J.G. Jewelry Pte. Ltd. v TJC Jewelry, Inc.
2021 NY Slip Op 32549(U)
December 3, 2021
Supreme Court, New York County
Docket Number: Index No. 651469/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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J.G. JEWELRY PTE. LTD., JDM IMPORT CO. INC.,MG WORLDWIDE LLC,MILES BERNARD, INC, ASIA PACIFIC JEWELRY, L.L.C.,

Plaintiffs,

- v -

TJC JEWELRY, INC.,SHREE RAMKRISHNA EXPORTS PVT., LTD, THE JEWELRY COMPANY, ASHISH SHAH,

Defendants.

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INDEX NO. 651469/2018

MOTION DATE 10/08/2021

MOTION SEQ. NO. 015

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 384, 385, 386, 389, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 431, 432, 433, 434, 435, 441

were read on this motion for PARTIAL SUMMARY JUDGMENT.

This action arises from an alleged joint venture among international diamond merchants.[1] Plaintiffs J.G. Jewelry Pte. LTD (JGJ), JDM Import Co. Inc. (JDM), MG Worldwide LLC (MG Worldwide), and Asia Pacific Jewelry, L.L.C. (Asia Pacific) (collectively, the "JDM Entities") allege that they entered into a joint venture with Defendants Shree Ramkrishna Exports Pvt., LTD (SRK), The Jewelry Company, and TJC Jewelry, Inc. (TJC) (collectively, the "SRK Entities"), to expand the parties' collective reach and profit. The parties allegedly operated this joint venture by combining their worldwide jewelry businesses and funneling the financial arrangements and operations through JGJ. Plaintiffs allege that Defendants instead drained tens

[1] The Court detailed the background facts of this litigation in its July 1, 2020 Decision and Order (*see* NYSCEF 249) and June 30, 2021 Decision and Order (*see* NYSCEF 377). The Court presumes familiarity with those facts here.

of millions of dollars from the joint venture, before unilaterally withdrawing from it and then denying its existence.

After years of contesting service of process, and filing two unsuccessful motions to dismiss, Defendants now move for summary judgment via what is essentially a third motion to dismiss, purporting to challenge the sufficiency of the allegations of the complaint rather than submitting evidence. While it may be true that the defense of "failure to state a claim" can be a basis for a pre-discovery summary judgment motion, this does not relieve Defendants of their obligations under CPLR 3212 and associated Court rules, including the submission of a Commercial Division Rule 19(a) statement. Moreover, in this setting, Plaintiff is not precluded from responding to this motion by introducing evidence (*see Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 636 [1976] [noting that where a motion to dismiss under CPLR 3211 is treated as one for summary judgment, the parties must be given an opportunity to make an appropriate record]).

Procedural infirmities aside, Defendants' motion is denied on its merits. Defendants have not established as a matter of law that the existence of JGJ as a corporate entity precludes any claim based on an alleged joint venture between the parties, assuming of course that Plaintiffs can prove that such a venture existed. Plaintiffs assert that the joint venture *preceded* the creation of JGJ and submit evidence indicating that joint venture was announced to customers months before JGJ was incorporated. Further, Plaintiffs argue that while JGJ plays an important role in the alleged joint venture (including by serving as a means for the parties to account to each other for their joint activities), the venture itself is broader than JGJ.

Defendants' reliance on *Weisman v Awnair Corp. of Am.* (3 NY2d 444 [1957]), is misplaced. In that case, the Court of Appeals held that "the rule is well settled that a joint

venture may not be carried on by individuals through a corporate form. The two forms of business are mutually exclusive, each governed by a separate body of law. When parties adopt the corporate form, with the corporate shield extended over them to protect them against personal liability, they cease to be partners and have only the rights, duties and obligations of stockholders. They cannot be partners inter sese and a corporation as to the rest of the world" (*id.* at 449 (internal citation omitted).

In the ensuing decades, courts have made clear that *Weisman* does not state a rigid, formulaic rule that the concept of "joint venture" is inherently incompatible with use of a corporate entity as part of the venturers' business. Specifically, the concerns about the conflicting messages of corporate and non-corporate liability and obligations are minimized if "the rights of third parties, like creditors, are not involved and the parties' rights under the partnership agreement are not in conflict with the corporation's functioning" (*Blank v Blank*, 222 AD2d 851, 852–53 [3d Dept 1995]; *see also Richbell Info. Servs. v Jupiter Partners* (309 AD2d 288, 300 [1st Dept 2003]; *Hochberg v Manhattan Pediatric Dental Group, P.C.*, 41 AD3d 202, 204 [1st Dept 2007]; *Lombard & Co., Inc. v De La Roche*, 46 AD3d 393, 394 [1st Dept 2007]). Further, where parties to a joint venture create a corporation to conduct some but not all of their business, the joint venture claims may survive, as the joint venture does not conflict with the corporation's functioning (*see e.g Rinaldi v Casale*, 13 AD3d 603, 605 [2d Dept 2004] ["The defendants' contention that the plaintiff and the decedent could not legally have carried on a joint venture or a partnership through a corporate vehicle . . . did not warrant dismissal of the amended complaint, since it does not negate the possibility that a valid partnership or joint venture was created in which the corporate entity . . . was a mere conduit to hold title to the underlying property"]; *Priel v Heby*, 4 Misc 3d 1011(A) [Sup Ct, NY County 2004]) [finding that where

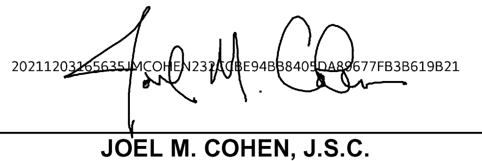
partners were engaged in purchasing real estate and established corporations to own some of the properties, the corporations did not destroy the partnership because the "corporations were utilized by the parties to conduct business and there is not apparent conflict with the corporation's functioning, it cannot be said, at least at this juncture, that the alleged joint venture ceased to exist after the creation of the defendant corporations"]; *Macklem v Marine Park Homes*, 17 Misc 2d 439 [Sup Ct, Nassau County 1955] ["the corporation was formed subsequent to the commencement of the joint venture merely as a conduit of title [to the realty]"], *affd sub nom.* 8 AD2d 824 [2d Dept 1959], *affd sub nom.* 8 NY2d 1076 [1960]).

Defendants have not shown, as a matter of law, that the alleged joint venture is incompatible with the operation of JGJ, such that after the formation of JGJ, the joint venture ceased to exist (if it ever did). The viability of Plaintiffs' claims will turn on the facts—aided by discovery—and cannot be adjudicated conclusively at this stage based solely on the ground that JGJ is a corporation.

Accordingly, it is

ORDERED that Defendants' motion for partial summary judgment is **denied**.

This constitutes the decision and order of the Court.



12/3/2021	JOEL M. COHEN, J.S.C.
DATE	

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION		
	☐ GRANTED	☒ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER		
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