

Qualified Indus., LLC v Legends Hospitality, LLC

2025 NY Slip Op 33105(U)

August 15, 2025

Supreme Court, New York County

Docket Number: Index No. 654264/2024

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

-----X INDEX NO. 654264/2024

QUALIFIED INDUSTRIES, LLC, 10/31/2024,
Plaintiff, 10/31/2024,
MOTION DATE 10/31/2024

- v -

MOTION SEQ. NO. 001 002 003

LEGENDS HOSPITALITY, LLC, CREATING CULINARY
COMMUNITIES, LLC, BOP MW C3 TRS LLC,
Defendants. **DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 35, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 174, 175, 178, 182, 183, 184, 185, 190, 191, were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 36, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 180, 186, 187, 188, 194, 195, were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 37, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 176, 177, 179, 189, 192, 193, were read on this motion to DISMISS.

Upon the foregoing documents, after oral argument held on June 13, 2025, and for the reasons stated hereinbelow, defendants' motions to dismiss are granted in part and denied in part as follows.

Background

On October 31, 2019, non-party BOP MW Retail Subsidiary LLC ("Landlord"), a subsidiary of defendant BOP MW C3 TRS LLC ("Brookfield"), leased certain property located at 50 West 33rd Street, New York, New York 10001 (the "Premises") to non-party Citizens Manhattan West, LLC ("CMW") for the purposes of operating a food hall. NYSCEF Doc. No. 24.

In May 2021, plaintiff, Qualified Industries, LLC D/B/A CJS Global ("CJS"), entered into a written service agreement (the "Service Agreement") with CMW, in which CMW agreed to pay a monthly fee to plaintiff for performing janitorial services at the Premises. NYSCEF Doc. No. 1.

On January 1, 2023, CMW and defendant Creating Culinary Communities, LLC (“C3”), a Delaware limited liability company, entered into a consulting agreement (the “Consulting Agreement”) with defendant Legends Hospitality, LLC (“Legends”), pursuant to which Legends would manage the food hall for a consulting fee that included a percentage of gross monthly revenue. NYSCEF Doc. No. 72. As part of the Consulting Agreement, all parties expressed that they “intend[ed] to execute a [m]anagement [a]greement under the terms of which” Legends would “take over management of the food hall.” Id.

On August 17, 2023, following CMW’s alleged failure to make payments pursuant to the Service Agreement, plaintiff commenced an action against CMW in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. 50-2023-CA-012990XXXXMB (the “First Florida Lawsuit”). NYSCEF Doc. No. 57.

In emails dated October 5, 2023, C3’s Senior Director of Operations, Carlos Casados (“Casados”), notified Legend’s Executive Vice President of Hospitality, Jeff Rosenthal (“Rosenthal”), that CMW was indebted to plaintiff in the amount of approximately \$1,500,000. NYSCEF Doc. Nos. 75, 76.

The First Florida Lawsuit resulted in two judgments in plaintiff’s favor: a \$1,746,956.76 judgment entered on October 26, 2023 (the “First Judgment”), and a \$8,928.74 judgment entered on November 30, 2023, for prevailing party attorney’s fees and costs (the “Second Judgment”). NYSCEF Doc. Nos. 58, 59.

Between October 11, 2023 and November 29, 2023, C3’s Chief Business Officer, Jay Patel (“Patel”), an attorney for Legends, Justin Blass (“Blass”), and Rosenthal exchanged emails addressing drafts of a unit purchase agreement (“Unit Purchase Agreement”) and a subscription agreement and commercial side letter (“Letter Agreement”) between defendants. NYSCEF Doc. No. 77. In addition, the emails discussed Legends’ concerns about the “risk to Legends’ ability to operate” the food hall because “[i]f CMW transfers all of its assets to a third party (i.e. Brookfield) with an existing and enforceable judgment against it, [plaintiff could] seek to challenge the transfer as a fraudulent transfer intended to avoid judgment.” Id.

On December 5, 2023, CMW filed an Emergency Motion to set aside the First Judgment, resulting in a stay in discovery proceedings. NYSCEF Doc. No. 62.

On December 22, 2023, CMW, Landlord, and defendants entered into a series of agreements, all effective December 25, 2023, including: a termination of lease and surrender agreement (“Surrender Agreement”), an Asset Purchase Agreement (“Asset Purchase Agreement”), a management agreement (“Management Agreement”), a Food and Beverage License Agreement (“License Agreement”), the Unit Purchase Agreement, and the Letter Agreement. NYSCEF Doc. Nos. 27, 28, 82, 81, 83, 84.

Pursuant to the Surrender Agreement and the Asset Purchase Agreement: Landlord forgave approximately \$12 million in rent arrears, CMW surrendered the Premises to Landlord and sold certain furniture, fixtures, equipment, inventory, a liquor license for the Premises and a license

for certain intellectual property to Brookfield (collectively, the “Assets”). NYSCEF Doc. Nos. 27, 28.

Pursuant to the License Agreement, Brookfield agreed that C3 “owns and/or has the right to use certain trademarks, service marks, and commercial symbols (the ‘Marks’), distinct restaurant concepts and designs (the ‘Concepts’), and certain materials (together with the Marks and the Concepts, the ‘Licensed Materials’),” and that Brookfield was granted the rights to use these Licensed Materials in exchange for a royalty fee. NYSCEF Doc. No. 81.

Pursuant to the Management Agreement, Brookfield permitted Legends to manage operation of the food hall restaurants and kiosks and to use the Licensed Materials. NYSCEF Doc. No. 82.

Pursuant to the Unit Purchase Agreement, Legends purchased an interest in C3 in the amount of \$2,599,273.18. NYSCEF Doc. No. 83. Additionally, the Unit Purchase Agreement included a capitalization schedule identifying an entity called Brookfield C3 Holdings, LLC as owning 6,250 common units. Id.

Simultaneously, C3, CMW, and Legends entered into the Letter Agreement that, inter alia, modified the Unit Purchase Agreement by, inter alia, reducing the purchase price that CMW owed to Legends by removing \$272,000 in outstanding consulting fees. NYSCEF Doc. Nos. 74, 84. Sam Nazarian signed the Letter Agreement on behalf of both C3 and CMW as chairman and CEO. Id.

Pursuant to § 1(b) and (c) of the Letter Agreement, Legends was to pay C3 a reduced purchase price of \$2,268,090.61, which C3 was to use

exclusively for the satisfaction of any and all debts, bills, liabilities, accounts payable or other outstanding obligations or expenses of the [C3] or CMW or any of their respective affiliates incurred in connection with the management or operations of the New York Location (as defined below) and owed to any third party (including any food and beverage vendors).

NYSCEF Doc. No. 84.

Additionally, the Letter Agreement states, as relevant here, that:

CMW has filed with the court in the [First Florida Action] a Verified Emergency Motion to Set Aside Default Final Judgment in accordance with applicable law and court procedures seeking to set aside the Default Judgment (the “*Emergency Motion*”). Each of [C3] and CMW is using and shall continue to use all reasonable best efforts to contest in good faith the Default Judgment, [C3] acknowledges and agrees that the amount disputed by the parties in the [First Florida Action] is an amount equal to or less than \$1,746,965.76. In addition to the filing of the Emergency Motion,

each of CMW and [C3] is cooperating and negotiating in good faith with [plaintiff] with respect to a settlement of the [First Florida Action], and shall use its respective reasonable best efforts to reach and enter into a binding and final settlement agreement of the [First Florida Action] as promptly as practicable following the date hereof that includes a full a complete release of all claims by [plaintiff] against [C3] and CMW, including any claims relating in any manner to the New York Location. For avoidance of doubt such obligations shall continue following any dismissal or setting aside of the Default Judgment so long as the [First Florida Action] remains pending before a court.

Id. §2 (c).

Additionally, pursuant to §2 (h) of the Letter Agreement, titled Third-Party Beneficiaries:

Nothing in this letter agreement, whether express or implied, is intended to confer rights or remedies under or by reason of this letter agreement on any Persons other than the Parties, the Legends Indemnified Parties and their respective successors and assigns, nor is anything in this letter agreement intended to relieve or discharge the obligation or liability of any third persons to any Party, nor shall any provisions give any third person any right of subrogation over or action against any Party.

Id.

After these transactions closed, CMW conveyed the majority of its assets to defendants, allegedly rendering CMW insolvent and judgment proof. NYSCEF Doc. No. 1. Plaintiff alleges that Legends, C3, and Brookfield then operated the food hall using the same Licensed Materials, social media accounts, and Assets as CMW had, and that Legends retained all or nearly all front of house employees, hourly employees, management level employees, and managers who formerly worked for CMW. Id.

On January 26, 2024, the Florida court issued an order granting CMW's prior counsel's motion to withdraw and directed CMW's new counsel to appear within twenty days of the order or "all pending motions shall be deemed abandoned and/or denied." NYSCEF Doc. No. 63. CMW failed to retain new counsel by the deadline, rendering its motion abandoned. NYSCEF Doc. No. 16.

Between January 26, 2024 and February 20, 2024, Rosenthal, Blass, and Patel exchanged emails addressing C3's intent to retain new counsel and proceed with its Florida motion to vacate, with Blass advising that C3's abandonment of the motion would "be a breach of C3's obligations in the letter agreement." NYSCEF Doc. Nos. 88, 90.

On March 13, 2024, Casados and Rosenthal exchanged emails in which Rosenthal expressed that Legends, which plaintiff “is not willing to work with,” would “pay [plaintiff] for services since Jan 1st at the old C3 rate,” with the intention of ending the relationship. NYSCEF Doc. No. 91.

Procedural Background

On August 20, 2024, plaintiff commenced the instant action against Legends, C3 and Brookfield, asserting six causes of action: (1) violation of Debtor and Creditor Law (“DCL”) § 273 against C3 and Brookfield; (2) violation of DCL § 274 against Brookfield; (3) alter ego liability against C3; (4) successor liability against Brookfield; (5) breach of contract (the Letter Agreement) against C3; and (6) aiding and abetting a fraudulent conveyance against Legends. NYSCEF Doc. No. 1.

On October 31, 2024, C3, Brookfield, and Legends moved, pursuant to CPLR 3211(a)(1) and (7) and CPLR 3013, to dismiss plaintiff’s claims. NYSCEF Doc. Nos. 12, 21, 31. In the alternative, C3 seeks a stay of the action pending the disposition of the Florida lawsuit. NYSCEF Doc. No. 12.

C3 argues, inter alia, that: plaintiff failed to demonstrate that the New York Debtor and Creditor Law applies to C3; plaintiff failed to allege any facts that establish the elements of a DCL § 273 claim against C3; alter ego liability is not a cognizable claim under New York law nor can it be based on a breach of contract; plaintiff failed to allege sufficient facts to pierce the corporate veil; and, that, as a third-party to the Letter Agreement, plaintiff has no standing to bring a breach of contract claim against C3. NYSCEF Doc. No. 13.

Brookfield argues, inter alia, that: plaintiff failed to establish that CMW intended to defraud plaintiff under DCL § 273; Brookfield’s purchase was in good faith and for reasonably equivalent value; plaintiff fails to state a claim under DCL § 274(a) and (b); successor liability is not a standalone cause of action; and, plaintiff failed to allege that Brookfield is the “mere continuation” of CMW’s business. NYSCEF Doc. No. 22.

Legends argues, inter alia, that plaintiff failed to allege an underlying fraudulent conveyance, and, in any event, that Legends was not a beneficiary of any alleged fraudulent conveyance. NYSCEF Doc. No. 32.

In opposition, plaintiff argues, inter alia, that: it alleged facts with sufficient particularity that demonstrate C3’s and Brookfield’s violation of DCL § 273 by engaging in a fraudulent conveyance; it alleged facts that establish that C3 is an alter ego of CMW; it alleged facts that establish Brookfield as a successor to CMW; it had standing as a third-party beneficiary to the Letter Agreement; there is no basis to stay the instant action until the outcome of the Florida action; and, that Legends benefited from the alleged fraudulent conveyance. NYSCEF Doc. Nos. 173, 175, 177.

In reply, C3 argues, inter alia, that plaintiff: failed to plead an actual or constructive fraudulent transfer with sufficient particularity; failed to allege that C3 benefitted from any transfer; failed to plead facts that support its alter ego claim in accordance with Delaware law; and has no right

to enforce the terms of the Letter Agreement as a third-party beneficiary. NYSCEF Doc. No. 182.

In reply, Brookfield argues, inter alia, that plaintiff: relies on outdated “badges of fraud” from the pre-amended DCL § 273; fails to establish that Brookfield was an “insider” of CMW; and, fails to allege a de facto merger. NYSCEF Doc. No. 189.

Finally, Legends argues in reply, inter alia, that plaintiff fails to: allege that the purchase price reduction was connected to the alleged fraudulent conveyance; explain what additional discovery is needed; and, fails to allege that plans were changed to have Legends manage the food hall on Brookfield’s behalf instead of CMW’s. NYSCEF Doc. No. 186.

Discussion

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. EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005).

Violation of Debtor and Creditor Law § 273 against C3 and Brookfield

A transfer by a debtor is “voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation [...] with actual intent to hinder, delay or defraud any creditor of the debtor.” DCL § 273(a)(1). In determining actual intent, consideration may be given, among other factors, to whether, as relevant here:

- (1) the transfer or obligation was to an insider; ... (3) the transfer or obligation was disclosed or concealed; (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all of the debtor’s assets; ... (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; ... (10) the transfer occurred shortly before or shortly after a substantial debt was incurred.

DCL § 273(b).

Here, following the First Judgement, CMW filed an Emergency Motion, resulting in the staying of discovery, and entered into a series of transactions with C3 and Brookfield. These transactions allegedly divested CMW of substantially all of its assets and rendered it insolvent. Accordingly, plaintiff has pled a voidable transfer pursuant to DCL § 273(a)(1), and the motion to dismiss plaintiff’s first cause of action should be denied.

Violation of Debtor and Creditor Law § 274 against Brookfield

A transfer made or obligation incurred by a debtor is

voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

DCL § 274(a).

Further,

A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

DCL § 274(b).

Here, plaintiff has alleged that Brookfield has the authority to appoint a member to C3's board of directors and that C3 and/or CMW owns an interest in Brookfield, presenting an issue of fact as to whether Brookfield is an insider. Moreover, plaintiff has asserted that the agreements between Brookfield and CMW for forgiveness of rent arrears occurred following Brookfield's knowledge of the First Judgment. Thus, plaintiff has pled a DCL § 274 cause of action and the motion to dismiss plaintiff's second cause of action should be denied.

Alter Ego Liability against C3

C3 is a Delaware limited liability corporation, and to state an alter ego liability claim under Delaware law, a plaintiff is generally required to allege facts "supporting an inference that the corporation, through its alter-ego, has created a sham entity designed to defraud investors and creditors." Goodwill Toys MFG, Ltd. v I-Star Entertainment, LLC, 214 Ad3d 628, 630 (2d Dept 2023) citing Crosse v BCBSD, Inc., 836 A2d 492, 497 (Del 2003). In determining whether to pierce the corporate veil under Delaware law, courts consider factors including: "whether the company was adequately capitalized for the undertaking; whether the company was solvent; whether corporate formalities were observed; whether the dominant shareholder siphoned company funds; and whether, in general, the company simply functioned as a facade for the dominant shareholder." Id. at 631 (internal citations omitted).

Here, plaintiff has failed to allege facts that would support an inference that C3 is a "sham entity designed to defraud investors and creditors." Thus, plaintiff's third cause of action should be dismissed.

Successor Liability against Brookfield

Although a corporation that acquires the assets of another is generally not liable for the torts of its predecessor, “New York recognizes four exceptions ... : (1) a buyer who formally assumes the seller’s debts; (2) a buyer who de facto merged with the seller; (3) transactions undertaken to defraud creditors; and (4) where the buyer may be considered a “mere continuation” of the seller.” Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd., 184 AD3d 116, 126 (1st Dept 2020).

A transaction structured as a purchase-of-assets may be deemed to fall within this exception as a “de facto” merger, even if the parties chose not to effect a formal merger, if the following factors are present: (1) continuity of ownership; (2) cessation of ordinary business operations and the dissolution of the selling corporation as soon as possible after the transaction; (3) the buyer’s assumption of the liabilities ordinarily necessary for the uninterrupted continuation of the seller’s business; and (4) continuity of management, personnel, physical location, assets and general business operation. ... a de facto merger finding does not necessarily require the presence of each of these factors ...

New York City Asbestos Litig., 15 AD3d 254, 255-56 (1st Dept 2005) (internal citations omitted).

Here, plaintiff has sufficiently pled that a de facto merger occurred when Brookfield, through Legends, continued to operate the food hall in the same location using the same assets, employees and payment systems as judgment-debtor CMW after CMW transferred its assets to Brookfield and became effectively insolvent. Thus, plaintiff’s fourth cause of action, for successor liability against Brookfield, should not be dismissed.

Breach of Contract against C3

It is well-settled that “to plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant’s breach resulted in damages 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 52 (2022) (internal citations omitted). In order for plaintiffs to recover as third-party beneficiaries “it must appear that no one other than the third party can recover if the promisor breaches the contract ... or that the language of the contract otherwise clearly evidences an intent to permit enforcement by the third party.” Oursler v Women’s Interart Ctr., 170 AD2d 407, 408 (1st Dept 1991).

Here, the Letter Agreement, of which plaintiff alleges it is a third-party beneficiary and that C3 breached, expressly states that it is not “intended to confer rights or remedies ... on any Persons other than the Parties ... nor shall any provisions give any third person any right of subrogation over or action against any Party.” Accordingly, plaintiff’s fifth cause of action, for breach of contract, should be dismissed. See Banco Espirito Santo, S.A. v Concessionaria Do Rodoanel Oeste S.A., 100 AD3d 100, 109-10 (1st Dept 2012) (rejecting argument plaintiffs were intended third-party beneficiaries to a contract with “No Third Party Beneficiaries” clause).

Aiding and Abetting a Fraudulent Conveyance against Legends

Here, plaintiff has alleged an underlying fraudulent conveyance, Legends knowledge of the possibility of that fraudulent conveyance, and Legends participation in rendering CMW insolvent through the Management and Letter Agreements. Thus, the motion to dismiss plaintiff's sixth cause of action should be denied. See Faulkner v City of Yonkers, 105 AD3d 899 (2nd Dept 2013) ("a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants with an actionable, underlying tort and establish that those actions were part of a common scheme.").

This Court has considered the parties' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Accordingly, those parts of the instant motions seeking to dismiss plaintiff's third and fifth causes of action, asserting alter ego liability and breach of contract against defendant Creating Culinary Communities, LLC, are hereby granted and are otherwise denied.

HON. ARTHUR F. ENGORON
(Signature)

8/15/2025
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: