

Antique Light. Solutions, LLC v Frangoulis

2025 NY Slip Op 30473(U)

February 7, 2025

Supreme Court, New York County

Docket Number: Index No. 152919/2021

Judge: Richard G. Latin

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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. RICHARD G. LATIN PART 46M

Justice

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ANTIQUE LIGHTING SOLUTIONS, LLC, D/B/A COUTURE
SHADES

Plaintiff,

- v -

DARLENE FRANGOULIS,

Defendant.

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INDEX NO. 152919/2021

MOTION DATE 07/03/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 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

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

Upon the foregoing documents, it is ordered that plaintiff Antique Lighting Solutions, LLC, d/b/a Couture Shades (“Antique Lighting”)’s unopposed motion for summary judgment, pursuant to CPLR 3212, dismissing the complaint is determined as follows:

Defendant Darlene Frangoulis was a manager of plaintiff’s business, Couture Shades, from August 1, 2017, through October 5, 2020 (NYSCEF # 1 ¶ 4). Plaintiff commenced this action alleging that Defendant fraudulently converted a total of forty-one checks payable to Antique Lighting by altering the business name to her own (Frangoulis) and depositing the funds into her personal bank account (NYSCEF # 1 ¶ 15). Plaintiff alleges that defendant’s actions constitute a breach of contract and breach of fiduciary duties (*id.*). Defendant’s position was, that modifying the checks was the result of an oral agreement between her and plaintiff, and that plaintiff “was aware of the practice and supported it” as a means of improving the business’ efficiency (NYSCEF # 16 ¶ 7). Defendant plead guilty to criminal charges for the misappropriation of six checks and

paid restitution in the amount of \$8,833.80. Plaintiff now seeks a sum certain of \$42,850.25 plus interest, costs, and allowable attorney's fees for thirty-five additional checks (NYSCEF # 46).

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). “[F]ailure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Ayotte*, 81 NY2d at 1063 [internal quotation marks and citation omitted]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman*, 49 NY2d at 562).

“Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]; *see also American Home Assur. Co. v Amerford Intl. Corp.*, 200 AD2d 472, 473 [1st Dept 1994]). “On a summary judgment motion, facts must be viewed in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]).

Plaintiff contends that defendant explicitly breached her employment contract and as a manager of the business, violated the implicit fiduciary duty of loyalty (NYSCEF # 61). Plaintiff cites to specific provisions in the business' Employment Agreement with Defendant which were violated. (*id.*). These provisions specifically required that the Defendant act in furtherance of

the interests and business of the company (§ 3); that she not interfere with or disrupt the company's contractual relationships with its customers (§ 6); and further, that she not engage in activity that conflicts with the business interests of the company (§ 10). (*id.*) Plaintiff contends that defendant's actions are in violation of these provisions and have resulted in damages amounting to a sum total loss of \$42,850.25 plus interest, costs, and allowable attorney's fees.

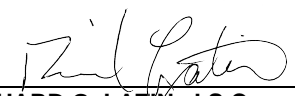
Plaintiff's claim for breach of fiduciary duties is based on the well-established principle that "an employee is to be loyal to his [or her] employer and is 'prohibited from acting in any manner inconsistent with his [or her] agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his [or her] duties'" (*City of Binghamton v Whalen*, 141 AD3d 147 [3d Dept 2016], citing *Western Elec. Co. v Brenner*, 41 NY2d 291, 295 [1977]). Defendant's act of changing the name on plaintiff's checks and depositing the amounts into her personal bank account is inconsistent with exercising the utmost good faith and loyalty in her performance as a manager of plaintiff's business.

Plaintiff also contends that defendant fraudulently converted checks that its business legally owned. To succeed on a cause of action to recover damages for conversion, a plaintiff must show (1) legal ownership or an immediate right of possession to a specific identifiable thing and (2) that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's right (*Giardini v Settanni*, 159 AD3d 874, 875 [2018]). Plaintiff asserts that its business legally owned the checks and defendant exercised unauthorized dominion over them by changing the name and depositing the funds into her personal bank account. Plaintiff offers defendant's testimony of her guilty plea to criminal misdemeanor charges to further demonstrate defendant's fraudulent actions (NYSCEF # 58).

In support of the motion, plaintiff submits, inter alia, the sworn affirmation of Steven M. Cherniak, Chief Operating Officer for Cohen Brothers Realty Corporation and managing agent for Plaintiff (NYSCEF # 52). At his deposition on November 29, 2022, Cherniak stated, inter alia, that each and every allegation in the complaint is true regarding the stolen funds by misappropriated checks (*id.*). Thus, plaintiff met its prima facie burden and it is incumbent on the defendant to raise a triable issue of fact, which she failed to do.

Accordingly, plaintiff’s motion for summary judgment is granted.

Submit order including an affirmation concerning attorneys’ fees.

<u>2/7/2025</u> DATE					 RICHARD G. LATIN, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE