

<b>Anhui Guoci Handbags Co., Ltd. v Verge Mktg., Inc.</b>
2022 NY Slip Op 32186(U)
July 8, 2022
Supreme Court, New York County
Docket Number: Index No. 650735/2022
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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ANHUI GUOCI HANDBAGS CO., LTD.	INDEX NO.	<u>650735/2022</u>
Plaintiff,	MOTION DATE	<u>06/08/2022</u>
- v -	MOTION SEQ. NO.	<u>001</u>
VERGE MARKETING, INC. T/A VERGE CREATIVE GROUP,		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to DISMISS CERTAIN CLAIMS.

Defendant Verge Marketing, Inc., t/a Verge Creative Group (“Verge”) moves to dismiss Plaintiff Anhui Guoci Handbags, Co., Ltd.’s (“Anhui”) Complaint in part pursuant to CPLR §§ 3211(a)(1) and (7) on the basis that the claims for account stated, unjust enrichment, and quantum meruit are duplicative of the breach of contract claim. Defendant’s motion is **granted**.

While plaintiff’s allegations are to be accorded their most favorable intendment on a motion to dismiss (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]), where, as here, the allegations are lacking a factual basis and consist of bare legal conclusions, “they are not entitled to such consideration”<sup>1</sup> (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995]; *Caniglia v Chicago Tribune-New York News Syndicate, Inc.*, 204 AD2d 233, 234 [1st Dept 1994]; *see also* CPLR 3013 [“Statements in a pleading shall be sufficiently particular to give the

<sup>1</sup> Plaintiff has failed to provide a statement of facts giving rise to this action in its complaint or otherwise (*see* NYSCEF 1).

court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”)].

The first cause of action for account stated (Complaint ¶¶ 3 - 7) is duplicative of Plaintiff’s breach of contract claim, which alleges that Defendant agreed to pay for the goods sold and delivered and/or services rendered by the Plaintiff to the Defendant, and that Defendant is currently indebted to Plaintiff for unpaid balance in the amount of \$730,130.90 (NYSCEF 1 ¶¶ 10–11 [“Complaint”]). Defendant does not deny the existence of a contract between the parties (see NYSCEF 7 at 3) and acknowledges that a commercial invoice documented the transaction (NYSCEF 13). Here, the allegation in the account stated claim are inextricably tied to the invoices, and both claims allege the same claim for damages of \$730,130.90 (*id.* at ¶¶ 6,7,11,13). Thus, the account stated cause of action is dismissed as duplicative of the breach of contract claim (see *Vanpoy Corp., S.R.L. v Soleil Chartered Bank*, 204 AD3d 486, 487 [1st Dept 2022]).

Plaintiff’s quantum meruit and unjust enrichment causes of action are also duplicative of the breach of contract claim. It is well-established that “[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter” (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987]). Here, the allegations underlying both claims are the same as those pleaded in support of the breach of contract claim. Further, in the unjust enrichment claim, plaintiff also seeks the same damages (\$730,130.90) it seeks in its breach of contract claim.

Even if the quasi-contract claims were not duplicative, they would be dismissed on the independent ground that they fail to state a claim. As to unjust enrichment, there are no allegations of a “relationship between the parties that could have caused reliance or inducement”

(*Suverant LLC v Brainchild, Inc.*, 191 AD3d 513 [1st Dept 2021]). “Without sufficient facts, conclusory allegations that fail to establish that a defendant was unjustly enriched at the expense of a plaintiff warrant dismissal” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 517 [2012]).

Finally, nowhere is it alleged in Plaintiff’s fourth cause of action for quantum meruit that services were performed in good faith, that Verge accepted the services, that Plaintiff expected compensation for services, and Plaintiff failed to receive the reasonable value of such services (*see Soumayah v Minnelli*, 41 AD3d 390, 391 [1st Dept 2007]). Accordingly, plaintiff has failed to state a cause of action for quantum meruit.

Accordingly, it is

**ORDERED** that Defendant’s partial motion to dismiss is **GRANTED**, and the First, Third, and Fourth Causes of Action are dismissed; is it further

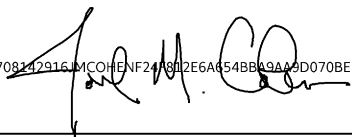
**ORDERED** that Defendant shall file an answer to the remaining claims in the complaint within twenty-one (21) days of the date of this Order; and it is further

**ORDERED** that the parties appear for a preliminary conference on August 9, 2022, at 10:30 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.<sup>2</sup>

This constitutes the decision and order of the Court.

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<sup>2</sup> If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.

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JOEL M. COHEN, J.S.C.

7/8/2022  
DATE

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