

Friedlander v Jack's Holdings Inc.

2025 NY Slip Op 33882(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 653210/2019

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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ROBERT FRIEDLANDER,

Plaintiff,

- v -

JACK'S HOLDINGS INC., JACK MAZZOLA, JACK'S
HOLDINGS (FVP), LLC

Defendant.

INDEX NO. 653210/2019

MOTION DATE 02/06/2025

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 173

were read on this motion to/for JUDGMENT - SUMMARY.

In this action for breach of contract, Defendant Jack’s Holdings (FVP), LLC (“FVP”) moves for summary judgment seeking dismissal of the Amended Complaint’s fifth cause of action asserting successor liability against it. Plaintiff Robert Friedlander (“Plaintiff”) opposes this motion. Plaintiff has resolved his claims against Defendants Jack’s Holdings Inc. (“Jack’s Holdings”) and individual Defendant Jack Mazzola (“Mazzola”), and the only remaining claim is the cause of action that is the subject of this motion.

This action relates to a coffee shop chain created by Mazzola operating under the name Jack’s Stir Brew Coffee and owned by Jack’s Holdings. Plaintiff was Chief Marketing Officer of Jack’s Holdings until his termination in 2022 (NYSCEF Doc. No. 154, Plaintiff’s Affirmation ¶ 1). During his employment, Plaintiff and Jack’s Holdings agreed that Plaintiff would identify and bring in investors for Jack’s Holdings in exchange for specified compensation. Plaintiff contends he was not fully compensated in accordance with the agreement and commenced this breach of contract action

against Jack's Holdings and Mazzola seeking damages, counsel fees, and liquidated damages. In 2020, Plaintiff added the fifth cause of action against FVP, seeking to hold it liable as the successor to Jack's Holdings (NYSCEF Doc. 15, Amended Complaint ¶¶ 41-42).

In April 2018, Jack's Holdings entered into a Loan Agreement with non-party Feenix Venture Partners Opportunity Fund, LP ("Feenix"), pursuant to which Feenix agreed to lend to Jack's Holdings a lump sum of \$1,000,000 and up to \$1,500,000 if specific criteria were met (NYSCEF Doc. No. 98, Loan Agreement ¶¶ 2.1, 3.2). In the beginning of 2019, Jack's was struggling financially (NYSCEF Doc. No. 97, Mazzola's EBT at 79-80). In December 2019, Feenix as the lender, Jack's Holdings as the borrower, and Jack's Holdings' subsidiaries as grantors ("Grantors") entered into a security agreement in which the Grantors granted Feenix their "rights, title and interest" in a list of assets as collateral, including accounts, copyrights, equipment, cash, patents, trademarks, contracts, and other goods (NYSCEF Doc. No. 99, Security Agreement). As to the contracts that were included, the Security Agreement provided that Feenix did not assume any obligations, liabilities, or Grantors' duties to perform thereunder (Security Agreement ¶ 1.5[b]).

Jack's Holdings defaulted under the Loan Agreement. Thereafter, in March 2020, Feenix, Jack's Holdings, the Grantors entered into a foreclosure agreement (NYSCEF Doc. No. 100, Foreclosure Agreement). FVP is also a party, and the agreement provides that it is the assignee of Feenix's interests in the Loan Agreement and Security Agreement (*id.* at 2). The Foreclosure Agreement acknowledged Jack's Holdings' default on the loans and FVP's right to sell the collateral (*id.* ¶¶ 1.3, 2.2). It further provided that FVP "shall not assume, nor shall . . . be deemed to have assumed, any liability or obligation of [Jack's Holdings] or Grantors whatsoever" and Jack's Holdings agreed that FVP "has not assumed any liability with respect to any of the Collateral" (*id.* ¶ 2.4). Jack's Holdings and FVP executed two bills of sale through which the Grantors' assets were transferred to

specified subsidiaries of FVP (NYSCEF Doc. Nos. 101, 102). During this period, Jack's Stir Brew Coffee locations throughout Manhattan continued to be operational.

In both the Foreclosure Agreement and in one of the bills of sale, FVP was represented by Mazzola as FVP's CEO (Foreclosure Agreement at 10; NYSCEF Doc. No. 101 at 3). In June 2020, he was offered the option to purchase 106,111 common units of FVP upon certain conditions being reached. In the offer letter, Jack's Holdings was included in the list of FVP's acquired assets (NYSCEF Doc. No. 105, Offer Letter, Schedule A). FVP and some of the Grantors also executed a transition agreement dated June 17, 2020, pursuant to which those Grantors were to maintain operations of six locations of the coffee shop chain as independent contractors hired by FVP for three months, with the possibility to extend the contract for up to an additional twelve months (NYSCEF Doc. No. 104). This contract was signed on behalf of FVP by Mazzola as its CEO (*id.* at 11). FVP also acquired Jack's Holdings' trademark, patent, and URL and domain name (NYSCEF Doc. No. 158, 159, 160).

In September 2020, Plaintiff amended his complaint in this action to add the cause of action against FVP as a successor of Jack's Holdings under the theory of de facto merger and the doctrine of mere continuation. FVP now moves for summary judgment, arguing that the Security Agreement and Foreclosure Agreement clearly provide that FVP only acquired the assets of Jack's Holdings, not the business as a whole, and explicitly assumed the benefits of certain contracts without any the obligations thereunder.

On a motion for summary judgment, a movant must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any issue of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, "the burden shifts to the party opposing the motion . . . to produce evidentiary

proof in admissible form sufficient to establish the existence of material issues of fact which require trial of the action” (*id.*).

“The hallmarks of a de facto merger include: continuity of ownership; cessation of ordinary business and dissolution of the acquired corporation as soon as possible; assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the acquired corporation; and, continuity of management, personnel, physical location, assets and general business operation” (*Fitzgerald v Fahnestock & Co.*, 286 AD2d 573, 574 [1st Dept 2001] [internal citation omitted]). “The doctrine is based on the principle that a successor who ‘effectively takes over a company in its entirety should carry the predecessor’s liabilities as a concomitant to the benefits it derives from the good will purchased’ (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 126 [1st Dept 2020] citing *Fitzgerald*, 286 AD2d at 575).

As for the mere continuation doctrine, “[a]lthough no one factor is dispositive, courts determining whether a successor corporation is a ‘mere continuation’ of its predecessor have considered whether: (1) all or substantially all assets are transferred to the successor corporation; (2) the predecessor corporation has been effectively extinguished following the transaction; (3) the successor has assumed an identical or nearly identical name; (4) the successor has retained one or more of the same corporate officers, directors, and/or employees; and (5) the successor has continued the same business” (*Avamer 57 Fee LLC v Hunter Boot USA LLC*, ___AD3d___, 2025 NY Slip Op 04607, *1 [1st Dept 2025]).

Here, FVP fails to meet its burden of demonstrating that there are no issues of fact material to the de facto merger and mere continuation allegations. Specifically, it is unclear from the evidence presented which assets FVP took possession of as a result of Jack’s Holdings’ default on the loan.

The only document submitted which references FVP taking Jack’s Holdings is the offer letter to

Mazzola. In particular, the Offer Letter lists Jack’s Holdings on the first position of the target assets acquired by FVP (Offer Letter, Schedule A), even though no other document relied upon by FVP includes any indication that Jack’s Holdings itself would be acquired by FVP.

The parties also dispute the motivation behind Mazzola receiving the offer to acquire shares in FVP in the manner that he did. FVP argues it was unrelated to the foreclosure of Jack’s Holdings, while Plaintiff presents email correspondence that he claims suggests the parties sought to avoid burdening Mazzola with out-of-pocket costs at that time (NYSCEF Doc. No. 163). Mazzola’s role in FVP is also unclear. The documents relied on by FVP in its motion show that Mazzola acted as FVP’s CEO at least for some time between March and June 2020, which is directly contradicted by Mazzola’s deposition, which is then relied upon by FVP. Mazzola testified that he did not hold a managerial role with FVP after Jack’s Holdings’ foreclosure (Mazzola’s EBT at 156-157). There is also a dispute as to the continuation of the operations by FVP of Jack’s Holdings’ coffee shops in the same store locations, with Plaintiff relying on emails suggesting that FVP continued some of the businesses (NYSCEF Doc. No. 162, 163).

Accordingly, it is hereby

ORDERED that Defendant Jack’s Holdings (FVP), LLC’s motion for summary judgment is denied.

All other relief sought is denied. This constitutes the Decision and Order of the Court.



LORI S. SATTLER, J.S.C.

10/9/2025
DATE

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER	
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APPLICATION:

CHECK IF APPROPRIATE:

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