

Novogratz v M. Daddio Inc.

2025 NY Slip Op 34533(U)

November 26, 2025

Supreme Court, New York County

Docket Number: Index No. 651780/2024

Judge: Kathleen Waterman-Marshall

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

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AMY NOVOGRATZ, MIKE VEILINGS,
Plaintiff,

- v -

M. DADDIO INC.,303 DESIGN CONSULTANTS
LLC,CAYLEY BARRETT ASSOCIATES LTD, JOY LIGHT,
AIR FORCE MECHANICAL CORP.

Defendant.

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INDEX NO. 651780/2024

MOTION DATE 05/07/2024,
05/13/2024

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 31, 32

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion by defendants Cayley Barret Associates Ltd. (“Cayley”) and Joy Licht (“Licht”) to dismiss the complaint pursuant to CPLR 3211(a)(7) is granted. Upon the same record, the motion by M. Daddio Inc. (“Daddio”) to dismiss the complaint against it pursuant to CPLR 3211(a)(1) and (7) is granted.

Background

Although this is a pleadings motion, the submissions reveal sharp factual disputes. What is not disputed is that plaintiffs Amy Novogratz and Mike Veilings (“Plaintiffs”) engaged defendant 303 Design Consultants LLC (“303 Design”) to serve as general contractor for renovations to their apartment, pursuant to a construction contract (the “Contract”). 303 Design and Cayley are owned by Licht.

The complaint alleges, in pertinent part, that: contrary to the Contract’s representations and requirements, 303 Design was not properly licensed and insured to perform construction work; 303 Design entered into a subcontract with Daddio in order to conceal these deficiencies; and Daddio knowingly entered into the subcontract as part of this fraudulent scheme to conceal 303 Design’s licensure status. At bottom, Plaintiffs alleged shoddy construction work by defendants, including failing to perform work in accordance with approved plans and removal of a bathroom without authorization, requiring Plaintiffs to terminate the contract. Against these (and other) factual allegations, the complaint asserts claims for: (1) Fraud against all defendants;

(2) Negligence against all defendants; (3) Breach of Contract against 303 Design; (4) Civil Conspiracy against all defendants; and (5) Declaratory Judgment against all defendants.

In its motion to dismiss, Daddio contends that Plaintiffs never terminated the Contract. Instead, Daddio alleges that it walked off the job for non-payment and filed a mechanic's lien foreclosure action against Plaintiffs and 303 Design – arising from the same disputed construction work at issue in this matter – a year before Plaintiffs filed this action (New York Index No. 154190/2023). The court (Hon. Francis A. Kahn, III) recently dismissed the lien foreclosure action by Decision and Order dated November 19, 2025. Daddio contends that Plaintiffs' instant action is retaliation for Daddio's mechanic's lien foreclosure action.

Cayley and Licht contend, at bottom, that this matter asserts a simple breach of contract, and the other claims should be dismissed as duplicative of the breach of contract claim or refuted by documentary evidence (i.e. the Contract). They argue that the Contract is between Plaintiffs and 303 Design only, and thus claims against Licht or Cayley related to the Contract should be dismissed. As to piercing the corporate veil to hold Licht personally responsible, she argues that she should not be held personally liable because she did not sign the Contract in her personal capacity and the complaint contains only conclusory assertions that the corporate veil should be pierced. Licht further contends that paragraph 3.1.1 of the Contract does not make a representation that the contractor is licensed, but instead requires that the contractor be licensed. As such, Licht contends that if the contractor was not licensed, it may amount to a breach of the Contract, but does not constitute a fraud or conspiracy. Cayley argues that it is not referenced in the Contract; nor is it referenced in the complaint's first cause of action for fraud; or the second cause of action for negligence. Accordingly, Cayley argues that the complaint fails to assert any allegations or facts against it.

Discussion

On a motion to dismiss under 3211(a)(7) for failure to state a claim, the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, “factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, “when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists,” and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

Where dismissal is sought based upon documentary evidence pursuant to CPLR 3211(a)(1), the complaint is likewise liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v Martinez*, 84 NY2d 83 [1994]). Dismissal is warranted only if the documentary evidence submitted

conclusively establishes a defense to the asserted claims as a matter of law” (*id.*; citing *Heaney v Purdy*, 29 NY2d 157 [1971]).

I. Fraud

Fraud requires “a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). A claim of fraud must be pled with particularity under CPLR 3016(b); this requires that “the complaint must allege the basic facts to establish the elements of the cause of action” sufficient to permit a “reasonable inference of the alleged misconduct” (*id.*).

As an initial matter, the first cause of action alleging fraud must be dismissed against Cayley. Although the complaint purports to assert fraud against all defendants, the complaint claims only Licht, 303 Design, and Daddio misrepresented 303 Design’s licensing status. The complaint is wholly silent regarding any alleged fraudulent acts committed by Cayley.

The fraud cause of action must also be dismissed as insufficiently pled as against the remaining defendants; it does not contain any details of the allegedly fraudulent representation. Instead, the complaint contains conclusory allegations that Licht, 303 Design, and Daddio misrepresented 303 Design’s licensure status. Conspicuously absent from the complaint is any timeframe of any party’s alleged representation, whether the representation was oral or written, or the language of the representation itself (*Stein v Doukas*, 98 AD3d 1024 [2d Dept 2012] [conclusory allegations insufficient to meet heightened pleading requirements for fraud]; *Hirsch v Stellar Management*, 148 AD3d 588 [1st Dept 2017] [requisite specificity missing]; *610 Park 8E LLC v Best & Co., Inc.*, 61 Misc.3d 1225(A) [Sup. Ct. New York County, 2018] [Reed, J.] [pleading failed to provide detail of actual language used and failed to provide circumstances in which language was used]; compare *Scott v Fields*, 92 AD3d 666 [2d Dept 2012] [specific language of allegedly fraudulent representation identified]). The details of the allegedly fraudulent representation would be known to Plaintiffs, as the representation was alleged to have been made directly to them, thus there is no barrier to Plaintiffs including this information in the complaint (*c.f. Bernstein v Kelso & Co., Inc.*, 231 AD2d 314 [1st Dept 1997] [fraud claim not dismissed where “plaintiff had no way of knowing the precise dates, the participants in or the extent of the conversations”]).

Furthermore, the fraud cause of action fails to allege any duty independent from the Contract, and is therefore duplicative of the breach of contract claim (*Ho v Star Contrs., Inc.*, 226 AD3d 511 [1st Dept 2024]).

To the extent that the complaint may be read to allege that section 3.1.1 of the General Conditions of the Contract for Construction required 303 Design to be licensed, and assuming that the General Conditions of the Contract for Construction was incorporated by reference into the construction contract, a failure to comply with the section constitutes a breach of the agreement, not a fraudulent misrepresentation. Contrary to plaintiffs’ contention, section 3.1.1 does not set forth a representation by 303 Design; rather, that section reads in pertinent part:

The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located.

Notably absent from section 3.1.1 is any language indicating that a representation has been made, such as the word “represents”. Elsewhere in the General Conditions of the Contract representations are made using the word “represents” (§ 3.12.6 “Contractor represents to the Owner”).

Accordingly, the claim for fraud is dismissed in its entirety.

The Court need not perform an inquiry into whether plaintiffs may pierce the corporate veil to impute 303 Design’s allegedly fraudulent actions to Licht and Cayley. “[A]n attempt to pierce the corporate veil does not constitute a cause of action independent of that against the corporation” (*Cortlandt Street Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). Given that plaintiffs have failed to plead fraud with the required specificity in the first instance, there is no need to determine whether the alleged fraud is sufficient to pierce the corporate veil.

Were the Court to reach the issue, it would find that the complaint does not make any specific factual allegations that Licht acted outside of her scope as owner of Design 303, acted for her own personal gain, or abused the corporate form, as is required to pierce the corporate veil (*Saivest Empreendimentos Imobiliarios E. Participacoes, Ltda. v Elman Invs., Inc.*, 117 AD3d 447, 449; *Matter of Goldman v Chapman*, 44 AD3d 938, 939 [2d Dept 2007] [conclusory allegations that a corporate entity was undercapitalized and that the owner commingled assets and dominated the corporation are insufficient to pierce the corporate veil]). “At the pleading stage, a plaintiff must do more than merely allege that defendant engaged in improper acts or acted in bad faith while representing the corporation. The plaintiff must allege ... [the individual defendant] abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice” (*Cortlandt Street Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). The complaint does not allege an abuse of the corporate form in order to perpetrate a wrong. To the contrary, the complaint alleges that Licht’s actions were to benefit both herself and 303 Design (NYSCEF Doc. No. 1 at ¶ 38 [“all to increase the windfall she, and 303 Design, intended to enjoy”]). The allegation that Licht used a Cayley email domain is not present in the complaint (*see* NYSCEF Doc. No. 25 at p. 11 of 20) and, in any event, an individual may be the principal of more than one entity within a shared office without piercing either corporate veil (*Goldman v Chapman*, 44 AD3d 938 [2d Dept 2007]). The remaining allegations are conclusory and devoid of facts (*Bd. of Mgrs of the Gansevoort Condo. v 325 W. 13th, LLC*, 121 AD3d 554 [1st Dept 2014]). Consequently, the first cause of action for fraud is dismissed.

II. Negligence

The second cause of action for negligence must be dismissed as against all defendants. As to Cayley, the negligence cause of action makes no mention of Cayley and fails to assert any facts that could establish Cayley’s negligence. To the extent that plaintiffs’ counsel’s submissions on this motion indicate that Licht used a Cayley email domain and that use of the domain is sufficient basis to allege negligence against Cayley, this allegation is not contained within the complaint, and is without legal support. Additionally, the allegation is made in an attorney affidavit, and is therefore insufficient to defeat a motion to dismiss (*Jones v First*

Federal Sav. And Loan Ass'n of Rochester, 101 AD2d 1005 [4th Dept 1984] [“The hearsay affidavit of an attorney without personal knowledge of the facts is insufficient to defat either a motion to dismiss or a motion for summary judgment”). Thus, the negligence cause of action is dismissed as against Cayley.

The negligence claim must also be dismissed as against the remaining defendants. Plaintiffs entered into the Contract with 303 Design for construction. The negligence claim “does not allege a breach of any duty independent of the parties’ construction agreement” (*Ho v Star Contrs., Inc.*, 226 AD3d at 511]; *Matter of Soames v 2LC Consulting Eng’g, D.P.C.*, 187 AD3d 490, 491 [1st Dept 2020]) and is thus not cognizable in the face of a construction contract between plaintiffs and 303 Design. Simply put, the negligence cause of action is duplicative of the breach of construction contract (*99 Wall Dev., Inc. v Consigli & Assoc., LLC*, 238 AD3d 502 [1st Dept 2025]). The principle that negligent performance of a contract is not cognizable “applies even when the plaintiff’s agreement is with the general contractor, not the subcontractors” (*Kordower-Zetlin v Home Depot U.S.A., Inc.*, 134 AD3d 556 [1st Dept 2015]). Therefore, plaintiffs may not maintain a negligence cause of action for allegedly shoddy construction work, whether against the contractor or subcontractor, as duplicative of the breach of contract claim.

Accordingly, the negligence claim is dismissed in its entirety.

III. Civil Conspiracy

Plaintiffs concede that the fourth cause of action for civil conspiracy must be dismissed. “Allegations of conspiracy are permitted only to connect the actions of separate defendants with an otherwise actionable tort;” conspiracy to commit a tort is not a separate cause of action (*Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986] [“a mere conspiracy to commit a tort is never of itself a cause of action”] quoting *Brackett v Griswold*, 12 NY 454 [1889]; *Faulkner v City of Yonkers*, 105 AD3d 899 [2d Dept 2013] [plaintiff may plead existence of a conspiracy to connect actions to an underlying tort, although there is no independent cause of action for civil conspiracy]).

To the extent that plaintiffs contend the first cause of action for fraud is a cognizable tort which permits their allegations of civil conspiracy to be incorporated therein, the fraud claim is insufficiently pled; thus, dismissal of the fraud claim necessarily requires dismissal of the conspiracy to commit fraud claim (*Philip S. Schwartzman Inc., Pliskin, Rubano, Baum & Vitulli*, 215 AD3d 699, 703 [2d Dept 2023] [civil conspiracy to commit fraud “stands or falls with the underlying tort”]). Accordingly, the fourth cause of action alleging a civil conspiracy is dismissed in its entirety.

IV. Declaratory Judgment

To the extent that the complaint seeks declaratory relief related to the parties’ respective obligations under the Contract, it is duplicative of the breach of contract claim which provides an “adequate alternative remedy in another form of action” warranting dismissal (*Upfront Megatainment, Inc. v Thiam*, 215 AD3d 576 [1st Dept 2023] [dismissing declaratory judgment action as duplicative of breach of contract claim]). To the extent that the complaint seeks

declaratory relief related to a mechanics lien, that relief is properly sought in the mechanic’s lien action, not here. Accordingly, the Declaratory Judgment claim is dismissed in its entirety.

V. Amend Complaint

To the extent that Plaintiffs’ opposition seeks to amend their complaint, the request is denied. First, neither a motion nor cross-motion to amend the complaint have been filed. Second, a proposed amended complaint clearly showing the changes to the pleading has not been provided with plaintiffs’ request, as required by CPLR 3025(b).

Accordingly, it is

ORDERED that motion sequences 001 and 002 are granted to the extent of dismissing the first (fraud), second (negligence), fourth (civil conspiracy), and fifth (declaratory judgment) causes of action; and it is further

ORDERED that 303 Design shall file its answer to the complaint within 20 days; and it is further

ORDERED that a **Preliminary Conference** is scheduled for **February 18, 2026 at 10:00am** in courtroom 623 at 111 Centre Street New York, NY 10013. Counsel are reminded of the Part Rules, available on the Court’s website, including those regarding the submission of a joint proposed conference order in advance of the conference date and in lieu of an in-person appearance.

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11/26/2025

DATE

KATHLEEN WATERMAN-MARSHALL,
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