

Park Armory LLC v Icon Parking Sys. LLC
2020 NY Slip Op 33628(U)
October 29, 2020
Supreme Court, New York County
Docket Number: 656282/2019
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE **PART** **IAS MOTION 63M**

Justice

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PARK ARMORY LLC,

Plaintiff,

- v -

ICON PARKING SYSTEMS LLC, CITIZENS ICON
HOLDINGS LLC, PARK ARMORY MANAGEMENT LLC

Defendants.

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INDEX NO. 656282/2019

MOTION DATE 10/23/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28

were read on this motion to/for

DISMISS

Upon the foregoing documents,

The following read on defendants' motion to dismiss, CPLR 3211(a)(1), a defense is founded upon documentary evidence; and CPLR 3211(a)(7), the pleading fails to state a cause of action. This action involves a parking-garage owner against its managing agent at 171 Clermont Avenue, Brooklyn, New York.

The complaint states the subject garage was acquired by plaintiff in 2015 pursuant to a long-term lease. Defendant operated the garage on behalf of plaintiff, as managing agent, from its acquisition in 2015. "The wrongdoing underlying this action followed a transfer of ownership and control of defendant to icon defendants in or around late 2017: a transaction which was undisclosed and unauthorized by plaintiff and through which Icon defendants effectively gained total control of defendant, the garage and its operations. The misconduct was only recently exposed to plaintiff following discovery of an undisclosed personal injury claim at the garage –

leading to the revelation that plaintiff [sic] had failed to maintain the required liability insurance at the garage.”

Plaintiff alleges damages at approximately \$260,000 and causes of action for 1) breach of contract; 2) fraud; 3) aiding and abetting fraud; 4) breach of implied duty of good faith and fair dealing; 5) breach of fiduciary duty; 6) aiding and abetting breach of fiduciary duty; 7) unjust enrichment; 8) conversion; and 9) accounting.

Plaintiff’s alleges the “claims arise from a coordinated fraud enacted by defendant together with its parent companies – in which they knowingly submitted falsified operating reports and billing to plaintiff containing false operating expenses for the garage – with the intent and effect of inducing plaintiff to make unwarranted payments to defendants. The full extent of this wrongdoing has been successfully concealed from plaintiff to date because defendants have continuously refused to turn over any of the operating records for the garage since their termination in September 2019.”

A motion to dismiss [under CPLR 3211(a)(1)] on the ground that the action is banned by documentary evidence ... may be appropriately granted only where the documentary evidence utterly refutes plaintiffs factual allegations, conclusively establishing a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326). To succeed on a motion to dismiss CPLR 3211(a)(7) for failure to state a claim upon which relief may be granted, defendants have the exceptionally-difficult burden of establishing that the complaint failed to allege any conceivable claims which “fit within any discernable legal theory,” despite (i) affording the complaint its most “liberal construction; (ii) “accepting as true the facts alleged in the complaint;” and (iii) “according plaintiff the benefit of every possible inference” (see *Sheila C. v. Povich*, 11 A.D.3d 120, 122 [1st Dept 2004]).

Plaintiff submits the management agreement between the parties along with an affidavit from Andrew Meyer, the principal and manager of plaintiff Park Armory LLC. Plaintiff submits the personal injury action, index number 507697/2018, that occurred at plaintiff's garage. Per the management agreement, defendant was to notify plaintiff of any increases in operating liabilities in excess of \$5,000. Through plaintiff's due diligence surrounding this litigation, an approved liability insurance was terminated, in violation of the management agreement. This approved liability insurance obtained by defendant at the outset of the management relationship with plaintiff included comprehensive coverage of up to one-million dollars, and a deductible of just \$10,000 per incident. A subsequent investigation by plaintiff revealed that defendant had allegedly secretly terminated the approved liability insurance in or around August 2017 without notice or approval of plaintiff and secretly replaced this insurance with "ultra-cheap, ultra-high deductible insurance which increased the insurance deductible from \$10,000 to \$150,000 per occurrence."

Plaintiff sought to terminate their agreement and demanded turnover of all operating funds as well as all books and records related to operations for the garage in accordance with its rights under the management agreement.

Defendants basis for seeking to dismiss this matter is based on their claims that Plaintiff improperly and without sufficient evidence is seeking to pierce the corporate veil of IPS and Citizen and is also pursuing a fraud claims without merit. However, a review of Plaintiffs complaint and supporting documents indicate a theory of alter-ego liability by these entities and sufficiently plead claims of fraud.

Based on the documents and legal arguments presented the Court hereby denies defendants motions as they have failed to sufficiently met the standards to justify dismissal of any of Plaintiffs causes of actions.

ORDERED that defendants motion to dismiss is DENIED.

10/29/2020

DATE



LAURENCE L. LOVE, 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