

Standlee Premium Prods, LLC v WGST, Inc.

2023 NY Slip Op 30625(U)

March 2, 2023

Supreme Court, New York County

Docket Number: Index No. 654230/2020

Judge: Arlene P. Bluth

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
 COUNTY OF NEW YORK: PART 14

-----X

<p>STANDLEE PREMIUM PRODUCTS, LLC D/B/A STANDLEE PREMIUM WESTERN FORAGE, BSAK RANCH LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>WGST, INC.,WGST PRODUCTIONS INC.,DANIEL L. DAILEY, LAURA HOLLANDER, MICHAEL HUDSON, LORIANN PARINELLO,</p> <p style="text-align: center;">Defendants.</p>	<p>INDEX NO. <u>654230/2020</u></p> <p>MOTION DATE <u>02/02/2023</u></p> <p>MOTION SEQ. NO. <u>003</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
--	--

-----X

HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for SUMMARY JUDGMENT.

Defendant Hollander's motion for summary judgment is granted in part and denied in part.

Background

Plaintiff Standlee is an Idaho-based farm that cultivates various forage crops including alfalfa and timothy grass. Plaintiff BSAK is a ranch that produces grass-fed beef in Texas.

Plaintiff Standlee alleges that in March 2019, defendant Hollander contacted its marketing manager about Standlee sponsoring an episode of a television show called Farmhouse Life. Hollander allegedly quoted the price for the sponsorship to be between \$20,000 and \$60,000. Standlee claims that it declined the offer and then Hollander attempted to secure a deal for between \$12,000 and \$15,000. Standlee claims that it signed a contract with WGST on March 28, 2019 and wired to \$15,000 at or about that time. In exchange for that payment,

WGST was to produce video segments with footage of Standlee to be aired on three television networks and also turn over all footage to Standlee.

After the Standlee contract was signed in late March, a crew visited Standlee's farm and filmed in June. The date(s) of filming in June 2019 are not specified. But what was specified is that, unbeknownst to Standlee, WGST filed dissolution paperwork in Florida on June 12, 2019. The typed "signature" on those dissolution papers was defendant Hollander. Standlee claims that WGST never provided any footage to Standlee, it did not air an episode of Farmhouse Life featuring Standlee and it did not return the \$15,000 plaintiff wired to WGST.

Plaintiff BSAK suffered similar circumstances in terms of paying money to WGST getting nothing for it. However, BSAK never dealt with Hollander. And BSAK signed its contract and paid its \$15,000 well after WGST was already dissolved.

Hollander's motion for summary judgment

Hollander now moves for summary judgment on all of both plaintiffs' claims. She argues that she was only a contracted salesperson and not responsible for WGST's actions. First, Hollander claims plaintiffs' breach of contract claim should be dismissed because Hollander is not a party to the contracts. As for plaintiffs' conversion claim, she argues all of plaintiffs' allegations assert that WGST and WGST Productions kept the video footage; however, Hollander never possessed the footage for either plaintiff. In short, Hollander argues the conversion claim should not have been alleged against her personally.

Hollander asserts that the fraudulent inducement claim should be dismissed because Hollander never communicated with BSAK and there is no evidence that Hollander knew WGST would not produce the footage at the time she was communicating with Standlee. Hollander argues that the record shows WGST "fully intended on fulfilling the terms of the Standlee

Agreement at the time the [Agreement] was entered into” (NYSCEF Doc. No. 88 at 14). She contends that the claim for fraudulent conveyance should be dismissed because the cause of action only makes allegations against WGST and WGST Productions, not her. Finally, Hollander asserts plaintiffs’ claims under the General Business Law § 349 should be dismissed because Hollander never engaged in deceptive practices and the acts amount to no more than a private contract dispute rather than an issue with a broader impact on consumers at large.

In response, plaintiffs contend Hollander failed to submit an affidavit of fact in support of her motion, and only submitted an attorney affirmation with no good faith basis as to why she failed to submit an affidavit herself. Next, plaintiffs allege WGST and WGST Productions are the alter-ego of one another. Plaintiffs claim there was significant overlap of principals, officers, and directors between the two companies, and they share the same address, telephone number, and email domain. Plaintiffs assert they did not have the opportunity through discovery to obtain the financial filings of WGST or WGST Productions, but they allege the companies commingled assets as evidenced by the fact Standlee paid WGST Productions, not WGST, Inc. Plaintiffs argue this is evidence of total domination and control over WGST by WGST Productions.

Plaintiffs further claim there are significant issues of material fact regarding their claims for fraudulent inducement. And based on their alter-ego theory, plaintiffs allege that defendants fraudulently conveyed the assets of WGST to WGST Productions to prevent plaintiffs from collecting on the refund owed by defendants after failing to perform their end of the agreement. Additionally, plaintiffs claim Hollander was an officer of WGST. Despite her contentions that she was just a salesperson, plaintiffs allege that Hollander signed her emails with “EVP” (Executive Vice President) and included this title on her LinkedIn profile and Zoominfo page.

Because of her status as an officer, plaintiffs argue that Hollander is personally liable for the breach of contract action.

Furthermore, plaintiffs contend defendants violated GBL § 349 because their actions were consumer-oriented, as evidenced by the way employees of defendants reached out to potential partners for the television series. Plaintiffs claim that defendants reached out numerous times to companies and decided on two small family-oriented farming businesses, making their actions recurring and consumer-oriented. Plaintiffs go on to assert that Hollander is personally liable for breach of contract and GBL § 349 because of her status as officer of WGST, and she was actively and personally involved in the procurement of plaintiffs as clients and execution of the contracts. Plaintiffs further allege they have established the elements of conversion as depositions of plaintiffs establish that defendants took film footage of plaintiffs and their products and failed to deliver the footage per the provisions of the contract. Plaintiffs claim they have also established the elements of fraudulent inducement, as representatives of defendants continued to represent that the filming would be completed despite the fact the company was already defunct by the time filming took place. Plaintiffs contend Hollander is personally liable for the claims of conversion and inducement by virtue of her position as an officer who worked closely with plaintiffs to ensure plaintiffs performed their end of the contract.

In reply, Hollander contends she has submitted sufficient evidence to demonstrate her entitlement to summary judgment. Hollander argues there is no evidence that she intended to hold herself personally liable for the contracts with the plaintiffs. Hollander further claims she is not a corporate officer, and the title “EVP” did not originate with her, as her email signature was formatted by a secretary at WGST. Moreover, Hollander argues there is no evidence that she operated as an officer other than an email signature. Hollander further contends that plaintiffs’

alter-ego theory is unsupported. Hollander asserts that plaintiffs are unable to demonstrate there was both an abuse of the corporate form and such abuse was for the purpose of defrauding people. Moreover, piercing the corporate veil is a very limited doctrine that Hollander argues is inappropriate in this litigation. Additionally, Hollander contends plaintiffs do not offer any evidence that Hollander personally abused the corporate form to commit fraud.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec*,

Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Breach of Contract

Preliminarily, although Hollander did not submit an affidavit in support of the motion, her sworn deposition testimony, which was submitted, is perfectly acceptable.

The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." (*Markov v Katt*, 176 AD3d 401, 402-403 [1st Dept 1995]).

"Corporate officers may not be held personally liable on contracts of their corporations, provided they did not purport to bind themselves individually under such contracts," (*Westminster Constr. Co. v Sherman*, 160 AD2d 867, 868, 554 NYS2d 300 [2nd Dept 1990]).

It is undisputed that Hollander did not sign the contracts with Standlee or BSAK. There is no evidence that she agreed to bind herself individually. Standlee's contract was signed by Dan Dailey, the President and CEO of WGST (NYSCEF Doc. No. 90) and BSAK's contract was signed by Michael Hudson (NYSCEF Doc. No. 102).

Under plaintiff's argument, assuming Hollander was an officer or WGST (which she denies), Hollander and every other corporate officer would be personally liable for every contract a corporation enters into. Obviously, that argument fails; being an officer of a corporation does not mean you are personally liable for every contract anyone enters into on behalf of the corporation.

If plaintiffs wish to pierce the corporate veil, they have not shown that Hollander was anything more than a salesperson for Standlee (she had nothing to do with the other plaintiff).

She made contact with the potential customer and negotiated the terms, but then she did not even sign the contract. Plaintiffs have not presented a material issue of fact to support a piercing the corporate veil to make Hollander personally liable under the contracts at issue here. Therefore, this cause of action is severed and dismissed as against Hollander.

Conversion

“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights” (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50, 827 NYS2d 96 [2006] [citations omitted]).

The First Department recognizes that “[a] corporate officer can be held personally liable for his tortious conduct,” (*Sergeants Benev. Ass'n Annuity Fund v Renck*, 19 AD3d 107, 110, 796 NYS2d 77 [1st Dept 2005]).

The Court dismisses the cause of action for conversion against Hollander. Plaintiffs have not pointed to anything to show that she had any role in the filming, producing, or editing of the television series (NYSCEF Doc. No. 99. Hollander Dep. 99:12-19). She testified that she never had the footage and is not holding it and plaintiffs have not raised an issue of fact on this point. There is no indication from her testimony that she oversaw the filming process or visited the farms. Hollander also testified that other salespeople were employed by WGST; however, that is all she testified to, claiming she had no knowledge of how they were hired (NYSCEF Doc. No. 99, Hollander Dep. 10:5-9). Therefore, the Court cannot find any personal liability for plaintiffs’

conversion claim against her and this cause of action is severed and dismissed as against Hollander.

Fraudulent Inducement

“To sustain a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury,” (*GoSmile, Inc. v. Levine*, 81 AD3d 77, 81, 915 NYS2d 521 [1st Dept 2010] [internal quotations and citations omitted]).

Hollander had nothing to do with the BSAK contract so she cannot be held for fraudulently inducing it. Therefore, BSAK’s claim for fraudulent against Hollander is severed and dismissed.

Although Hollander claims she did not know that the company was going to take Standlee’s money and run, the timeline and Hollander’s role in the dissolution of the corporation raises an issue of fact that is for the trier of fact to decide; this Court will not dismiss it on summary judgment.

Hollander’s name was on the dissolution documents which were filed less than three months after taking Standlee’s money and making promises that were not fulfilled. While Hollander testified her email signature was a “fancy” title for sales and marketing and declined knowing anything about her signature appearing on the Articles of Dissolution (NYSCEF Doc. No. 99, Hollander Dep. 14:4-7; 49:7-12), the finder of fact may or may not believe her. If the factfinder believes her, then this claim will fail. If the factfinder does not believe her, and believes instead that at the time she was making the sale to Standlee she knew the company was

going to dissolve shortly, and she still induced Standlee to part with \$15,000 with the knowledge that they probably would get nothing for it, then she may be found liable.

Because plaintiff has raised an issue of fact as to whether Hollander fraudulently induced Standlee to enter the contract and pay the money, and it is not this Court's role to make a factual determination on this motion, the claim for fraudulent inducement on the Standlee contract remains against Hollander and that part of Hollander's motion is denied.

Fraudulent Conveyance Under Debtor/Creditor Law

Under Debtor and Creditor Law § 273, "[a] conveyance that renders the conveyor insolvent is fraudulent as to creditors without regard to actual intent, if the conveyance was made without fair consideration" (*CIT Group/Commercial Services, Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 302, 808 NYS2d 187 [1st Dept 2006]).

Where did the plaintiffs' money go? Plaintiff is a creditor. If the factfinder does not believe that Hollander was a mere contract salesperson (as she claims) but rather believes that she was involved in the dissolution and was responsible for paying money to persons or entities without fair consideration instead of refunding plaintiffs' money (or refunding some money and handing over the footage), then Hollander may be liable under this cause of action.

Because it is up to the factfinder, both plaintiffs' claims for fraudulent conveyance remain, and Hollander's motion to dismiss it is denied.

General Business Law § 349

General Business Law § 349(a) provides "[deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

The Court of Appeals has found "as a threshold matter, plaintiffs claiming the benefit of section 349--whether individuals or entities such as the plaintiffs now before us--must charge conduct of the defendant that is consumer-oriented," (*Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, NA*, 85 NY2d 20, 25, 623 NYS2d 529 [1995]). Furthermore, "[p]rivate contract disputes, unique to the parties, for example, would not fall within the ambit of the statute," (*id.*).

Moreover, "some part of the underlying transaction must occur in New York State and the New York action of a defendant cannot merely be hatching a scheme or originating a marketing campaign in New York," (*Mountz v Global Vision Prods.*, 3 Misc. 3d 171, 177, 770 NYS2d 603 [Sup Ct, New York County, 2003] [internal citations and quotations omitted]).

The Court of Appeals has addressed the reach of GBL 349 decades ago. In *Goshen v Mutual Life Ins. Co.*, 98 NY2d 314, 746 NYS2d 858 (2002), it found that to state a cognizable cause of action under GBL 349, the plaintiff must allege that it was deceived in New York. Neither plaintiff alleges that here. Standlee is in Idaho and BSAK is in Texas. Neither plaintiff is a resident of the state of New York, and neither presented evidence that the communications and transactions between the parties occurred in New York. The protections of GBL do not extend to everyone in the world just because the forum selection clause in their contract lands them in New York courts.

Because plaintiffs here are not entitled to the protections of GBL 349, this cause of action against Hollander is severed and dismissed.

Accordingly, Hollander’s motion is decided as follows: It is hereby


ORDERED that the motion is granted to the extent that causes of action for breach of contract, conversion and violation of GBL 349 are severed and dismissed against Hollander; and it is further

ORDERED that the motion is granted to the extent that BSAK’s claim of fraudulent inducement against Hollander is severed and dismissed; and it further

ORDERED that the motion is denied to the extent that Standlee’s claim of fraudulent inducement against Hollander remains; and it is further

ORDERED that the motion is denied to the extent that claims of both plaintiffs for fraudulent conveyance against Hollander remain.

3/2/2023
DATE


ARLENE P. BLUTH, J.S.C.

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