

Orithyia Omada v Hunt

2025 NY Slip Op 32616(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 659494/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

INDEX NO. 659494/2024

ORITHYIA OMADA, MARY DARLING,

Plaintiffs,

MOTION DATE 05/07/2025, 05/19/2025

- v -

MOTION SEQ. NO. 002 003

PAMELA HUNT,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 121, 122, 123, 154, 155, 156,

were read on this motion to DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 157, 158, 159, 160, 161, 162,

were read on this motion to VACATE/LIFT - STAY

Upon the foregoing documents and for the reasons hereinbelow, the motion to dismiss is granted in part and denied in part, and the motion to lift the stay is denied as moot.

Background

This dispute arises from a falling out between the parties, who in 2021 co-founded a New York Road Runners registered run club based in Manhattan called Orithyia Omada ("OO"). Defendant, Pamela Hunt, has an activewear brand called "Orithyia" that is unaffiliated with OO. On December 6, 2024, plaintiffs, OO and Mary Darling, filed a complaint against defendant, alleging: (1) conversion of OO's membership funds (defendant's unilateral possession of the OO Venmo account); (2) breach of fiduciary duty (defendant's self-interested usurpation of OO's financial and intellectual property assets); (3) and misappropriation (the contention that defendant blocked Darling, a co-founder and manager of OO and an active member of the club, from accessing OO club pages and other OO digital assets). NYSCEF Doc. No. 2.

On December 10, 2024, plaintiffs moved by order to show cause for a temporary restraining order and a preliminary injunction, which this Court later granted based on, inter alia, a likelihood of success on the merits on the conversion and misappropriation causes of action, enjoining defendant from: maintaining access to and control over OO's official social media accounts, email, and website; maintaining possession of the OO membership dues and any further collection of such dues; and from selling her activewear brand on OO's website. NYSCF Doc. No. 5.

On December 27, 2024, defendant answered with a general denial, one affirmative defense, and four counterclaims. NYSCEF Doc. No. 26.

On January 9, 2025, the parties appeared at oral argument, at the conclusion of which they appeared to reach a tentative settlement. During that oral argument, the following underlying facts were undisputed; that defendant no longer runs with OO, that defendant joined a run club in Brooklyn, and that defendant stepped down from her leadership position with OO in an email to New York Road Runners (“NYRR”). NYSCEF Doc. No. 100. Indeed, in a November 25, 2024, email, defendant asked NYRR to “remove [her] name” from OO’s leadership. NYSCEF Doc. No. 55.

On February 18, 2025, as settlement negotiations between the parties had ceased, plaintiffs filed a verified reply to defendant’s answer and counterclaims. NYSCEF Doc. No. 98.

On February 26, 2025, plaintiffs requested that this Court grant them a preliminary injunction. NYSCEF Doc. No. 101. On March 5, 2025, this Court granted plaintiffs’ preliminary injunction. NYSCEF Doc. No. 107.

Plaintiffs state that on April 25, 2025, they served defendant with discovery demands, which were due on May 7, 2025, and thereafter. NYSCEF Doc. No. 154.

Motion to Dismiss

On May 6, 2025, defendant moved to dismiss the instant action, pursuant to CPLR 3211(a)(1), (3), and (7). NYSCEF Doc. No. 121.

In support of her motion, defendant contends, inter alia, that OO is not a legal entity and therefore cannot sue or be sued. Id. Defendant also notes her former trademark ownership of her clothing brand “Orithyia,” and that while federal registration “was inadvertently abandoned,” she continues to use it in commerce. Id. While defendant does not own the federal trademark to OO, she points out that her application has been pending with the USPTO since November 2024. Id.

In opposition, plaintiffs allege, inter alia, that on April 18, 2025, the New York State Department of State granted OO’s application to register the service mark “Orithyia Omada” to the run club, confirming its ongoing use of the name in connection with its running club activities since 2021. NYSCEF Doc. No. 154.

Plaintiffs argue, inter alia, that the fact that OO is not a formal legal entity does not deprive it of the ability to litigate. Id. Plaintiffs cite New York General Associations Law §§ 12–13 for the proposition that unincorporated associations may sue through a representative member, and here, Mary Darling, a co-founder and current manager of OO, “brings this action in part on behalf of its members.” Id. Plaintiffs contend that the fact that defendant’s federal trademark application was filed “in her own name” and “without consent from the group” substantiates plaintiffs’ claims of misappropriation and breach of fiduciary duty. NYSCEF Doc. No. 155.

Motion to Vacate/Lift Stay

On May 19, 2025, plaintiffs moved, pursuant to CPLR 3214(b), to lift the automatic stay of discovery imposed by defendant's motion to dismiss. NYSCEF Doc. No. 157.

Discussion

"Under New York law, an unincorporated association is afforded the capacity to sue through its president or treasurer, and because the governing statutory provision is generally viewed as a pleading and procedural aid, and not as denying a right of action to an association lacking officers bearing such titles, suit can be brought in the name of an officer who is the functional equivalent to a president or treasurer." Arbor Hill Concerned Citizens Neighborhood Ass'n v City of Albany, N.Y., 250 F Supp 2d 48, 62 (NDNY 2003). Here, plaintiff Mary Darling, the co-founder and current manager of OO, is the functional equivalent of a president or treasurer. Accordingly, in terms of CPLR 3211(a)(3), Darling has standing to bring the instant action as a representative of OO on behalf of its members.

Dismissal pursuant to CPLR 3211(a)(1) is warranted where "documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." Leon v Martinez, 84 NY2d 83, 87-88 (1994). Dismissal pursuant to CPLR 3211(a)(7) is warranted when, "afford[ing] the pleadings a liberal construction, tak[ing] the allegations of the complaint as true and provid[ing] plaintiff the benefit of every possible inference," the complaint fails to assert facts that would make out a cause of action. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005). "A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Id. "Before courts can infer and superimpose a duty of the finest loyalty, the contract and relationship of the parties must be plumbed." Northeast Gen. Corp. v Wellington Adv., Inc., 82 NY2d 158, 162 (1993).

Here, this Court finds that the circumstances do not warrant superimposing a fiduciary duty. Therefore, the fiduciary duty cause of action must be dismissed.

Defendant argues that documentary evidence she has submitted, including, inter alia, her pending application for a federal trademark to OO (NYSCEF Doc. No. 127), warrants the dismissal of plaintiff's entire complaint. Defendant's argument, pursuant to CPLR 3211(a) fails, as the documentary evidence submitted does not conclusively establish a defense to the alleged conversion and misappropriation causes of action.

The complaint also withstands dismissal pursuant to CPLR 3211(a)(7), as plaintiff has demonstrated that defendant left her position with OO in November 2024 (which defendant does not dispute), and that defendant maintained exclusive control of OO's funds and social media accounts after her departure from OO until March 6, 2025, when this Court granted plaintiffs' preliminary injunction. Taking the allegations of the complaint as true, plaintiffs have demonstrated facts that would make out causes of action against defendant for conversion and misappropriation.

Additionally, as plaintiffs' complaint has withstood defendant's motion to dismiss, plaintiffs' motion to lift the automatic stay of discovery must be denied as moot, as discovery may now proceed.

Conclusion

Thus, the motion for summary judgment by defendant, Pamela Hunt, is hereby denied in part and granted in part as follows: (1) granted as to plaintiff's breach fiduciary duty cause of action; (2) denied as to plaintiff's conversion and misappropriation causes of action; and the Clerk is hereby directed to enter judgment accordingly.

The motion by plaintiffs, Marly Darling and Orithyia Omada, to lift the stay of discovery is denied as moot, as discovery may now proceed.

In addition, the parties are hereby directed to attend an in-person preliminary conference on July 17, 2025, at 10:00am at 60 Centre Street, New York, NY, 10007, Courtroom 418.

HON. ARTHUR F. ENGORON

6/30/2025
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	