Abid v Nuride Transp. Group, LLC
2023 NY Slip Op 35246(U)
October 30, 2023
Supreme Court, Queens County
Docket Number: Index No. 715841/22
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **ALLAN B. WEISS** IAS PART 2
Justice

SADAF ABID, RAYED BUKHARI, and YELM CONSULTING LLC, individually and derivatively on behalf of NURIDE MANAGEMENT GROUP LLC, LAPUMA TRANSPORTATION GROUP LLC, LAPUMA GO GREEN LLC, TYMPF HOLDINGS LLC, SIGNATURE BLACK CAR LLC, ACCESS TRANSPORTATION GROUP, LLC, NURIDE MEDTRANS GROUP, LLC, RADIALITY, LLC and NUQUEST MANAGEMENT GROUP LLC,	Index No. 715841/22
Plaintiffs,	Motion Date: 4/12/23
-against-	Motion Seq. No(s). 1 & 2
NURIDE TRANSPORTATION GROUP, LLC et. al.,	
Defendants.	

The following numbered papers read on this motion by defendant Mona Shah a/k/a Mehreen Shah (Shah) to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (7); and, by separate notice of motion, plaintiffs Sadaf Abid (Abid), Rayed Bukhari (Bukhari), and Yelm Consulting LLC (Yelm) move to dismiss defendants' counterclaims pursuant to CPLR 3211 (a) (1), (3), and (7).

	Papers Numbered
Notices of Motion - Affidavits - Exhibits	EF 64 - 75
	EF 77 - 99
Answering Affidavits - Exhibits	EF 102 - 108
	EF 110 - 136
Reply Affidavits	EF 138
	EF 140

Upon the foregoing papers it is ordered that the motions are determined as follows:

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 406, 414 [2001]; *Benitez v Bolla Operating LI Corp.*, 189 AD3d 970 [2d Dept 2020]). The role of the court is to determine only whether the facts as alleged fit within any cognizable legal theory (*see Bianco v Law Offices of Yuri Prakhin*, 189 AD3d 1326 [2d Dept 2020]). In general, when deciding a motion made pursuant to CPLR 3211 (a) (7), "[t]he court is limited to 'an examination of the pleadings to determine whether they state a cause of action'" (*Dolphin Holdings, Ltd. v Gander & White Shipping, Inc.*, 122 AD3d 901, 902 [2d Dept 2014], quoting *Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 20 NY3d 342, 351 [2013]; *see Fedele v Qualified Pers. Residence Trust of Doris Rosen Margett*, 137 AD3d 965, 967 [2d Dept 2016]). Moreover, where documentary evidence definitively contradicts the plaintiff's factual allegations and conclusively disposes of the plaintiff's claim, dismissal pursuant to CPLR 3211 (a) (1) is warranted (*see DiGiacomo v Levine*, 76 AD3d 946, 949 [2d Dept 2010]).

Applying these principles to the case at bar, this court finds that the causes of action against Shah premised on a theory of piercing the corporate veil must be dismissed. Specifically, as stated in the complaint, Shah's liability under the first through eleventh causes of action - namely, breach of fiduciary duty, conversion, dissolution pursuant to Business Corporation Law § 1104-A, dissolution pursuant to Limited Liability Company Law § 702, common-law dissolution, withdrawal and equitable buyout, breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, promissory estoppel, and quantum meruit - is predicated on piercing the corporate veil.

Generally, a plaintiff seeking to pierce the corporate veil must show 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" (*Conason v Megan Holding, LLC*, 25 NY3d 1 [2015], quoting *Morris v State Dep't of Taxation & Fin.*, 82 NY2d 135 [1993]).

Piercing of the corporate veil is not a cause of action independent of that against the corporation; rather, it is established when the facts and circumstances compel a court to impose the corporate obligation on its owners, who are otherwise shielded from liability (*see Morris*, 82 NY2d at 141). Therefore, "[t]he concept is equitable in nature, and the decision whether to pierce the corporate veil in a given instance will depend on the facts and circumstances" (*Millennium Constr., LLC v Loupolover*, 44 AD3d 1016 [2d Dept 2007], quoting *Hyland Meat Co. v Tsagarakis*, 202 AD2d 552, 553 [2d Dept 1994]). Factors to consider in determining whether an individual has abused the corporate form include failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and personal use of corporate funds (*see Grammas v Lockwood Assoc., LLC*, 95 AD3d 1073, 1074 [2d Dept 2012]).

Here, plaintiffs have not pleaded sufficient facts to pierce the corporate veil against Shah because there is no allegation in the complaint that she was an owner, director, officer, member, or shareholder in any of the defendant corporations (*see Old Republic Nat'l Title Ins. Co. v Moskowitz*, 297 AD2d 724 [2d Dept 2002]). Furthermore, the court rejects Shah's argument that dismissal of the complaint against her is inappropriate at this stage because evidence may eventually be discovered that would justify piercing the corporate veil (*see Yovich v Montefiore Nyack Hosp.*, 212 AD3d 425 [1st Dept 2023]; *East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 128-129 [2d Dept 2009]).

Next, the court will address those branches of Shah's motion to dismiss the twelfth through seventeenth causes of action alleging violations of New York Labor Law. In support of the motion, Shah contends that these claims should be dismissed because she was not Abid and Bukhari's direct employer during the relevant periods. In determining whether a party is an employer for purposes of the Labor Law, New York courts have employed an "economic realities" analysis, which considers whether a defendant had an "ownership interest or power to do more than carry out personnel decisions made by others" (*Patrowich v Chem. Bank*, 63 NY2d 541 [1984]). A broad interpretation of the "economic realities"test has been adopted by evaluating "whether the alleged employer (1) had the power to hire and fire the employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records" (*Matter of Carver v State of New York*, 87 AD3d 25 [2d Dept 2011], quoting *Herman v RSR Sec. Services Ltd.*, 172 F3d 132, 139 [2d Cir 1999]).

Here, based upon a careful reading of the allegations of the complaint, and upon consideration of the economic realities of this case, plaintiffs, at this stage of the litigation, have sufficiently stated causes of action against Shah as an "employer" within the meaning of the Labor Law (*see Lomeli v Falkirk Mgt. Corp.*, 179 AD3d 660 [2d Dept 2020]; *Cohen v Finz & Finz, P.C.*, 131 AD3d 666 [2d Dept 2015]; *Bonito v Avalon*

Partners, Inc., 106 AD3d 625 [1st Dept 2013]). Plaintiff claims that, during Abid and Bukhari's employment with defendants NuRide Transportation Group, LLC (NuRide) and NYC Green Transportation Group, LLC (NYC Green), Shah exercised control over the daily operations of their work. In particular, the complaint alleges that, "[t]hroughout the relevant time period, Shah controlled and directed Abid's and Bukhari's terms of employment and compensation," "Shah maintained authority to hire, fire, discipline, and promote Abid and Bukhari," and "Shah maintained control, oversight, and direction of Abid and Bukhari, including with respect to timekeeping, work allocation, task supervision, monitoring work product, payroll, and other employment policies and practices." As such, those branches of Shah's motion to dismiss the Labor Law causes of action asserted against her are denied.

Likewise, those branches of Shah's motion to dismiss the eighteenth and nineteenth causes of action alleging violations of the Free Lance Isn't Free Act (FIFA) against her, which were asserted as alternatives to Abid and Bukhari's claims under the Labor Law in the event that they are not found to be "employees" within the meaning of the Labor Law, are denied. FIFA provides legal protections for freelance workers against nonpayment for work performed (*see Chen v Romona Keveza Collection LLC*, 208 AD3d 152, 155 [1st Dept 2022]). Pursuant to Administrative Code of the City of New York § 20-927, the term "freelance worker" is defined as "any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation." The term "hiring party" is defined as "any person who retains a freelance worker to provide any service . . . ." (Administrative Code of the City of New York § 20-927).

Here, the complaint sufficiently states causes of action alleging violations of FIFA against Shah. Plaintiffs allege that "FIFA requires hiring parties, including NuRide, NYC Green, Ahmed, and Shah, to pay freelance workers, including Yelm, Abid, and Bukhari, all compensation on or before the date such contracted compensation is due under the terms of the contract or, if the contract does not specify when the contracted compensation is due or the mechanism by which such due date shall be determined, no later than 30 days after completion of the freelance worker's services under the contract." It is further alleged that Shah violated FIFA by failing to pay Abid and Bukhari for their services and, with respect to Abid, for providing late compensation for her work.

In view of the foregoing, the court need not reach the grounds for dismissal of the complaint pursuant to CPLR 3211 (a) (1).

Furthermore, in the absence of a notice of motion, the court will not entertain plaintiffs' informal request for leave to amend the complaint made in his opposition papers. For the same reason, Shah's arguments pertaining to dismissal of the cross-claims asserted against her will not be addressed herein. An application to the court for such relief must be made by notice of motion setting forth the relief demanded (CPLR 2214).

That branch of the separate motion by Yelm, Abid, and Bukhari to dismiss NuRide's counterclaim against Yelm for breach of contract is denied. To state a claim for breach of contract, the complaint must allege the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and damages as a result of the breach (*see Dee v Rakower*, 112 AD3d 204, 208-209 [2d Dept 2013]).

Here, the court finds that NuRide adequately pleaded a cause of action for breach of the consultancy agreement against Yelm. It is alleged in the counterclaim that, on January 1, 2016, NuRide and Yelm entered into a consultancy agreement, whereby the annual fee for Yelm's consulting services was $100,000.00. It is further alleged that NuRide overpaid Yelm for such services, in the total amount of $454,120.96, and that Yelm breached the consultancy agreement by "failing to refund and return the amounts that were overpaid by NuRide to which Yelm was not entitled to pursuant to the Consultancy Agreement." Moreover, contrary to Yelm's additional contention, NuRide's breach of contract counterclaim is not barred by the doctrine of account stated because, as stated in the affidavit of Nadim Ahmed, Nuride's executive chairman, NuRide demanded a return of the overpayment in February 2020 (*see generally Interman Industrial Products, Ltd. v R. S. M. Electron Power, Inc.*, 37 NY2d 151 [1975]).

Turning to that branch of the motion by Yelm, Abid, and Shah to dismiss NuRide's counterclaim for conversion against Yelm, this court finds that it is duplicative of the breach of contract counterclaim. NuRide does not allege any facts independent of the facts supporting its breach of contract counterclaim or that the alleged conversion resulted from a legal duty independent of the contract (*see e.g. Jeffers v American Univ. of Antigua*, 125 AD3d 440 [1st Dept 2015]). Rather, NuRide simply alleges in the conversion counterclaim that Yelm assumed control over the money it allegedly overpaid to Yelm under the contract and that NuRide is entitled to the return of the overpayments pursuant to the contract. Specifically, it is alleged that, "Yelm has wrongfully converted and continue to convert the Overpaid Amounts that are due to be refunded and returned to NuRide in connection with the Consultancy Agreement" and Yelm's "exercise of dominion and control over the Overpaid Amounts unjustly deprived NuRide of its right in and use of the Overpaid Amounts to which it is rightfully entitled to under the Consultancy Agreement." As such, that branch of the motion by Yelm, Abid, and Shah to dismiss NuRide's counterclaim for conversion is granted.

That branch of Yelm, Abid, and Shah's motion to dismiss the counterclaim for breach of fiduciary duty by defendants/plaintiffs on the counterclaim SBL Capital, LLC (SBL Capital), Fatfield Equities, LLC (Fatfield), and Mohammad Jawad Ansari (Ansari) against Yelm is denied. To state a claim for breach of fiduciary duty, a plaintiff must allege " '(1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct' " (*Varveris v Zacharakos*, 110 AD3d 1059 [2d Dept 2013], quoting *Rut v Young Adult Inst., Inc.*, 74 AD3d 776, 777 [2d Dept 2010]; *see Village of Kiryas Joel v County of Orange*, 144 AD3d 895 [2d Dept 2016]). Pursuant to Limited Liability Company Law § 409, members of a limited liability company owe one another a fiduciary duty to act in good faith and with the degree of care of an ordinarily prudent person in similar circumstances.

In this case, SBL Capital, Fatfield, and Ansari sufficiently stated a counterclaim for breach of fiduciary duty against Yelm by alleging that Yelm "by virtue of its majority interests in SLS, LaPuma, Go Green, Access, and TYMPF owes a fiduciary duty to SBL Capital, Fatfield, and Ansari to operate in good faith and loyalty as majority owner and with regard to SBL Capital, Fatfield, and Ansari as minority owners," and that "Yelm breached its fiduciary duty owed to SBL Capital, Fatfield, and Ansari as minority owners by seeking dissolution without providing fair compensation of their minority ownership interests in SLS, LaPuma, Go Green, Access, and TYMPF." It is further alleged that Yelm "acted oppressively, wastefully, and/or breached its fiduciary duty," "failed to exercise reasonable business judgment," and "is self-interested in the dissolution" by "seeking dissolution of SLS, LaPuma, Go Green, Access, and TYMPF to the extent that dissolution is improper because it is still reasonably practicable for these entities to carry on their business operations and purpose."

In addition, Yelm, Abid, and Shah move to dismiss the breach of fiduciary counterclaim on the ground that SBL Capital, Fatfield, and Ansari lack standing to bring said claim pursuant to CPLR 3211 (a) (3). However, to the extent that it is alleged that SBL Capital, Fatfield, and Ansari are minority owners of SLS, LaPuma, Go Green, Access, and TYMPF, they have standing to assert a derivative claim for breach of fiduciary duty against Yelm, which is alleged to be a majority owner of SLS, LaPuma, Go Green, Access, and TYMPF, (*see Tzolis v Wolff*, 10 NY3d 100 [2008]; *Yuko Ito v Suzuki*, 57 AD3d 205 [1st Dept 2008]).

Finally, that branch of Yelm, Abid, and Shah's motion to dismiss the counterclaim seeking sanctions and attorneys' fees for frivolous litigation under 22 NYCRR § 130-1.1 is granted. It is well-established that New York does not recognize an independent cause of action for the imposition of sanctions relating to frivolous actions (*see Wells Fargo Bank, N.A. v Mitselmakher*, 197 AD3d 781 [2d Dept 2021]; *Lewis, Brisbois, Bisgaard & Smith, LLP v Law Firm of Howard Mann*, 141 AD3d 574 [2d Dept 2016]).

Accordingly, those branches of Shah's motion to dismiss the first through eleventh causes of action against her are granted. In all other respects, Shah's motion is denied. The separate motion by Yelm, Abid, and Shah to dismiss defendants' counterclaims is granted only to the extent that the counterclaim for conversion and the counterclaim seeking sanctions and attorneys' fees are dismissed.

Dated: October 30 , 2023

J.S.C.

FILED
10/30/2023
COUNTY CLERK
QUEENS COUNTY