

**Glomex S.P.A. v GA Communications LLC**

2025 NY Slip Op 31546(U)

April 28, 2025

Supreme Court, New York County

Docket Number: Index No. 655855/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 655855/2024

GLOMEX S.P.A.,

MOTION DATE 01/15/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

GA COMMUNICATIONS LLC, JUSTIN ROEM, ERNEST ELLIS, STEPHEN ELLIS, JAMES ELLIS, JOHN ELLIS, WILLIAM ELLIS

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after a final submission date of February 18, 2025, Defendants GA Communications LLC ("GA Communications"), Justin Roem ("Justin"), Ernest Ellist ("Ernest"), Stephen Ellis ("Stephen"), James Ellis ("James"), John Ellis ("John"), and William Ellis ("William") (collectively "Defendants") motion to dismiss Plaintiff Glomex S.P.A.'s ("Plaintiff") Complaint pursuant to CPLR 3211(a)(7) and (a)(8) is denied.

I. Background

Plaintiff is an Italian company that manufactures marine antennas. GA Communications is a limited liability company based in Baltimore, Maryland, while the individually named defendants are all members of GA Communications. On December 16, 2020, Plaintiff and GA Communications entered a distribution agreement (the "Distribution Agreement") where GA Communications agreed to distribute Plaintiff's products throughout North, Central, and South America. When GA Communications failed to make timely payments, an amendment to the Distribution Agreement (the "Amendment") was executed on April 6, 2023, coupled with a

promissory note where GA Communications agreed to pay Plaintiff the sum of \$371,803. GA Communications failed to pay that sum and additional amounts owed for merchandise received and threatened to file for bankruptcy in response to Plaintiff's demands for payment.

On February 16, 2024, Plaintiff sued GA Communications in the Southern District of New York (the "Federal Lawsuit"). GA Communications sought an extension of time to file its answer, and on the day its answer was due, filed for bankruptcy. Although the Federal Lawsuit was temporarily stayed by the bankruptcy, the stay was lifted on September 3, 2024, and Plaintiff withdrew the action without prejudice once it learned there was no diversity jurisdiction. Plaintiff then re-filed its complaint in State Court and alleges breach of contract, breach of a promissory note and account stated. Plaintiff seeks to hold the individually named Defendants liable through a theory of alter-ego liability. Defendants now move to dismiss based on failure to state a claim and lack of personal jurisdiction.

## II. Discussion

### A. Personal Jurisdiction

The motion to dismiss based on lack of personal jurisdiction is denied. It has long been held that where personal jurisdiction may be asserted over a corporation, if the activities of corporate members show a disregard of corporate formalities or the use of the corporate form to commit a fraud or wrong, personal jurisdiction may be asserted over the corporate members who perpetrated the wrong (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460 [1988]; *Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp.*, 751 F2d 117, 120 [2d Cir. 1984]; *Corcoran v Haddon S. Fraser Associates, Ltd.*, 171 AD2d 522, 522-23 [1st Dept 1991]).

The standard for piercing the corporate veil is less stringent for a plaintiff who seeks to pierce the veil to establish jurisdiction rather than to impose liability (*GEM Advisors, Inc. v*

*Corporacion Sidenor, S.A.*, 667 F.Supp.2d 308 [SDNY 2009]). “The stripping of corporate assets by shareholders to render the corporation judgment proof constitutes a fraud or wrong justifying piercing the corporate veil” (*Dafeng Hengwei Textile Co. v Liu*, 720 F. App’x 83, 85 [2d Cir. 2018] quoting *Godwin Realty Assocs. v CATV Enters., Inc.*, 275 AD2d 269 [1st Dept 2000]).

There is no doubt personal jurisdiction exists over GA Communications, which explicitly agreed to litigating claims with respect to the amendment to the Distribution Agreement in New York County (NYSCEF Doc. 4 at § 15). Moreover, there are sufficient allegations set forth, and enough evidence submitted in opposition to the motion for this Court to find an exercise of jurisdiction based on piercing the veil to be appropriate.

Specifically, as the bankruptcy proceedings’ transcript makes clear, GA Communications was undercapitalized, with an initial capitalization of \$100,000 and an additional capitalization of \$50,000 in 2022 despite taking on debt to Plaintiff in excess of \$370,000 (NYSCEF Doc. 38 at p. 7). Moreover, GA Communications took loans from its members, which it paid back with priority over non-member creditors, including Plaintiff (*Id.* at p. 16-17; 27-29). It is further alleged that GA Communications threatened to file bankruptcy rather than pay back Plaintiff, and at the same time agreed to pay GA Communications members disbursements, while strategically timing the filing of bankruptcy to avoid claw back of those payments. Finally, there is a sworn affidavit from Plaintiff’s principal (NYSCEF Doc. 35) stating that GA Communications represented it had no assets and was near bankruptcy, but at the same time represented it was selling Plaintiff’s products despite failing to pay Plaintiff for the products sold and delivered. Plaintiff’s principal claims the money from those sales remains unaccounted for.

The individually named Defendants are either active members in managing GA Communications or signatories to a resolution winding up GA Communications and authorizing

the payment to Ernest and Justin \$2,000 a week until dissolution was complete. This resolution was passed only eight months after signing a promissory note with Plaintiff, which gives rise to an inference that the members never intended to repay the promissory note and effectively voted to strip the corporation of its assets for the benefit of its members rather than paying Plaintiff (*Godwin Realty Assocs. v CATV Enters., Inc.*, 275 AD2d 269, 270 [1st Dept 2000]). Although the Defendants' affidavits aver that most were silent members who were not engaged in day to day management, this at most raises an issue of fact as to whether veil piercing is viable, as these Defendants still: (a) participated in the undercapitalization of the company; (b) participated in prioritizing repayment of loans to the company from members over loans from outside parties; (c) ratified winding down the business and authorized using assets to pay other members despite just months prior signing a promissory note with Plaintiff, and (d) were potentially complicit in coordinating disbursements to members and the filing of bankruptcy to avoid claw back of those disbursements. Therefore, the motion to dismiss based on lack of personal jurisdiction is denied.

#### **B. Failure to State a Claim**

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure

to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

As a preliminary matter, the Court finds Defendants' argument that this Court should apply Maryland law to its alter-ego analysis because that is the state where GA Communications is incorporated to be unavailing, as the alter-ego allegations arise from GA Communications performance and relationship with Plaintiff under a promissory note which explicitly contains a choice of law provision stating New York law governs. The internal affairs doctrine implicates "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders" (*Edgar v MITE Corp.*, 457 US 624, 625 [1982]) while alter ego liability involves "the abuse of the corporate form to the detriment of third parties" (*UBS Securities LLC v Highland Capital Management, L.P.*, 30 Misc3d 1230[A] at \*3 [Sup. Ct. NY Cty 2011] citing *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 140-141 [1993]). Therefore, New York law guides this Court's alter-ego analysis.

Accepting the facts alleged as true, granting Plaintiff all favorable inferences, and considering the affidavit and other evidence proffered in opposition, which amplify Plaintiff's pleadings (*see, e.g. Ninth Space LLC v Goldman*, 192 AD3d 594, 594 [1st Dept 2021]), Plaintiff states a claim for alter-ego liability for the same reasons this Court is able to exercise personal jurisdiction over Defendants on a theory of alter-ego liability.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint is denied in its entirety; and it is further

ORDERED that within twenty days of entry, counsel for Defendants shall serve an Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall they submit a proposed order later than September 2, 2025. In the event the parties have a serious discovery dispute preventing them from entering a proposed preliminary conference order, they shall appear for a preliminary conference at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York on September 3, 2025; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>4/28/2025</u> DATE	<u>Mary V. Rosado</u> HON. MARY V. ROSADO, J.S.C.				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" 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