining balance of \$410,896.44 (*id.*, ¶8).

On January 29, 2013, Thompson emailed Hangzhou, claiming his office was robbed and that his bank accounts were frozen (*id.*, ¶9). PCA failed to make any further payments to Hangzhou after January 29, 2013 and dissolved on April 24, 2015 (*id.*, ¶¶ 10-11). Hangzhou then commenced this action against Thompson and PCA on August 21, 2019 for breach of contract, fraud, unjust enrichment, and to pierce the corporate veil (*id.*). PCA failed to answer the complaint and is now in default.

Thompson moves to dismiss the complaint, pursuant to CPLR 3211(a)(5) and (7). According to Thompson, the breach of contract, fraud and unjust enrichment claims all accrued on January 29, 2013 and are now time-barred since the six-year statute of limitations expired on January 29, 2019, nearly seven months before Hangzhou commenced this action.

Lastly, Thompson argues that New York does not recognize a separate cause of action to pierce the corporate veil, which necessitates dismissal. Thompson further maintains that the complaint is devoid of any allegations that he dominated or controlled PCA sufficient to invoke this doctrine.

Hangzhou argues in opposition that the breach of contract and fraud claims are timely under both New York and New Jersey law. According to Hangzhou, the limitations period did not begin to run until April 24, 2015 when PCA dissolved without providing the requisite notice under New Jersey's Limited Liability Company Law and this state's Business Corporation Law. Hangzhou argues, among other things, that the breach of contract and fraud claims are timely until April 27, 2020 in accordance with New Jersey's five-year limitations period, and timely until April

27, 2021 under this state's six-year limitations period.<sup>2</sup> Hangzhou further maintains that Thompson's January 29, 2013 email did not constitute a breach of contract since Hangzhou expected the parties' business relationship would continue and that PCA would pay the outstanding balance.<sup>3</sup>

Hangzhou also cross moves to amend the complaint pursuant to CPLR 3025(b) and argues that leave to amend is freely granted and that the proposed amendment would not result in any prejudice to Thompson. However, Thompson argues in opposition to the cross-motion and in further support of dismissal that the cross-motion is futile since the breach of contract, fraud and unjust enrichment claims are time-barred and that there is no separate cause of action to pierce the corporate veil.

## DISCUSSION

### **Motion to Dismiss – CPLR 3211(a)(5) and (a)(7)**

On a motion to dismiss pursuant to CPLR 3211(a)(5) on the ground that the action is barred by the statute of limitations, the defendant must establish that the time to sue expired (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011]).

The statute of limitations for a breach of contract claim is six years (*see* CPLR 213[2]). Inasmuch as Hangzhou maintains that PCA breached the parties' agreement on January 29, 2013, this claim is time-barred since it was commenced nearly seven months after the limitations period expired on January 29, 2019.

In a cause of action for fraud, "the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the

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<sup>2</sup> The Court will not provide a discussion of Hangzhou's opposing arguments which are inapplicable and lack merit.

<sup>3</sup> The Court notes that Hangzhou's representative mistakenly avers in his affidavit that the date of Thompson's email is April 23, 2013 (*Wei Qiang Gan Affidavit*, ¶7, NYSCEF Doc. No. 12)

plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it” (*see* CPLR 213[8]). The fraud cause of action accrued on January 29, 2013 and is also time-barred.

There is no specified statute of limitations for an unjust enrichment claim (*see Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [2013]). However, “where, as here, the unjust enrichment and breach of contract claims are based upon the same facts and pleaded in the alternative, a six-year statute of limitations applies” (*id.*; *see also Knobel v Shaw*, 90 AD3d 493, 495 [1st Dept 2011]). Similarly, the unjust enrichment claim also accrued on January 29, 2013 and is now time-barred.

Accordingly, the Court grants that branch of Thompson’s motion to dismiss the complaint insofar as asserted against him pursuant to CPLR 3211(a)(5).

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court is required to afford the pleadings “a liberal construction, accept the allegations of the complaint as true and accord the plaintiffs the benefit of every possible favorable inference” (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 52 [2016], citing *Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]).

As Thompson correctly contends, “New York does not recognize a separate cause of action to pierce the corporate veil” (*Chiomenti Studio Legale, LLC v Prodos Capital Mgt. LLC*, 140 AD3d 635, 636 [1st Dept 2016] [internal quotation marks and citations omitted]; *see Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]). The doctrine of piercing the corporate veil is “typically employed by a third party seeking to go behind the corporate existence in order to circumvent the limited liability of the owners and to hold them liable for some underlying corporate obligation” (*Matter of Morris v New York State Dept. of Taxation & Fin.*, *supra* at 140-141).

In order to invoke the doctrine of piercing the corporate veil, a party must establish that “(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*id.* at 141).

The complaint herein fails to allege any evidence of “self-dealing, commingling of funds, lack of corporate formalities or other veil-piercing indicia,” which is required to invoke such doctrine (*Hartej Corp. v Pepsico World Trading Co.*, 255 AD2d 233, 233 [1st Dept 1998]).

Therefore, the Court grants that branch of Thompson’s motion to dismiss the complaint insofar as asserted against him, pursuant to CPLR 3211(a)(7).

#### **Cross-Motion to Amend – CPLR 3025(b)**

Pursuant to CPLR 3025(b), leave to amend a pleading is freely given, absent prejudice or surprise resulting from the delay (*McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp.*, 59 NY2d 755, 757 [1983]). However, leave to amend will be denied where the proposed amendment fails to state a cause of action (*see Davis & Davis, P.C. v Morson*, 286 AD2d 584, 585 [1st Dept 2001]).

Thompson correctly maintains that leave to amend is futile since the breach of contract, fraud and unjust enrichment claims are time-barred, the complaint fails to allege sufficient facts to justify piercing the corporate veil (*see Triad Intl. Corp. v Cameron Indus.*, 122 AD3d 531, 532 [1st Dept 2014]), and there is no separate cause of action to pierce the corporate veil (*see Chiomenti Studio Legale, LLC v Prodos Capital Management LLC, supra* at 636).

Accordingly, it is

ORDERED that the motion of defendant William Thompson to dismiss pursuant to CPLR 3211(a)(5) and (a)(7) is granted in its entirety, and the complaint is dismissed insofar as asserted

against said defendant, with costs and disbursements to be taxed by the Clerk to said defendant and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff's cross-motion to amend the complaint pursuant to CPLR 3025(b) is denied; and it is further

ORDERED that the action is severed and continued against the remaining defendant PCA Textiles & Apparel/Teld Tex Limited Liability Company.<sup>4</sup>

This constitutes the Decision and Order of the Court.

Dated: New York, New York  
July 17, 2020

ENTER:



**TANYA R. KENNEDY**  
**J.S.C.**

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<sup>4</sup> Inasmuch as PCA is now dissolved and the Court determined this action is time-barred, the Court suggests that plaintiff's counsel consider the viability of continuing this matter.