

**373-381 PAS Assoc., LLC v Ocean Mgt. Corp.**

2022 NY Slip Op 34014(U)

November 28, 2022

Supreme Court, New York County

Docket Number: Index No. 158331/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

373-381 PAS ASSOCIATES, LLC,
Plaintiff,

INDEX NO. 158331/2021

MOTION DATE 11/02/2022

MOTION SEQ. NO. 002

- v -

OCEAN MANAGEMENT CORP., FOXWOOD REALTY,
LLC, ALPHABET PLAZA, LLC,

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 41

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants Ocean Management Corp. ("Ocean"), Foxwood Realty, LLC ("Foxwood"), and Alphabet Plaza, LLC ("Alphabet") (collectively "Defendants") motion to dismiss pursuant to CPLR §§ 3211(a)(1), (3), and (7) is denied<sup>1</sup>.

I. Factual and Procedural Background

This action arises out of a rent arrears dispute between Plaintiff 373-381 PAS Associates, LLC ("Plaintiff") and Defendant Ocean. Plaintiff's summons and complaint seeking rent arrears and attorneys' fees was filed on September 9, 2021 (NYSCEF Doc. 1). Plaintiff moved to amend the Complaint on January 6, 2022, to add Defendants Foxwood and Alphabet under a theory of alter-ego liability (NYSCEF Doc. 6). The Court granted that motion in a decision and order dated September 8, 2022 (NYSCEF Doc. 27). All Defendants then moved to dismiss the Amended Complaint on October 11, 2022 (NYSCEF Doc. 35).

<sup>1</sup> Although Defendants move to dismiss pursuant to CPLR §§(a)(1) and (3), there was no documentary evidence submitted in support of Defendants' motion other than a self-serving affidavit executed by Majid Kahen, a member of Ocean Management Corp., nor are there any arguments related to dismissal based on CPLR §§(a) (1) and (3).

## II. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give a plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

## III. Discussion

Plaintiff alleges that Defendants Foxwood and Alphabet should be liable for Defendant Ocean's breach of contract/rent arrears under a theory of alter ego liability. There are no rigid rules governing the circumstances when the alter ego liability may be imposed since imposition of alter ego liability is dependent on a variety of circumstances and factors (*Morris v New York State Dept. of Taxation and Finance*, 82 NY2d 135 [1993]; *Perez v Long Is. Concrete Inc.*, 203 AD3d 552, 554 [1st Dept 2022]). Generally, there should exist allegations that a party exercised complete domination of a corporation and that such domination was used to commit fraud or wrong against the plaintiff (*Schnell Contracting Systems L.L.C. v Empire Outlet Bldrs. LLC*, 198 AD3d 548 [1st Dept 2021]). Wrongdoing necessary to pierce the corporate veil on an alter-ego theory does not require allegations of actual fraud; while fraud satisfies the wrongdoing requirement, other claims of inequity or malfeasance will also suffice (*Baby Phat Holding Co., LLC v Kellwood Co.*, 123

AD3d 405 [1st Dept 2014]). Further, a Plaintiff is not required to plead the elements of corporate alter ego liability with the particularity required for a fraud claim; rather, a plaintiff must only plead the elements of alter-ego liability in a non-conclusory manner (*2406-12 Amsterdam Associates LLC v Alianza LLC*, 136 AD3d 512 [1st Dept 2016]). The First Department has held on numerous occasions that an alter ego theory can be used to recover from certain corporate entities for breach of contract claims (*Perez v Long Is. Concrete Inc.*, 203 AD3d 552, 554 [1st Dept 2022]; *Baltic Fourth LLC v Stern*, 193 AD3d 630, 633 [1st Dept 2021]; *Baby Phat Holding Co., LLC v Kellwood Co.*, 123 AD3d 405, 407 [1st Dept 2014]; *Emposimato v CICF Acquisition Corp.*, 89 AD3d 418, 420 [1st Dept 2011]).

The Court finds that under the rubric provided by a plethora of precedent, Plaintiff has sufficiently stated claims for breach of contract and alter ego liability to survive Defendants' motion to dismiss. Plaintiff alleges in the Amended Complaint that Foxwood and Alphabet, individually and jointly, exercised control over Ocean such that the identity of these three Defendants is intertwined (NYSCEF Doc. 39 at ¶ 9). Plaintiff provides various non-conclusory allegations in support of its assertion that Foxwood and Alphabet are alter egos of Ocean who are jointly responsible for Ocean's rent arrears. For instance, Plaintiff asserts that (1) Alphabet and Foxwood paid Ocean's rent on over 30 separate occasions; (2) the signatory on Ocean, Foxwood, and Alphabet rent checks is the same individual; (3) Foxwood, Alphabet, and Ocean all occupied the premises at issue during the lease term and published to the public that they used that address, (4) Ocean's non-party guarantor is an officer for Foxwood's according to filings with the New York State Department of State; (5) Ocean, Foxwood, and Alphabet all share the same phone number, and (6) Foxwood and Alphabet are being used as conduits by which Ocean, which is signatory on the lease at issue in this lawsuit, may avoid paying rent (*id.* at ¶¶ 8-11; 13-21; 38-47).

As the procedural posture of this motion is a pre-answer motion to dismiss for failure to state a claim, the Court must accept the pleadings as true and give the Plaintiff the benefit of all favorable inferences which must be drawn from the pleadings (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). Again, there are no “rigid rules” governing claims of alter ego liability, and allegations are only required to be pled in a non-conclusory manner (*Perez v Long Is. Concrete Inc.*, 203 AD3d 552, 554 [1st Dept 2022]; *2406-12 Amsterdam Associates LLC v Alianza LLC*, 136 AD3d 512 [1st Dept 2016]). Further, the alleged payments, use of the same business address, and shared corporate officers, all give rise to an inference of domination and intermingling which could give rise to alter ego liability. Finally, the allegation that the corporate form was used to evade rent payments satisfies the wrongdoing and inequity branch of an alter ego claim. While this decision is not a judgment on the merits of Plaintiff’s claims, given the procedural posture of the case and the requirement that this Court must give Plaintiff the benefit of all favorable inferences that may be drawn from the pleadings, the Court finds that Plaintiff’s Complaint should survive. Thus, Defendants’ motion to dismiss is denied, and Plaintiff’s claims of alter-ego liability survive.

Accordingly, it is hereby,

ORDERED that Defendants Ocean Management Corp., Foxwood Realty, LLC, and Alphabet Plaza, LLC’s motion to dismiss Plaintiff 373-381 PAS Associates, LLC’s Amended Complaint is denied in its entirety; and it is further

ORDERED that within thirty (30) days of entry, counsel for Plaintiff 373-381 PAS Associates, LLC shall serve a copy of this Decision and Order upon all parties to this action, and the Clerk of the Court, with notice of entry, and the Clerk of the Court is to enter judgment, accordingly, and it is further

ORDERED that such service upon the Clerk of the Court 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 of the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.

11/28/2022  
DATE

Mary V Rosado  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE