

Style Asia, Inc. v J Club Inc.
2020 NY Slip Op 33386(U)
October 13, 2020
Supreme Court, New York County
Docket Number: 160405/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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STYLE ASIA, INC.,

Index No. 160405/2019

Plaintiff

- against -

DECISION AND ORDER

J CLUB INC. d/b/a JCLUB.COM, 9TH LLC,
N.D. GEMS INC., HASMUKH SAVALIA, and
UPINDER GAREWAL,

Defendants

-----X

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff, a wholesale supplier of merchandise, sues defendants to recover damages for a fraudulent conveyance, N.Y. Debt. & Cred. Law (DCL) §§ 273, 274, 275, 276, 276-a, 278, fraud, aiding and abetting fraud, and unjust enrichment. The claims arise from plaintiff's inability to collect a Final Judgment by Default dated January 11, 2018, for breach of a contract between plaintiff and defendant 9th LLC, entered in the Superior Court of Bergen County, New Jersey.

Plaintiff claims that all defendants are alter egos of each other. 9th LLC and defendant N.D. Gems Inc. purchase and resell merchandise. Defendant J Club Inc. operates an e-commerce platform for the sale of merchandise. Defendant Savalia and Garewal are members of 9th LLC. Savalia is also an officer of

9th LLC and N.D. Gems and a shareholder and officer of J Club.

After issuance of the default judgment, plaintiff alleges that Choxi.com, 9th LLC's e-commerce platform, petitioned for bankruptcy in the Southern District of New York and identified 9th LLC and N.D. Gems as secured creditors, along with 645 nonpriority creditors. Plaintiff alleges that the bankruptcy proceeding resulted in an auction of Choxi.com's assets, with an accompanying license agreement for future sales, to J Club. The license agreement provided that 9th LLC and N.D. Gems voluntarily subordinated their secured claims against Choxi.com below the 645 nonpriority creditors, changing their status from secured to unsecured creditors. Plaintiff alleges that the voluntary subordination of 9th LLC's secured claim prevented plaintiff from recovering the funds 9th LLC owed to plaintiff, as ordered by the New Jersey default judgment. 9th LLC and N.D. Gems also were guarantors of the license agreement. Plaintiff further alleges that they received no consideration for the subordination of their claims, which effected a diversion of 9th LLC's assets, or their guaranties. Plaintiff points out that only J Club and neither 9th LLC nor N.D. Gems signed the license agreement, demonstrating the alter ego relationship that authorized J Club to bind 9th LLC and N.D. Gems.

Defendants move to dismiss this action based on documentary evidence, res judicata, failure to state a claim, and lack of

personal jurisdiction. C.P.L.R. § 3211(a)(1), (5), (7), and (8).

For the reasons explained below, the court grants defendants' motion in part.

II. PERSONAL JURISDICTION

Defendants move to dismiss the complaint against defendant Garewal, C.P.L.R. § 3211(a)(8), maintaining that he lives in New Jersey, holds no ownership interest in any of the corporate defendants, and was uninvolved with Choxi.com's prior bankruptcy proceeding. Plaintiff, as the party seeking to confer jurisdiction, bears the burden of pleading facts to establish personal jurisdiction. Robins v. Procure Treatment Ctrs., Inc., 179 A.D.3d 412, 413 (1st Dep't 2020); ABKCO Music, Inc. v. McMahon, 175 A.D.3d 1201, 1202 (1st Dep't 2019); Coast to Coast Energy, Inc. v. Gasarch, 149 A.D.3d 485, 486 (1st Dep't 2017); Wang v. LSUC, 137 A.D.3d 520, 521 (1st Dep't 2016).

Plaintiff fails to meet its burden to present facts demonstrating jurisdiction over Garewal. U.S. Immigration Fund LLC v. Litowitz, 182 A.D.3d 505, 506 (1st Dep't 2020); Robins v. Procure Treatment Ctrs., Inc., 179 A.D.3d at 413; ABKCO Music, Inc. v. McMahon, 175 A.D.3d at 1202; Ripplewood Advisors, LLC v. Callidus Capital SIA, 151 A.D.3d 611, 612 (1st Dep't 2017).

Plaintiff's claims against Garewal arise from the license agreement, which subordinated 9th LLC's status as a secured creditor, preventing plaintiff from collecting the funds 9th LLC

owed to plaintiff. Although it alleges that Garewal, as an admitted member of 9th LLC, availed himself of the benefits of conducting business in New York when 9th LLC entered the license agreement and subordinated its claims in the bankruptcy proceeding, Garewal neither was named as a party to the licensing agreement, nor signed it. ABKCO Music, Inc. v. McMahon, 175 A.D.3d at 1201. See U.S. Immigration Fund LLC v. Litowitz, 182 A.D.3d at 506; Robins v. Procure Treatment Ctrs., Inc., 179 A.D.3d at 413; Concotilli v. Brown, 168 A.D.3d 426, 426 (st ep't 2019). Plaintiff thus fails to plead facts (1) to show that Garewal personally transacted the business or committed the tortious conduct in New York, C.P.L.R. § 302(a), with which plaintiff charges 9th LLC, Robins v. Procure Treatment Ctrs., Inc., 179 A.D.3d at 413; Concotilli v. Brown, 168 A.D.3d at 426; IMAX Corp. V. Essel Group, 154 A.D.3d 464, 466 (1st Dep't 2017), or (2) to pierce the corporate veil, East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc., 16 N.Y.3d 775, 776 (2011); Kahan Jewelry Corp. v. Coin Dealer of 47th St. Inc., 173 A.D.3d 568, 568-69 (1st Dep't 2019); Skanska USA Bldg. Inc. v. Atlantic Yards OB2 Owner, LLC, 146 A.D.3d 1, 12 (1st Dep't 2016), to hold Garewal personally liable for 9th LLC's conduct. See Array BioPharma, Inc. v. AstraZeneca AB, 184 A.D.3d 463, 464 (1st Dep't 2020); Coast to Coast Energy, Inc. v. Gasarch, 149 A.D.3d at 487-88.

Finally, Garewal's residence in New Jersey and lack of other contacts with New York militate against personal jurisdiction.

U.S. Immigration Fund LLC v. Litowitz, 182 A.D.3d at 506; Concotilli v. Brown, 168 A.D.3d at 426; IMAX Corp. V. Essel Group, 154 A.D.3d at 466; Ripplewood Advisors, LLC v. Callidus Capital SIA, 151 A.D.3d at 612. Therefore the court grants defendants' motion to dismiss plaintiff's claims against Garewal. C.P.L.R. § 3211(a)(8).

III. C.P.L.R. § 3211(a)(5)

A. Res Judicata

Under the doctrine of res judicata, a final judgment on a claim bars relitigation between the same parties or parties in privity with those same parties of claims arising from the same transactions that either were raised or could have been raised in the prior action. Xiao Yang Chen v. Fischer, 6 N.Y.3d 94, 100 (2005); Rojas v. Romanoff, ___ A.D.3d ___, 2020 WL 4210402, at *3 (1st Dep't July 23, 2020); Platon v. Linden-Marshall Constr. Inc., 176 A.D.3d 409, 410 (1st Dep't 2019); Avilon Auto. Group v. Leontiev, 168 A.D.3d 78, 85 (1st Dep't 2019). Plaintiff commenced a prior action, which included claims for breach of contract, unjust enrichment, and quantum meruit, in New Jersey against 9th LLC and obtained a default judgment. As a result, res judicata bars plaintiff from maintaining its current unjust enrichment claim against 9th LLC. W54-7 LLC v. Perrin, 183

A.D.3d 448, 448-49 (1st Dep't 2020); Platon v. Linden-Marshall Constr. Inc., 176 A.D.3d at 410; IDT Corp. v. Tyco Group, S.A.R.L., 156 A.D.3d 538, 539 (1st Dep't 2017); Gropper v. 200 Fifth Owner LLC, 151 A.D.3d 635, 635 (1st Dep't 2017).

Defendants maintain that res judicata requires dismissal of plaintiff's entire action. Res judicata, however, bars only claims that actually were litigated or could have been raised in a prior action. Plaintiff's breach of contract action in New Jersey arose from 9th LLC's nonpayment for merchandise that 9th LLC ordered and received. Plaintiff's current claims are based on defendants' transactions that occurred after the transactions on which its default judgment in the New Jersey action were based and that plaintiff alleges it discovered only when it sought to collect the default judgment. Defendants' tortious conduct alleged in this action occurred during the bankruptcy proceeding, when 9th LLC subordinated its secured claim below 645 nonpriority creditors, which plaintiff claims it did not discover until it sought to collect the New Jersey judgment. Based on these allegations set forth in the complaint, plaintiff could have raised only its unjust enrichment claim in the prior New Jersey action, because its other claims arise from a different transaction. Therefore, assuming plaintiff proves what its complaint alleges, res judicata does not bar its other claims against defendants now. Xiao Yang Chen v. Fischer, 6 N.Y.3d at

102; Rojas v. Romanoff, 2020 WL 4210402, at *3; Avilon Auto. Group v. Leontiev, 168 A.D.3d at 85; Chapman v. Faustin, 150 A.D.3d 647, 647 (1st Dep't 2017). See Commissioner of the Dept. of Social Servs. of the City of N.Y. v. New York-Presbyt. Hosp., 164 A.D.3d 93, 97 (1st Dep't 2018); UBS Sec. LLC v. Highland Capital Mgt., L.P., 159 A.D.3d 512, 513 (1st Dep't 2018); X-Act Contr. Corp. v. Flanders, 148 A.D.3d 518, 518 (1st Dep't 2017).

B. New Jersey's Entire Controversy Doctrine

Defendants also insist that the New Jersey entire controversy doctrine requires dismissal of plaintiff's claims. The entire controversy doctrine, New Jersey's functional equivalent of res judicata, similarly would bar only plaintiff's claim against 9th LLC for unjust enrichment. See Seung-Min Oh v. Gelco Corp., 257 A.D.2d 385, 386 (1st Dep't 1999); Tammera v. Volger, 198 A.D.2d 34, 35 (1st Dep't 1993).

Should plaintiff eventually recover from 9th LLC based on the New Jersey judgment, then plaintiff of course may not recover the same damages from nonparties to the New Jersey action based on their actions impeding plaintiff's recovery. As long as plaintiff has not recovered the New Jersey judgment, however, then plaintiff may claim against other parties for impeding that recovery.

IV. DEFENDANTS' OTHER GROUNDS FOR DISMISSAL

Upon defendants' motion to dismiss the amended complaint pursuant to C.P.L.R. § 3211(a)(1) and (7), their remaining grounds for dismissal, the court accepts the complaint's allegations as true and draws all reasonable inferences in plaintiff's favor. When evaluating defendants' motion to dismiss the complaint pursuant to C.P.L.R. § 3211(a)(7), the court must give the pleadings a liberal construction, but accepts as true only plaintiff's factual allegations that set forth the elements of legally cognizable claims and from them accords plaintiff every possible favorable inference. Chanko v. American Broadcasting Cos. Inc., 27 N.Y.3d 46, 52 (2016); JF Capital Advisors, LLC v. Lightstone Group, LLC, 25 N.Y.3d 759, 764 (2015); Migliano v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d 342, 351 (2013); ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 227 (2011). Dismissal is warranted only if the complaint fails to allege facts that fit within any cognizable legal theory. Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 142 (2017); Faison v. Lewis, 25 N.Y.3d 220, 224 (2015); ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d at 227; Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595 (2008).

To dismiss the complaint pursuant to C.P.L.R. § 3211(a)(1), defendants must present admissible documentary evidence that utterly refutes or completely negates plaintiff's allegations,

eliminating all material disputes regarding those facts. Beal Sav. Bank v. Sommer, 8 N.Y.3d 318, 324 (2007); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002); 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002); Seaman v. Schulte Roth & Zabel LLP, 176 A.D.3d 538, 538-39 (1st Dep't 2019). The documentary evidence must plainly and flatly contradict the complaint's claims. Array BioPharma, Inc. v. AstraZeneca AB, 184 A.D.3d at 464; Cassidy v. Greater N.Y. Auto. Dealers Assn., Inc., 173 A.D.3d 536, 537 (1st Dep't 2019); Silvergrove Advisors, LLC v. Crosswing Holdings LLC, 173 A.D.3d 455, 456 (1st Dep't 2019); PMJ Capital Corp. v. PAF Capital, LLC, 98 A.D.3d 429, 430 (1st Dep't 2012). Upon defendants' motion to dismiss the complaint pursuant to C.P.L.R. § 3211(a)(1) or (7), the court may not consider the facts alleged by defendants' affidavits, Serao v. Bench-Serao, 149 A.D.3d 645, 646 (1st Dep't 2017); Calpo-Rivera v. Siroka, 144 A.D.3d 568, 568 (1st Dep't 2016); Asmar v. 20th & Seventh Assoc., LLC, 125 A.D.3d 563, 564 (1st Dep't 2015); City of New York v. VJHC Dev. Corp., 125 A.D.3d 425, 426 (1st Dep't 2015), but under § 3211(a)(1) the court may consider any admissible documents that these affidavits authenticate. Nomura Home Equity Loan, Inc., Series 2006-FM2 v. Nomura Credit & Capital, Inc., 30 N.Y.3d 572, 601 (2017); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d at 326; Calpo-Rivera v. Siroka, 144 A.D.3d at 568.

Defendants maintain that text messages from plaintiff's executive employee Ash Pamani to Savalia, see People v. Agudelo, 96 A.D.3d 611, 611-12 (1st Dep't 2012), show that plaintiff knew of the bankruptcy proceeding before obtaining the default judgment in the New Jersey action, so as to bar plaintiff's current action. The court may not consider this documentary evidence, however, as defendants impermissibly present it for the first time in reply. Eujoy Realty Corp. v. Van Wagner Communications, LLC, 22 N.Y.3d 413, 422-23 (2013); Amtrust-NP SFR Venture, LLC v. Vazquez, 140 A.D.3d 541, 541-42 (1st Dep't 2016); Scafe v. Schindler El. Corp., 111 A.D.3d 556, 556 (1st Dep't 2013); Keneally v. 400 Fifth Realty LLC, 110 A.D.3d 624, 624 (1st Dep't 2013).

In any event, the text messages do not conclusively demonstrate plaintiff's understanding that 9th LLC was subordinating its secured claim in the bankruptcy proceeding. Pamani wrote to Savalia while the bankruptcy proceeding was pending: "I pray u hit it big in j club." Reply Aff. of Hasmukh Savalia Ex. A. Defendants claim that Pamani was referring to J Club's anticipated purchase in the bankruptcy proceeding of Choxi.com's assets with the accompanying license agreement for future sales when he added: "let's pray it gets perfected by January 19 from court," since the hearing to approve the sale was January 19, 2017. Id. At most, these text messages indicate

that plaintiff knew of the upcoming auction in the bankruptcy proceeding, which in itself did not impact plaintiff's claim against 9th LLC. They do not indicate any knowledge of 9th LLC's subordination of its claim in the license agreement. Thus, even if the contents of the text messages are considered, they fail to refute plaintiff's allegations in its complaint and affidavit regarding its lack of knowledge about 9th LLC's subordination of its secured claim in the bankruptcy proceeding. Calpo-Rivera v. Siroka, 144 A.D.3d at 658; Art & Fashion Group Corp. v. Cyclops Prod., Inc., 120 A.D.3d 436, 438 (1st Dep't 2014); Amsterdam Hospitality Group, LLC v. Marshall-Alan Assoc., Inc., 120 A.D.3d at 433-34.

The complaint's specific claims demonstrate that plaintiff does not challenge the Bankruptcy Court's approval of the sale of Choxi.com's assets to J Club. Plaintiff simply claims that defendants' collective efforts subordinating 9th LLC's claim against J Club and diverting 9th LLC's assets, without consideration, so that 9th LLC could not collect from J Club, and hence plaintiff could not collect from 9th LLC, damaged plaintiff. Plaintiff's recovery of its claimed damages will not disturb the approved sale between Choxi.com and J Club. Plaintiff does not claim against Choxi.com and does not claim against J Club due to its purchase of Choxi.com's assets. Plaintiff's claim against J Club is only as an alter ego of 9th

LLC and enabler of its fraud against plaintiff.

A. Constructive Fraudulent Conveyance

Plaintiff first claims that all defendants were liable as transferors or transferees of a constructive fraudulent conveyance under DCL §§ 273, 274, 275, and 278. A constructive fraudulent conveyance claim requires allegations that a conveyance by or to defendants (1) was without fair consideration and (2) depleted the transferring defendants of their assets. 172 Van Duzer Realty Corp. v. 878 Educ., LLC, 142 A.D.3d 814, 818 (1st Dep't 2016); 2406-12 Amsterdam Assoc. LLC v. Alianza LLC, 136 A.D.3d 512, 513 (1st Dep't 2016); American Media, Inc. v. Bainbridge & Knight Labs., LLC, 135 A.D.3d 477, 478 (1st Dep't 2016); 320 W. 13th St., LLC v. Wolf Shevack, Inc., 85 A.D.3d 629, 629 (1st Dep't 2011). Plaintiff alleges that (1) it held a matured claim against 9th LLC of \$681,125.27, and (2) 9th LLC subordinated its claim against Choxi.com, without consideration, below 645 creditors to benefit co-defendants, (3) when 9th LLC was insolvent or near insolvency, (4) leaving 9th LLC with unreasonably little capital and (5) no financial resources to pay its debt to plaintiff. These alleged elements of a constructive fraudulent conveyance in turn raise the inference of defendants' fraudulent intent, further sustaining plaintiff's claim. 172 Van Duzer Realty Corp. v. 878 Educ., LLC, 142 A.D.3d at 817-18; 2406-12 Amsterdam Assoc. LLC v. Alianza LLC, 136 A.D.3d at 513;

American Media, Inc. v. Bainbridge & Knight Labs., LLC, 135 A.D.3d at 478; 320 W. 13th St., LLC v. Wolf Shevack, Inc., 85 A.D.3d at 629. Based on these allegations, the court denies defendants' motion to dismiss plaintiff's constructive fraudulent conveyance claim. C.P.L.R. § 3211(a)(7).

B. Actual Fraudulent Conveyance

Similarly, plaintiff sufficiently alleges an actual fraudulent conveyance claim against defendants under DCL §§ 276, 276-a, and 278. An actual fraudulent conveyance claim requires allegations, with the particularity required by C.P.L.R. § 3016(b), that (1) defendants made or received a conveyance with the actual intent to hinder, delay, or defraud plaintiff, and (2) the circumstances evince the "badges of fraud": "circumstances so commonly associated with fraudulent transfers 'that their presence gives rise to an inference of intent.'" 172 Van Duzer Realty Corp. v. 878 Educ., LLC, 142 A.D.3d at 818. See Wimbledon Fin. Master Fund, Ltd. v. Bergstein, 166 A.D.3d 496, 497 (1st Dep't 2018); 2406-12 Amsterdam Assoc. LLC v. Alianza LLC, 136 A.D.3d at 513.

Plaintiff's allegations recited above demonstrate with the requisite specificity that defendants made their conveyance with the intent of hindering, delaying, or defrauding plaintiff. Board of Mgrs. of the Lore Condominium v. Gateway IV LLC, 169 A.D.3d 617, 618 (1st Dep't 2019); Wimbledon Fin. Master Fund,

Ltd. v. Bergstein, 166 A.D.3d at 497. Moreover, because 9th LLC made the conveyance to closely related entities, the conveyance presumptively was made in bad faith. Wimbledon Fin. Master Fund, Ltd. v. Bergstein, 166 A.D.3d at 497. Finally, plaintiff has alleged sufficient "badges of fraud" to support an actual fraudulent conveyance claim, including the close relationship between defendants and the other parties to the alleged fraudulent transaction, the absence of any consideration, and 9th LLC's knowledge of plaintiff's claim and subsequent inability to pay 9th LLC's debt to plaintiff. Id.; 2406-12 Amsterdam Assoc. LLC v. Alianza LLC, 136 A.D.3d at 513. Based on these allegations, the court denies defendants' motion to dismiss plaintiff's actual fraudulent conveyance claim. C.P.L.R. § 3211(a)(7).

C. Fraud

Plaintiff claims fraud against 9th LLC only. To sustain this claim, plaintiff must allege (1) 9th LLC's misrepresentation or omission of a material fact that 9th LLC knew was false, to induce plaintiff to rely on the fact or omission; (2) plaintiff's justifiable reliance on the misrepresentation or omission; and (3) injury due to that reliance. Ambac Assur. Corp. v. Countrywide Home Loans, Inc., 31 N.Y.3d 569, 578-79 (2018); Pasternack v. Laboratory Corp. of Am. Holdings, 27 N.Y.3d 817, 827 (2016); Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173,

178 (2011). Plaintiff must plead its fraud claim with particularity. C.P.L.R. § 3016(b); Carlson v. American Intl. Group, Inc., 30 N.Y.3d 288, 310 (2017). The measure of damages for its fraud claim is its actual pecuniary loss, not what plaintiff might have gained had defendants not committed the fraud. Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d at 142; Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413, 421 (1996); Starr Found. v. American Intl. Group, Inc., 76 A.D.3d 25, 27 (1st Dep't 2010); Rather v. CBS Corp., 68 A.D.3d 49, 58 (1st Dep't 2009).

Plaintiff alleges that (1) from December 2016 through March 2017, 9th LLC repeatedly promised plaintiff that the payments owed to it were forthcoming; (2) 9th LLC had no intention of making such payments; and (3) 9th LLC knew the promises of payment were false when 9th LLC made them because it was a party to the license agreement, which subordinated its secured creditor claim. Plaintiff further alleges that 9th LLC made these promises to prevent plaintiff from commencing litigation, ensure that the Bankruptcy Court approved the license agreement, and allow 9th LLC to complete its fraudulent conveyance, as alleged above. Finally, plaintiff alleges that these promises caused financial injury of approximately \$450,000. These allegations, when accepted as true, plead a fraud claim. Solomon Capital, LLC v. Lion Biotechnologies, Inc., 171 A.D.3d 467, 468 (1st Dep't

2019); Starr Russia Invs. III B.V. v. Deloitte Touche Tohumatsu Ltd., 169 A.D.3d 421, 422 (1st Dep't 2019); Suttongate Holdings Ltd. V. Laconm Mgt. N.V., 160 A.D.3d 464, 464-65 (1st Dep't 2018); Mohinani v. Charney, 156 A.D.3d 443, 444 (1st Dep't 2017).

D. Aiding and Abetting Fraud

Plaintiff claims that defendants other than 9th LLC aided and abetted its fraud. To sustain this claim, plaintiff must allege (1) the underlying fraud, (2) defendants' actual knowledge of the fraud, and (3) their substantial assistance in the commission of the fraud. Gansett One, LLC v. Husch Blackwell, LLP, 168 A.D.3d 579, 580 (1st Dep't 2019); William Doyle Galleries, Inc. v. Stettner, 167 A.D.3d 501, 503 (1st Dep't 2018); Goldin v. TAG Virgin Is., Inc., 149 A.D.3d 467, 468 (1st Dep't 2017); Chambers v. Weinstein, 135 A.D.3d 450, 450-51 (1st Dep't 2016). As discussed above, plaintiff alleges the underlying fraud by 9th LLC. Plaintiff further alleges that the remaining defendants actually knew of that underlying fraud because they were 9th LLC's alter egos and were necessary parties to the license agreement and, by negotiating and entering the license agreement, which subordinated plaintiff's secured claim, substantially assisted 9th LLC in perpetrating the underlying fraud. Together these allegations set forth a claim for aiding and abetting fraud against the remaining defendants. Gansett One, LLC v. Husch Blackwell, LLP, 168 A.D.3d at 580; William

Doyle Galleries, Inc. v. Stettner, 167 A.D.3d at 503; Goldin v. TAG Virgin Is., Inc., 149 A.D.3d at 468; Chambers v. Weinstein, 135 A.D.3d at 450-51.

E. Unjust Enrichment

To sustain an unjust enrichment claim against defendants other than 9th LLC, plaintiff must allege that defendants were enriched at plaintiff's expense, and it is inequitable and unconscionable to allow them to retain the enrichment. Georgia Malone & Co., Inc. v. Rieder, 19 N.Y.3d 511, 516 (2012); Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 182 (2011). Here, because the valid and enforceable contract alleged by plaintiff in the prior New Jersey action, Aff. of Patrick Papalia Ex. E ¶ 7, provides for the same recovery that plaintiff seeks from other defendants who were not parties to the contract, it forecloses an unjust enrichment claim against these other defendants. Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 N.Y.2d 382, 388-89 (1987); Commissioner of the Dept. of Social Servs. of the City of N.Y. v. New York-Presbyt. Hosp., 164 A.D.3d at 102; Lantau Holdings Ltd. V. General Pac. Group Ltd., 163 A.D.3d 407, 410 (1st Dep't 2017); Norcast S.ar.l. v. Castle Harlan, Inc., 147 A.D.3d 666, 668 (1st Dep't 2017).

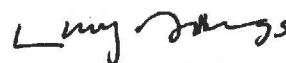
V. CONCLUSION

For the reasons expained above regarding each of defendants' grounds for dismissal and each of plaintiff's claims, the court

grants defendants' motion to dismiss the complaint to the extent of dismissing plaintiff's claims against Garewal and unjust enrichment claim against all defendants. C.P.L.R. § 3211(a)(5), (7), and (8). The court otherwise denies defendants' motion. Defendants other than Garewal shall answer the complaint's remaining claims within 10 days after service of this order with notice of entry. C.P.L.R. § 3211(f).

This decision constitutes the court's order and judgment dismissing plaintiff's claims against Garewal and unjust enrichment claim against all defendants. The Clerk shall enter a judgment accordingly.

DATED: October 13, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.