David Webb Holdings LLC v Sadian
2025 NY Slip Op 34178(U)
October 29, 2025
Supreme Court, New York County
Docket Number: Index No. 652511/2025
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK, Justice	PART 11M
DAVID WEBB HOLDINGS LLC,MARK EMANUEL, Plaintiff, - v - ROBERT SADIAN, Defendant.	INDEX NO. 652511/2025 MOTION DATE 06/12/2025 MOTION SEQ. NO. 002 **DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 4, 5, 6, 7, 8, 9, 10, 11, 17, 20, 21

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is granted solely as to the third counterclaim.

Background

Plaintiff Mark Emanuel and defendant Robert Sadian were long-time partners in jewelry company David Webb Holdings, LLC. Their working relationship deteriorated, and in July of 2024 an arbitration proceeding concerning their business interests was commenced. In November of that year the parties entered into a settlement agreement (the "Agreement") regarding plaintiff Emanuel's buyout of Defendant's share in David Webb and another company. The Agreement contained a "Tax Distribution" provision regarding a distribution to be made to Defendant by April of 2025. During the negotiation period leading up to the Agreement, Defendant also asked plaintiff Emmanuel over text message if Defendant could create a dozen pieces of jewelry for Defendant's family and have the pieces stamped David Webb. Plaintiff Emmanuel agreed and stated that "if the deal goes through, I will make sure no matter what that you will have the right

to do this." When Defendant reached out regarding the stamping after the successful signing of the Agreement, plaintiff Emmanual declined to have the pieces stamped.

In March of 2025, plaintiff David Webb made a tax distribution directly to Defendant in the amount of $376,050 and explained to Defendant that this amount combined with an earlier tax payment made directly to New York State on Defendant's behalf (the "PTET Payment") was considered by them to satisfy the distribution required by the Agreement. Defendant demanded that the full amount of distribution required by the Agreement be made directly to him, rather than partly to the State. Plaintiffs brought the underlying proceeding in April of 2025, seeking a declaratory judgment that the tax payment made to the State on behalf of Defendant was proper and that Defendant is not owed any more money under the Agreement. Defendant timely answered, asserting counterclaims for breach of contract and declaratory judgment.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 [1994].

CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally "constitutes a complete bar", for a signed release the burden shifts to the plaintiff to "show that there has been fraud, duress, or some other fact which will be sufficient to void the release." *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Plaintiffs bring the present motion to dismiss the counterclaims and Defendant opposes. Plaintiffs mainly argue that the terms of the Agreement bar the claims related to the distribution and the jewelry and that there is no enforceable contract for the jewelry stamping. For the reasons that follow, the motion to dismiss the counterclaims is denied as to the first two counterclaims but granted as to the third counterclaim.

The Terms of the Agreement Do Not Conclusively Bar the Breach of Contract Counterclaim for the Tax Distribution

Plaintiffs argue that the Agreement constitutes documentary evidence that conclusively bars the counterclaim for breach of contract. They posit that because the relevant provision requires that they make "tax distributions equal to 50 percent of Defendant's share of the Company's 2024 taxable income", and because distributions were made, that the claim fails. But

"a written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms." *Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 [2002]. Here, the plain language of the Agreement states, twice, that the distribution was to be made *to* Defendant, not on behalf of or for Defendant. Therefore, the Agreement cannot constitute conclusive documentary evidence that justifies dismissal of the counterclaim.

Plaintiffs also argue that Defendant has not been able to allege damages, as the payment to the State was to satisfy certain tax liabilities on his behalf. The issue with dismissing the claim based on this argument, however, is that it would be premature. The standard at this stage is that "a pleading need only state allegations from which damages attributable to the defendant's conduct may reasonably be inferred." *Lappin v. Greenberg*, 34 A.D.3d 277, 279 [1st Dept. 2006]. Here, there can be a reasonable inference of damages resulting from the breach, given that Defendant was to be paid monies that were instead sent to a third party on the belief that Defendant would have forwarded that same amount regardless. That is too much of a leap for this Court to make at this stage of the litigation. Dismissal of this counterclaim for lack of damages would be premature at this stage of the proceeding.

Plaintiffs Have Not Met Their Burden in Dismissing the Breach of Contract Counterclaim for the Jewelry

Plaintiffs argue that 1) Defendant has not pled a valid contract for the jewelry engraving claim; 2) that the merger and release clauses in the Agreement bar the jewelry counterclaim; and 3) that even if valid, the claim for specific performance is barred by impossibility. Turning first to the argument that the jewelry counterclaim was not adequately pled, Plaintiffs argue that the terms are too indefinite and that the text exchange did not address the timing of performance. Contrary to the assertion that "the purported terms of the text agreement are so vague, no court

could possibly determine what the agreement is", the terms are clear: Defendant would create 12 pieces of jewelry for his wife and daughters and Plaintiff Emmanuel would have them stamped David Webb. As for the time of performance issue, this does not mean that there is no valid contract as pled, as when an agreement is silent as to time of performance "the law will imply a reasonable time." *Sharper v. Harlem Teams for Self-Help, Inc.*, 257 A.D.2d 329, 332 [1st Dept. 1999]. Given every favorable inference, Defendant has adequately pled the existence of a contract from the text messages.

Plaintiff also argues that the merger provision in the Agreement bars the jewelry counterclaim. This provision stated that the Agreement "constitutes the complete understanding and agreement of the Parties with respect to the subject matter hereof." Because the Agreement post-dated the text agreement regarding jewelry, Plaintiffs argue that any contract was extinguished by the merger provision. Generally, a merger provision that covers a specified subject matter will supersede said matter, but interpreting such a merger provision as also superseding *all* matters between the parties would be "contrary to the plain language of the contract." *Pop Contr., Inc. v. New York City Hous. Auth.*, 214 A.D.3d 519, 520 [1st Dept. 2023]. Here, the subject matter at issue is the division of the parties' business interests. The agreement to engrave jewelry for Defendant's family is not related to the separation of the parties' business interests, and therefore it cannot be conclusively said that the subject matter of the Agreement and the text messages are the same. For this same reason, the argument that the waiver provision, which waives claims arising out of, based on, or relating in any way to the co-ownership of David Webb, fails to meet the burden on a motion to dismiss.

Finally, Plaintiffs argue that because Plaintiff Emanuel is no longer an officer or majority shareholder in David Webb, the doctrine of impossibility bars the claim for specific

performance. The general rule is that the question of whether the remedy of specific performance is available is a matter that "should not be determined on a motion to dismiss." *Stellar Sutton LLC v. Dushey*, 82 A.D.3d 485, 486 [1st Dept. 2011]; *see also Warberg Opportunistic Trading Fund, L.P. v. GeoResources, Inc.*, 112 A.D.3d 78, 86 – 87 (discussing why a plea for specific performance should not be dismissed as that is "a matter that should be determined by the trial court on a fuller record, not on a motion to dismiss"). While it is possible that specific performance would be unavailable as a remedy on this claim, determination of that at this stage is premature and would not regardless justify dismissal of the breach of contract counterclaim.

The Third Counterclaim is Wholly Duplicative of the Breach of Contract Counterclaim

Plaintiffs have moved to dismiss the counterclaim for declaratory relief on the grounds that the counterclaim is duplicative of the breach of contract counterclaim. The general rule is that parties are permitted to "plead inconsistent causes of action in the alternative." *Winick Realty Group LLC v. Austin & Assoc.*, 51 A.D.3d 408, 408 [1st Dept. 2008]. But a claim for declaratory relief that is "wholly duplicative" of another claim is dismissible. *Massoumi v. Ganju*, 227 A.D.3d 504, 504 [1st Dept. 2024]; *see also Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50, 54 [1st Dept. 1988] (holding that a "cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract"). Here, the counterclaim for declaratory relief seeks a judgment stating that the Plaintiffs breached two provisions of the Agreement. Because this relief sought is wholly duplicative of the counterclaim for breach of the Agreement, dismissal would be proper. The Court has considered Plaintiffs' other arguments and found them unavailing. Accordingly, it is hereby

ADJUDGED that the motion to dismiss is granted as to the third counterclaim and denied as to the rest; and it is further

ORDERED that the plaintiffs are directed to serve an answer to the remaining counterclaims within 20 days after service of a copy of this order with notice of entry.

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10/29/2025	LYLE E. FRANK, J.S.C.
DATE	

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