

Shapiro v LTD Lighting, Inc.

2024 NY Slip Op 34870(U)

July 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 609319/2023

Judge: James Hudson

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INDEX NO.: 609319/2023

**Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision**

P R E S E N T:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 3/19/24
SUBMIT DATE: 5/15/24
Mot. Seq. #: **001 - MotD**

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GREGORY SHAPIRO; and GLG LIGHTING,
INC.,
Plaintiffs,

LAW OFFICE OF MAX D. LEIFER, P.C.
Attorneys for the Plaintiffs
135 West 26th Street, Suite 11D
New York, NY 10001

-against-

LTD LIGHTING, INC.; LUKE PFEIFER; & TIM
DORSA,
Defendants.

OFFIT & KURMAN, P.A.
Attorneys for the Defendants
590 Madison Avenue, 6th Floor
New York, NY 10022

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LTD Lighting, Inc., Luke Pfeifer, and Tim Dorsa request an order, pursuant to **CPLR 3211 (a) (1), (3), (7)**: 1) dismissing the complaint due to lack of privity of contract between the plaintiffs and individual defendants; 2) for failure to state a cause of action; and 3) pursuant to the terms of the asset purchase agreement, for costs and reasonable attorneys' fees.

This is a commercial breach of contract action concerning the sale of a retail lighting fixtures business located in Farmingdale, NY.

On March 6th, 2021, defendant LTD Lighting, Inc. ("LTD") entered into an asset purchase agreement ("Contract") with plaintiff GLG Lighting, Inc. ("GLG"), and its sole

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principal, Gregory Shapiro. The contract embodied the terms of sale of the retail lighting fixture business known as Bowery Lighting Co. (“Bowery”) by owners GLG and Mr. Shapiro to LTD (NYSCEF Doc. No. 9). The principals of LTD are defendants Luke Pfeifer and Tim Dorsa. GLG was the lessee of a storefront at 1210 Broadhollow Road (Route 110), Farmingdale, NY 11735. LTD became the sublessee of GLG and assumed immediate tenancy. The lease from non-party lessor/landlord 1090 Route 110, LLC terminated on May 31st, 2021.

Gregory Shapiro simultaneously executed a consulting agreement with LTD (NYSCEF Doc. 14, “Agreement”). That Agreement provided for Mr. Shapiro, post-closing, to remain as a business consultant to LTD for a period of three (3) years. Agreement paragraph 2 states that remuneration for his services were to be “ten (10%) percent of the monthly net sales value and amounts received by the Company [LTD]” (NYSCEF Doc. No. 14).

The contract provides for the sale of the business, inventory, equipment, fixtures, computers, websites, domains, software, logos and trade and service marks of GLG/Bowery to LTD for the purchase price of \$300,000. The closing occurred on March 6th, 2021. At the closing, LTD made an initial payment of \$30,000. Contract terms required LTD to pay an additional \$20,000. no later then June 30th, 2021. The \$250,000 balance was amortized in monthly payments commencing on October 1st, 2021; and for sixty (60) months thereafter at three (3%) percent interest.

LTD and Messrs. Pfeifer and Dorsa defaulted by failing to make the \$20,000 payment when due. Between July 2021 and November 2021, LTD paid a total of

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\$10,599.90 to Mr. Shapiro, leaving a balance due and owing of \$259,400.10, plus interest.

That balance remains unpaid.

On December 20th, 2021, the plaintiffs commenced this action in New York County Supreme Court; and filed the instant motion (seq. no. 001); which included a request to transfer venue to Suffolk County. On December 7th, 2022, the parties stipulated to transfer the case to Suffolk County Supreme Court. On February 15th, 2023, Justice Saunders transferred venue to Suffolk County (NYSCEF Doc. No. 28).

The balance of the relief sought by the defendants will now be considered.

For the purposes of this dismissal motion the Court must accept the allegations made in the complaint as true, accord them the benefit of every reasonable inference, and determine only whether the allegations support any cognizable legal theory (*Connolly v. Long Island Power Authority*, 30 NY3d 719, 728, 70 NYS3d 909, 94 NE3d 471 [2018]). The criterion is whether Mr. Shapiro and GLG have a cause of action; not whether one has been stated (*Maddicks v. Big City Properties, LLC*, 34 NY3d 116, 123, 114 NYS3d 1, 137 NE3d 459 [2019]; *Leon v. Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511 [1994]). The Court will also consider whether the plaintiffs can succeed upon any reasonable view of the stated facts (*Aristy-Farer v. State*, 29 NY3d 501, 509, 59 NYSd 877, 81 NE3d 360 [2017]). Dismissal will only be warranted if an asserted material fact is not one, and no significant dispute exists regarding that assertion (*Houtenbos v. Fordune Association, Inc.*, 200 AD3d 661, 160 NYS3d 57 [2d Dept 2022]). In opposing the motion, the plaintiffs have no obligation to demonstrate evidentiary facts to support the complaint (*Stuart Realty Co. v. Rye Country Store, Inc.*, 296 AD2d 455, 456, 745 NYS2d

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72 [2d Dept 2022]). The Court will not consider whether the complaint will survive a summary judgment motion or whether the plaintiffs will be able to prove their claims (*Redwood Property Holdings, LLC v. Christopher*, 211 AD3d 758, 177 NYS3d 895 [2d Dept 2022]).

The Court will first consider the request for dismissal of the complaint against the individual defendants upon documentary evidence (CPLR 3211 [a] [1]).

The defendants cite to the contract and the agreement as documents in support of their requested relief. Both documents are fully executed by Messrs. Pfeifer and Dorsa solely in their corporate capacities. Neither individual defendant is named in either document. Documents such as contracts and other papers of undeniable content are considered documentary evidence (*Hohwald v. Farm Family Casualty Insurance Company*, 155 AD3d 1009, 1010, 66 NYS3d 316 [2d Dept 2017]; *Fontanetta v. John Doe I*, 73 AD3d 78, 84-85, 989 NYS3d 569 [2d Dept 2010]). The documentary evidence presented must resolve all factual issues as a matter of law and conclusively dispose of the allegations made by Mr. Shapiro and GLG (*B&A Realty Management, LLC v. Gloria*, 192 AD3d 851, 853, 144 NYS3d 443 [2d Dept 2021]).

Both the contract and agreement each speak for themselves (*Weg v. Kaufman*, 159 AD3d 774, 776, 72 NYS2d 135 [2d Dept 2018]; *In re 1545 Ocean Ave., LLC*, 72 AD3d 121, 128, 893 NYS2d 590 [2d Dept 2012]). The execution of both documents indicates that the parties understood the contents and assent to their terms (*British West Indies Guar. Trust Co., Inc. v. Banque Internationale a Luxembourg*, 172 AD2d 234, 567 NYS2d 731 [1st Dept 1991]). The Court recognizes that the parties are experienced businesspersons

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who possessed the ability to obtain the benefit of counsel in contract formation and execution. The Court will enforce each according to its terms (*Vermont Teddy Bear Co. v. 538 Madison Realty*, 1 NY3d 470, 475, 775 NYS2d 765, 807 NE2d 874 [2004]; *Loughlin v. Meghi*, 186 AD3d 1633, 1639, 132 NYS3d 65 [2d Dept 2020]).

The Defendants argue that the contract and agreement do not pertain to or name the individual defendants, nor was either document signed by either Mr. Pfeifer or Mr. Dorsa in their individual capacities. They contend that the plaintiff cannot assert privity of contract between Mr. Pfeifer and Mr. Dorsa and therefore, pursuant to **CPLR 3211 (a) (3)** “lack legal capacity to sue for lack of standing” (NYSCEF Doc. 26, P. 1, Reply Brief). That subsection addresses the lack of capacity to sue; not standing. The former concerns justiciability, the latter concerns a litigant’s power to appear and bring the grievance before the Court (*Community Board 7 of the Borough of Manhattan v. Schaffer*, 84 NY2d 148, 155, 615 NYS2d 644, 639 NE2d 1 [1994]). Standing relates to an assurance that the party seeking relief has a sufficiently cognizable stake in the outcome so as to cast the dispute in a form traditionally capable of judicial determination (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 772-773, 570 NYS2d 553, 655 NE2d 649 [1995]).

The documentary evidence is sufficient to dismiss the complaint as pertains to Mr. Pfeifer and Mr. Dorsa.

The Court will next consider the request to dismiss the complaint as against LTD Lighting, Inc. for failure to state a cause of action pursuant to **CPLR 3211 (a) (7)**.

It is uncontroverted that the parties have entered into a valid contract and agreement.

The first cause of action is for breach of contract.

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To plead a cause of action for breach of contract, a plaintiff must allege that: 1) a contract exists; 2) the plaintiff performed in accordance with the contract; the defendant breached its contractual obligations; and 4) that breach resulted in the plaintiff suffering damages (*34-06 73, LLC v. Seneca Insurance Company*, 39 NY3d 44, 178 NYS3d 1, 198 NE3d 1282 [2022]).

The plaintiffs have alleged the existence of the contract and agreement, under which terms LTD has failed to perform, and that Mr. Shapiro and GLG were damaged by the breach on the part of LTD. Although the plaintiffs do not allege the element of performance on their part, the Court accords them that reasonable inference. The first cause of action for breach of contract by LTD will not be dismissed.

The second cause of action is for breach of the implied covenant of good faith and fair dealing.

That cause of action is intrinsically tied to, and duplicative of, the damages which allegedly resulted from the breach of contract by LTD. For that reason, the second cause of action will be dismissed (*Normandy Real Estate Partners LLC v. 24 East 12th Street Associates LLC*, 168 AD3d 429, 430, 92 NYS3d 207 [1st Dept 2019]).

The third cause of action is for unjust enrichment and fiduciary breaching duty.

Unjust enrichment is a quasi-contractual claim (*Goldman v. Metropolitan Life Ins. Co.*, 5 NY3d 561, 572, 807 NYS2d 583, 841 NE2d 742 [2005]). There can be no quasi-contractual claims arising from the alleged breach of contract (*IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142, 879 NYS2d 355, 907 NE2d 268 [2009]).

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The case cited by the plaintiffs in their argument in opposition, which concerned the pleading of alternative theories of quantum meruit and unjust enrichment, along with that for breach of contract, can be distinguished from the case at bar (*Henry Loheac, P.C. v. Children's Corner Learning Ctr.*, 51 AD3d 476, 857 NYS2d 143 [1st Dept 2008]). In *Loheac*, the alleged contract was oral, and the scope of work concerned was in dispute.

That portion of the third cause of action which alleges unjust enrichment by LTD will be dismissed (*Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 70 NY2d 382, 388, 521 NYS2d 653, 516 NE2d 190 [1987]).

The third cause of action also contains an allegation of "fiduciary breaching duty" (NYSCEF Doc. No. 1, para. 24, Contract). The plaintiff's breach of fiduciary duty claim is based upon the same facts and theories as that of the first cause of action for breach of contract. That portion of the third cause of action is duplicative and for that reason will be dismissed (*Brooks v. Key Trust Co. N.A.*, 26 AD3d 628, 630, 809 NYS2d 47 [3d Dept 2006], *lv. dismissed* 6 NY3d 891, 817 NYS2d 625, 850 NE2d 672 [2006]).

Accordingly, it is

ORDERED, that the motion (seq. no. 001) by the defendants, LTD Lighting, Inc., Luke Pfeifer, and Tim Dorsa, which requests, pursuant to **CPLR 3211 (a) (1), (3), (7)**, dismissal of the complaint against Luke Pfeifer and Tim Dorsa, due to lack of privity of contract, is granted; and it is further

ORDERED, that the request for dismissal of the complaint against defendant LTD Lighting, Inc. is granted as to the second and third causes of action; and it is further

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ORDERED, that the request for dismissal of the first cause of action against defendant LTD Lighting, Inc., is denied; and it is further

ORDERED, that the request for costs and reasonable attorneys' fees pursuant to the terms of the parties' March 6th, 2021 asset purchase agreement, is denied, without prejudice.

This memorandum also constitutes the Order of the Court.

Dated: July 18th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court