

City Prints LLC v Darian Group, Inc.

2021 NY Slip Op 31302(U)

April 14, 2021

Supreme Court, New York County

Docket Number: 652423/2018

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

INDEX NO. 652423/2018

CITY PRINTS LLC and PREMIER FABRICS, INC.,

MOTION DATE 10/03/2019

Plaintiffs,

MOTION SEQ. NO. 001

- v -

DARIAN GROUP, INC., MARTIN SCHLOSSBERG, and
GARY RODBELL,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendants to dismiss pursuant to CPLR 3211(a)(7) and CPLR 3016(b) is granted to extent that the fifth cause of action (fraudulent misrepresentation), sixth cause of action (aiding and abetting fraudulent misrepresentation), seventh cause of action (fraudulent concealment), eighth cause of action (aiding and abetting fraudulent concealment), and ninth cause of action (unjust enrichment) against all defendants are dismissed, and the complaint is dismissed in its entirety as against defendant Martin Schlossberg, with costs and disbursements to such defendant as taxed by the Clerk of the Court, and the Clerk

is directed to enter judgment accordingly in favor of such defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the motion of defendants to dismiss the complaint is otherwise DENIED; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the remaining defendants are directed to serve answer(s) to the complaint within thirty (30) days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to submit to NYSCEF a proposed preliminary conference order or counter proposed preliminary conference orders on June 1, 2021.

DECISION

As stated in Espinosa v Rand, 24 AD3d 102 (1st Dept 2005),
“ [A] corporate officer who participates in the commission of a tort may be held personally liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced’ (American Express Travel Related Servs Co, Inc v N Atl Resources, Inc, 261 AD2d 310,311, 691 NYS2 403 [1999]).”
See also Stanfield Offshore Leveraged Assets, Ltd v Metropolitan Life Ins Co, 64 AD3d 472, 476 (1st Dept 2009). In addition, a plaintiff is permitted to assert the claims of fraudulent inducement and breach of contract. See GoSmile, Inc v Levine, 81 AD3d 77 (1st Dept 2010).

On the basis of the holdings of Espinosa and GoSmile, Inc, this court finds that the complaint at bar states cognizable claims of fraudulent inducement and “aiding and abetting” fraudulent inducement against the individual corporate officer defendant Gary Rodbell. However, the complaint does not sufficiently plead such claims against defendant Martin Schlossberg, as it is barren of any allegations of misrepresentations made by such individual

defendant that induced plaintiffs to enter into the subject contracts.

With respect to the claims of fraudulent misrepresentation and fraudulent concealment, and aiding and abetting fraudulent misrepresentation and fraudulent concealment, the complaint is insufficiently pled, as it does not allege any special relationship between any of the defendants and either of the plaintiffs or any fiduciary duty that any of the defendants owed either of the plaintiffs, from which a duty to fully and completely disclose would arise. See Gomez-Jimenez v New York Law School, 108 AD3d 13, 17-18 (1st Dept 2012).

The complaint insufficiently states a claim for unjust enrichment against either of the individual defendants, as it contains no allegations that establish liability upon the basis of piercing the corporate veil. See Sound Communications, Inc v Rack and Roll, Inc, 88 AD3d 523, 524 (1st Dept 2011). In any event, plaintiffs' claims of unjust enrichment cannot stand against any of the defendants, as the parties do not dispute the existence of the subject four purchase orders. See Clark-Fitzpatrick, Inc v Long Island R Co, 70 NY2d 382, 388 (1987).

Debra A. James
20210414181033DJAMESA43BD00F14814263885AC1404A90D25C

4/14/2021
DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE