West Houston Prop., LLC v New York Pilates NYC, LLC
2021 NY Slip Op 32150(U)
October 27, 2021
Supreme Court, New York County
Docket Number: Index No. 161131/2020
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY BANNON** **PART 42**

Justice

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WEST HOUSTON PROPERTY, LLC,

Plaintiff,

- v -

NEW YORK PILATES NYC, LLC,NEW YORK PILATES BOWERY, LLC,NEW YORK PILATES FLAT IRON, LLC,NEW YORK PILATES INCORPORATED, NEW YORK PILATES MONTAUK LLC,NEW YORK PILATES NYC2, LLC,NEW YORK PILATES SOHO LLC,NEW YORK PILATES SOUTH HAMPTON LLC,NEW YORK PILATES WEST VILLAGE LLC,HEATHER ANDERSEN

Defendant.

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INDEX NO. 161131/2020

MOTION DATE 08/02/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISS.

The plaintiff landlord in this breach of contract action seeks to recover unpaid rent under a commercial lease agreement with defendant New York Pilates NYC, LLC (Pilates NYC). The plaintiff also seeks to recover against all other defendants on a corporate veil-piercing theory and under the New York State Debtor and Creditor Law (Debtor and Creditor Law). The defendants now move pursuant to CPLR 3211(a)(7) to dismiss the second, third, fourth, and fifth causes of action of the complaint. The plaintiff opposes the motion. For the following reasons, the motion is granted.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-152 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152: see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994). "The motion must be denied if from the pleading's four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." 511 W. 232nd Owners Corp. v Jennifer Realty Co., supra, at 152 (internal quotation marks omitted); see Leon v Martinez, supra; Guggenheimer v Ginzburg, 43 NY2d 268 (1977).

The complaint avers that the plaintiff and Pilates NYC entered into a commercial lease dated March 22, 2018, for a term ending on March 31, 2028. The lease obligated Pilates NYC to pay rent, additional rent, and other fees to the plaintiff on or before the first day of each month of the lease term. However, Pilates NYC failed to make payments in the sum of $258,078.84 from March 1, 2020, through November 1, 2020. The first cause of action, sounding in breach of contract, seeks to recover unpaid rent as against Pilates NYC. The second cause of action seeks to recover unpaid rent as against all defendants other than Pilates NYC by piercing the corporate veil. The third and fourth causes of action seek to recover unpaid rent as against all defendants by voiding any conveyances and/or transfers of the assets of defendant Pilates NYC to the other defendants under Debtor and Creditor Law §§ 274, 275, and 276. The fifth cause of action, sounding in unjust enrichment, likewise seeks to recover unpaid rent as against all defendants.

Ordinarily, a corporation exists independently of its owners, as a separate legal entity, and its owners are not liable for the actions of the corporation. See Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135 (1993). The doctrine of piercing the corporate veil is a limitation to this rule, "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." Id. "Piercing the corporate veil requires a showing 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." Ciavarella v Zagaglia, 132 AD3d 608, 608-609 (1st Dept. 2015) (quotation and citation omitted); see also Fantazia Int'l Corp. v CPL Furs New York, Inc., 67 AD3d 511 (1st Dept. 2009). "[U]ndercapitalization of a corporation and the corporation's owner's personal use of corporate funds, which results in the corporation's being unable to pay a judgment, constitute wrongdoing and injury sufficient to satisfy the second prong of [Matter of Morris v New York State Dept. of Taxation & Fin., supra.]" Ciavarella v Zagaglia, supra at 609. However, a simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil. See Skanska USA Bldg., Inc. v Atalntic Yards B2 Owner LLC, 146 AD3d 1 (1st Dept. 2016); Bonacasa Realty Co., LLC v Salvatore, 109 AD3d 946 (2nd Dept. 2013); Treeline Mineola, LLC v. Berg, 21 AD3d 1028 (2nd Dept. 2005).

The complaint's second cause of action alleges, "[u]pon information and belief," (1) that all the other defendants dominated and controlled defendant Pilates NYC "so that Pilates NYC had no separate mind, will or existence of its own" and was the "mere alter ego of all of the other defendants." Further, the complaint states that Pilates NYC "did not comply with the standard company formalities required of a limited liability company," that the property of Pilates NYC was "used by the individual and company defendants as if it were their own," and that all defendants "shared, commingled and intermingled the same property including the name and goodwill of the business, the same employees and customers and the same offices and trade fixtures, furniture and equipment and the same website, customer lists, appointment schedules etc."

The foregoing allegations are insufficient to state a cause of action for alter ego liability. To begin, they are "wholly conclusory and consist of no more than a recitation of the elements of the claim, 'upon information and belief.'" 501 Fifth Ave. Co. LLC v Alvona LLC, 110 AD3d 494, 494 (1st Dept. 2013); see Board of Managers of Gansevoort Condominium v 325 West 13th, LLC, 121 AD3d 554 (1st Dept. 2014). Moreover, the complaint, even as supplemented by the plaintiff's submissions in opposition to the instant motion, "is devoid of any allegations as to how [all other defendants] used their domination of [Pilates NYC] to commit a wrong against the plaintiff[]." TMCC, Inc. v Jennifer Convertibles, Inc., 176 AD3d 1135, 1136 (2nd Dept. 2019); see Cornwall Management Ltd. v Kambolin, 140 AD3d 507 (1st Dept. 2016). The plaintiff has offered no specific facts as to what the other defendants did and how they allegedly controlled Pilates NYC, or as to the other defendants' actual personal gain and possession of money or assets in which the plaintiff had an interest. See Suverant LLC v Brainchild, Inc., 191 AD3d 513 (1st Dept. 2021); Arben Corp. v Durastone, LLC, 186 AD3d 599 (2nd Dept. 2020). Instead, the plaintiff relies on the bare observation that the Pilates NYC website and social media platforms show it has studios in several locations and offers members the ability to use one or all of its locations. "[T]he failure to allege any fraud or unjust conduct is fatal" to the second cause of action, especially where Pilates NYC performed for two years under the subject lease and, after missing payment for nine months, has apparently continued to perform under the lease. 501 Fifth Ave. Co. LLC v Alvona LLC, supra at 494. Accordingly, the second cause of action is dismissed.

With respect to the third and fourth causes of action, the court initially notes that the complaint, though filed on December 22, 2020, cites to outdated sections of the Debtor and Creditor Law that existed prior to the enactment of amendments effective on April 4, 2020. While the plaintiff cites to Debtor and Creditor Law § 276 under the third cause of action of the complaint, it appears that the plaintiff actually intended to state a claim pursuant to current Debtor and Creditor Law § 273(a)(1), which provides that "[a] transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation … with actual intent to hinder, delay or defraud any creditor of the debtor." Where a plaintiff seeks to void a transfer pursuant to this provision, fraudulent intent must be pleaded with particularity. See CPLR 3016(b); RTN Networks LLC v Telco Group, Inc., 126 AD3d 477 (1st Dept. 2015) (addressing analogous provision of prior version of Debtor and Creditor Law); see also Carlyle LLC v Quik Park 1633 Garage LLC, 160 AD3d 476 (1st Dept. 2018) (addressing analogous provision of prior version of Debtor and Creditor Law).

The third cause of action avers "[u]pon information and belief" that Pilates NYC "with the intent and purpose to hinder, delay and defraud its creditors and in particular the plaintiff, caused the transfer and conveyance of its assets, including but not limited to customers, the name and good will of the business, accounts receivables, membership fees, trade fixtures, equipment and furniture, without any consideration being paid or such assets," and that such transfer rendered Pilates NYC insolvent. Again, the plaintiff's allegations are wholly conclusory and merely recite the elements of an intentional fraudulent conveyance claim. They fail to plead with particularity the defendants' intent to defraud and, inasmuch as they are pleaded upon

information and belief, fail to reveal the basis for the plaintiff's claims. See Brennan v 3250 Rawlins Avenue Partners, LLC, 171 AD3d 603 (1st Dept. 2019); RTN Networks LLC v Telco Group, Inc., supra. The third cause of action is dismissed.

While the plaintiff cites to Debtor and Creditor Law §§ 274 and 275 under the fourth cause of action of the complaint, it appears that the plaintiff intended to state a claim pursuant to current Debtor and Creditor Law § 273(a)(2). That statute provides that a transfer made or obligation incurred by a debtor is voidable as to a present or future creditor if the debtor made the transfer or incurred the obligation…without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Since Debtor and Creditor Law § 273(a)(2) is not based in actual fraud, the heightened pleading requirements of CPLR 3016(b) do not apply.

Nonetheless, the fourth cause of action fails even under ordinary pleading standards. The complaint contains a perfunctory recitation of the elements of a constructive fraud claim pursuant to Debtor and Creditor Law § 273(a)(2) but does not plead a single fact identifying any conveyance from Pilates NYC to another defendant. Nor does the plaintiff identify the source of his belief that Pilates NYC transferred its assets without fair consideration. For these reasons, the fourth cause of action is subject to dismissal. See RTN Networks, LLC v Telco Group, Inc., supra (addressing analogous provisions of prior version of Debtor and Creditor Law).

Finally, the fifth cause of action, sounding in unjust enrichment, must be dismissed as against Pilates NYC because there is a valid lease governing the subject matter between the plaintiff and Pilates NYC. See Suverant LLC v Brainchild, Inc., supra. Additionally, the fifth cause of action must be dismissed as against all remaining defendants because the complaint contains no allegations of a "relationship between the parties that could have caused reliance or inducement" that is not "too attenuated." Georgia Malone & Co., Inc. v Rieder, 19 NY3d 511, 517 (2012).

Accordingly, it is

ORDERED that the defendants' motion to dismiss the second, third, fourth, and fifth causes of action of the complaint is granted, and the second, third, fourth, and fifth causes of action of the complaint are hereby dismissed in their entirety; and it is further

ORDERED that the sole remaining defendant, New York Pilates NYC, LLC, shall file an answer to the surviving causes of action of the complaint within 30 days of service of this Decision and Order with Notice of Entry; and it is further

ORDERED that the parties shall appear for a preliminary conference via Microsoft Teams on February 17, 2021, at 10:30 a.m.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

10/27/2021
DATE

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE