

Podokshik v Cachette

2024 NY Slip Op 32795(U)

August 8, 2024

Supreme Court, Kings County

Docket Number: Index No. 505069/2023

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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EUGENE PODOKSHIK and YEVGENIY LVOVSKIY,
Plaintiff,

Decision and order

- against -

Index No. 505069/2023

DÉSIRÉE CACHETTE, CACHETTE VENTURE
PARTNERS I, LP, and CACHETTE CAPITAL
MANAGEMENT, LLC.,

Defendants,

August 8, 2024

-----X
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3 & #4

The defendant Desiree Chachette has moved pursuant to CPLR §3211 seeking to dismiss the complaint. A motion to quash subpoenas has also been filed. The motions are opposed. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the verified complaint in December 2020 the plaintiffs each invested \$162,000 in defendant Cachette Venture partners I, L.P. [hereinafter CVP] a venture capital fund managed by defendant Desiree Cachette. Thus, a total of \$324,000 was invested by the plaintiffs. The verified complaint alleges the defendants have not explained what happened to that investment and have not returned any of the investment. This action was commenced and the complaint alleges causes of action for breach of contract, breach of fiduciary duty, fraud, unjust enrichment and punitive damages. The individual defendant has now moved seeking to dismiss the action against her on the grounds New York

is not a proper forum to maintain jurisdiction over her and on the grounds the complaint fails to state any cause of action. As noted the motion is opposed.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Perez v. Y & M Transportation Corporation, 219 AD3d 1449, 196 NYS3d 145 [2d Dept., 2023]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Archival Inc., v. 177 Realty Corp., 220 AD3d 909, 198 NYS2d 567 [2d Dept., 2023]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Lam v. Weiss, 219 AD3d 713, 195 NYS3d 488 [2d Dept., 2023]).

First, there is no evidence the defendant Desiree Chachette was properly served with a summons and complaint. While affidavits from process servers concerning the two corporate entities have been submitted there is no proof the individual defendant was ever served. Thus, there is no proof the court maintains any jurisdiction over her.

In any event, Desiree Chachette did not sign any contract with the plaintiffs in her individual capacity and cannot be liable for any breaches that are alleged. Concerning the allegation of piercing the corporate veil, it is well settled that if the defendant so dominated the activities of the corporation then piercing of the corporate veil would be permitted and defendant could then be liable personally (see, Matter of Morris v. New York State, 82 NY2d 135, 603 NYS2d 807 [1993]). However, dominance of a corporation, standing alone is insufficient to pierce the corporate veil (First Capital Asset Management Inc., v. N.A. Partners, L.P., 300 AD2d 112, 755 NYS2d 63 [1st Dept., 2002]). New York courts take piercing the corporate veil very seriously and will pierce the corporate veil only when necessary to prevent fraud or to achieve equity (see, Morris v New York State Department of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807 [1993]). To succeed on a request to pierce the corporate veil the plaintiff must demonstrate that "(1) the owners exercised complete dominion of the corporation in respect to the transaction attacked and (2) that such dominion 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, 6 NYS3d 206 [2015]). As the Court of Appeals observed, at the pleading stage, "a plaintiff must do more than merely allege that [defendant] engaged in improper acts or acted in 'bad

faith' while representing the corporation" (East Hampton Union Free School District v. Sandpebble Builders Inc., 16 NY3d 775, 919 NYS2d 496 [2011]). Rather, the plaintiff must allege facts demonstrating such dominion over the corporation and that "through such domination, abused the privilege of doing business in the corporate form to perpetuate a wrong or injustice against the plaintiff such that a court in equity will intervene" (Oliveri Construction Corp., v. WN weaver Street LLC, 144 AD3d 765, 41 NYS3d 59 [2d Dept., 2016]). "Factors to be considered in determining whether an individual has abused the privilege of doing business in the corporate or LLC form include the failure to adhere to [corporate or] LLC formalities, inadequate capitalization, commingling of assets, and the personal use of [corporate or] LLC funds" (see, Grammas v. Lockwood Associates LLC, 95 AD3d 1073, 944 NYS2d 623 [2d Dept., 2012]). Thus, mere conclusory statements that the individual dominated the corporation are insufficient to defeat a motion to dismiss (AHA Sales Inc., v. Creative Bath Products Inc., 58 AD3d 6, 867 NYS2d 169 [2d Dept., 2008]).

In this case the verified complaint does not allege any facts at all which demonstrate to any degree that the individual defendant dominated the activities of the corporation. In fact, the verified complaint does not mention any of the necessary criteria at all. Therefore, there is no basis upon which to find

the individual defendant liable in any manner. Thus, the motion seeking to dismiss the causes of action for breach of contract, breach of fiduciary duty and unjust enrichment is granted.

Turning to the fraud claim, it is well settled that to succeed upon a claim of fraud it must be demonstrated there was a material misrepresentation of fact, made with knowledge of the falsity, the intent to induce reliance, reliance upon the misrepresentation and damages (Cruciata v. O'Donnell & Mclaughlin, Esqs, 149 AD3d 1034, 53 NYS3d 328 [2d Dept., 2017]).

Thus, pursuant to CPLR §3016(b) to plead fraud the complaint must "sufficiently detail the alleged conduct" and contain facts that "are sufficient to permit a reasonable inference of the alleged conduct" (Pludeman v. Northern Leasing Systems Inc., 10 NY3d 486, 860 NYS2d 422 [2010]). In the verified complaint in this case there are absolutely no facts supporting allegations of fraud. The allegations merely contain conclusions that fraud was committed without explaining, with the detail required, how such fraud occurred. Thus, a complaint that alleges fraud "absent specific and detailed allegations establishing a material misrepresentation of fact, knowledge of falsity or reckless disregard for the truth, scienter, justifiable reliance, and damages proximately caused thereby, is insufficient to state a cause of action for fraud" (Old Republic National Title Insurance Company v. Cardinal Abstract Corp., 14 AD3d 678, 790 NYS2d 143

[2d Dept., 2005]).

The verified complaint does allege that "Plaintiffs were fraudulently induced by Cachette" (see, Verified Complaint, ¶13 [NYSCEF Doc. No. 1]). However, that allegation is insufficient to establish fraud since it is entirely conclusory. It asserts fraud was committed without explaining what statements were made, how such statements were false and that such false statements were then relied upon by the plaintiffs. The verified complaint further alleges that "Defendants made false promises about how the money would be used" (see, Verified Complaint, ¶43 [NYSCEF Doc. No. 1]). Again, that allegation is entirely conclusory and does not contain any of the specificity required to allege fraud. Thus, the motion seeking to dismiss the fraud cause of action is granted.

Lastly, the claim for punitive damages is improper. Punitive damages are not recoverable in an ordinary breach of contract case (see, Rocanova v. Equitable Life Assurance Society of U.S., 83 NY2d 604, 612 NYS2d 339 [1994]). There are no allegations the breach of contract alleged is of such a degree as to involve a "fraud evincing a 'high degree of moral turpitude' and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations'" (*id*) that such punitive damages may be appropriate.

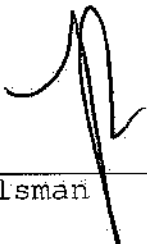
Therefore, based on the foregoing, the motion seeking to

dismiss the complaint in its entirety as to Desiree Chachette is hereby granted. The motion concerning any subpoenas is now rendered moot.

So ordered.

ENTER:

DATED: August 8, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC