

Bloom Eyelash Extensions Inc. v Zhenzhen Tu
2025 NY Slip Op 33350(U)
September 8, 2025
Supreme Court, New York County
Docket Number: Index No. 150554/2025
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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BLOOM EYELASH EXTENSIONS INC.,

Plaintiff,

- v -

ZHENZHEN TU, and CICI LASH & LIFT NYC

Defendant.

-----X

INDEX NO. 150554/2025

MOTION DATE 02/14/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 30, 31, 32, 33, 34

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after a final submission date of June 4, 2025, Defendant Zhenzhen Tu ("Tu") and Cici Lash & Lift NYC's ("Cici") (collectively "Defendants") motion to dismiss Plaintiff Bloom Eyelash Extensions Inc.'s ("Plaintiff") Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted.

According to a contract dated October 28, 2024, non-party Cui Yang purchased an eye lash extension business located at 119 West 23rd Street, #703, New York, New York, from non-party Bloom Lash Inc. (NYSCEF Doc. 10). Defendant Tu signed on behalf of the non-party Bloom Lash Inc. (Id.). The contract contained a covenant not to compete, which states "the seller and its principles (sic), shall not participate in any way, directly or indirectly in a bakery business (sic) similar to that herein sold to buyer anywhere 10 blocks in neither (sic) direction of the present location, for a term of 2 years from the date of sale." (Id. at ¶ 25). Plaintiff alleges that Tu secretly moved to work at Cici as an eyelash technician and alleges that Defendants conspired to divert former customers to Cici's business. Plaintiff now sues Defendants based on alleged breach of

contract and numerous other causes of action. Defendants move to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(1) and (a)(7).¹

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]). 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]). A motion to dismiss based on documentary evidence is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

Plaintiff's first and ninth causes of action alleging breach of contract are dismissed. Neither Plaintiff nor Tu are parties to the contract entered between Cui Yang and Bloom Lash Inc. While Tu signed, she did not do so individually but on behalf of non-party Bloom Lash Inc. Moreover, there is nothing in the contract that prohibited Tu from contacting prior customers, and the non-compete clause is unenforceable, as the parties agreed that Tu would not open a bakery business. It is axiomatic that "when interpreting a contract, words and phrases used by the parties must be given their plain meaning" (*DDS Partners, LLC v Celenza*, 6 AD3d 347, 348 [1st Dept 2004]).

¹ Plaintiff mistakenly opposes the motion under CPLR 3212, which is the provision governing summary judgment motions.

Absent a cause of action seeking reformation of the contract, this Court may not *sua sponte* read into the non-compete clause terms not included by the parties (*Maxine Co., Inc. v Brinks's Global Services USA, Inc.*, 94 AD3d 53, 56 [1st Dept 2012] [court cannot “rewrite the terms of an agreement under the guise of interpretation”] quoting *85th St. Rest. Corp. v Sanders*, 194 AD2d 324, 326 [1993]). As Plaintiff has failed to allege any actionable provision of the contract breached by Defendants the first and ninth causes of action are dismissed. Because Plaintiff has failed to allege breach of contract, her seventh cause of action which alleges wrongful inducement of a breach of contract is also dismissed.

While the Court is cognizant that the inclusion of the word “bakery” in the contract was likely a mistake, it is well established that a unilateral mistake alone is an insufficient basis for reformation or rescission, and the mistake must not have arisen from negligence where the means of identifying the mistake were easily accessible (*Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 369-70 [1st Dept 2007]). Plaintiff cannot claim to have had no knowledge of the error so as to allow for reformation when it had an obligation to read and understand the agreement it was entering (*Desiderato v N & A Taxi, Inc.*, 190 AD2d 250, 253 [1st Dept 1993]). And assuming, *arguendo*, the use of the word “bakery” was a mutual mistake, the doctrine of mutual mistake cannot support a cause of action for breach of contract and it may not be invoked by a party seeking to avoid the consequences of its own negligence (*Eisenberg v Hall*, 147 AD3d 602, 604-05 [1st Dept 2017]). Moreover, Plaintiff has not even alleged a cause of action seeking reformation of the contract, nor has it argued for it in opposition to the motion to dismiss.

The second cause of action which alleges fraud is also dismissed. This cause of action is subject to a heightened and particularized pleading standard CPLR 3016(b) (*see also MMCT, LLC v JTR College Point, LLC*, 122 AD3d 497 [1st Dept 2014]). However the cause of action alleging

fraud, which consists of two conclusory paragraphs, is devoid of any particularized facts regarding purported misrepresentations made or Plaintiff's reasonable reliance on the misrepresentations. Plaintiff's sixth cause of action seeks punitive damages; however this is not a standalone cause of action and must be dismissed (*Jean v Chinitz*, 163 AD3d 497 [1st Dept 2018]). Plaintiff has also failed to allege any specified basis for the fifth cause of action which seeks "an accounting of the wrongful actions of defendants."

The fourth cause of action for unjust enrichment alleges that defendants "unjustly obtained payments from the customers of the plaintiff." However, as there is no enforceable non-compete provision, this allegation falls flat. Moreover, there can be no claim for unjust enrichment against a business competitor because customers elect to go to that business as opposed to the plaintiff's business. For the same reason, the eighth cause of action, which alleges in conclusory fashion a claim for prima facie tort, is dismissed. Finally, the third cause of action, which purports to be for civil conspiracy, is dismissed as this cause of action requires an underlying tort, however all other underlying causes of action have been dismissed (*Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]). Therefore, Defendants' motion to dismiss is granted in its entirety.

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Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted, and Plaintiff's Complaint is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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.

9/8/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE