

**Finkel v Stanzione**

2024 NY Slip Op 30216(U)

January 17, 2024

Supreme Court, New York County

Docket Number: Index No. 157773/2020

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

DR. GERALD R. FINKEL, as Chairman of the Joint Industry  
Board of Electrical Industry,

Plaintiff,

INDEX NO. 157773/2020

MOTION DATE 04/14/2023

MOTION SEQ. NO. 001

- v -

PHABIANA STANZIONE and WALTER STANZIONE,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

ORDER

Upon the foregoing documents, it is

ORDERED that to the extent that it seeks payments due as of May 31, 2018, the motion of plaintiff for summary judgment is granted in favor of plaintiff as to the fourth cause of action for breach of contract against defendant Phabiana Stanzione; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff and against defendant Phabiana Stanzione in the amount of \$ 45,504.43, together with interest at the rate of statutory rate from the date of June 6, 2018, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk; and it is further

ORDERED that to the extent of \$45,504.42, the fourth cause of action is severed, and the balance of such claim and the remaining causes of actions are continued; and it is further

ORDERED that the motion of plaintiff for summary judgment is granted in favor of plaintiff as to liability on the first, second, third claims of the complaint against defendants Phabiana Stanzione and Walter Stanzione pursuant to Debtor Creditor Law §§ 273, 273-a, and the balance of the fourth claim; and it is further

ORDERED that the transfers of assets of Firealarm to defendants Phabiana Stanzione and Walter Stanzione are hereby set aside pursuant to Debtor Creditor Law § 276, and the value of the assets so conveyed shall be determined at trial; and, it is further

ORDERED that the motion of plaintiff for summary judgment is granted in favor of plaintiff as to liability as to the claim for attorney's fees under Debtor and Creditor Law § 276-a, in an amount to be determined at trial; and it is further

ORDERED that an immediate trial of the issues regarding damages as aforesaid shall be had before the court; and it is further

ORDERED that plaintiff shall, within thirty (30) days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of

the General Clerk's Office and shall serve and file with such Clerk a note of issue and statement of readiness and shall pay the fee therefor, and such Clerk shall cause the matter to be placed upon the calendar for such trial before the undersigned; and it is further

ORDERED that such service upon the General Clerk's Office 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 on the court's website).

#### DECISION

The court agrees with plaintiff that defendants have failed to offer evidence raising any issue of fact with respect to the record and testimonial evidence that (1) the defendants, Phabiana, as corporate secretary, and her father Walter, as executor of the estate of his deceased mother, who owned all shares of such corporation (see Flowers v 73<sup>rd</sup> Townhouse, LLC, 202 AD3d 403,404 [1<sup>st</sup> Dept 2022]), wielded plenary control over the assets of non-party Firealarm Electrical Corp. (Firealarm); and (2) the defendants, as insiders, conveyed over \$3.8 million, which was substantially all of Firealarm's assets, to their personal bank accounts. Such uncontested facts establish actual intent on the part of defendants to defraud plaintiff creditor,

as a matter of law (see American Media, Inc., 135 AD3d 477, 478 [1<sup>st</sup> Dept 2016])).

Finally, this court also agrees with plaintiff that defendant Phabiana has not raised an issue of fact with respect to her defenses that she entered into the Stipulation of Settlement and Forbearance, on March 7, 2018, under duress, or that the terms of such agreement, under which she personally guaranteed such payments, were unconscionable.

Not only did defendant Phabiana fail to raise duress as an affirmative defense in her answer dated November 12, 2020, but also asserted such defense for the first time in her deposition of March 2, 2021, five years after signing the Agreement. As argued by plaintiff, by failed to promptly repudiate the contract based upon duress, defendant Phabiana is deemed to have elected to confirm such agreement. See Bank Leumi Trust Co v D'Evori Internl, Inc, 163 AD2d 26, 30 (1<sup>st</sup> Dept 1990).

Nor has defendant Phabiana raised an issue of fact with respect to unconscionability. Substantively, the guaranty was not unconscionable, but constituted a "common term[] that do[es] not meet the high bar for substantive unconscionability", see Wojcik Law Firm, PC v Mull, 2024 NY Slip Op 00060 (1<sup>st</sup> Dept 2024).

*Debra A. James*

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<u>1/17/2024</u>			<u>DEBRA A. JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE