SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PAMELA LOVE CONSULTING LLC,

Plaintiff,

- v -

THE BATHING CLUB LLC, LC A&A HOLDINGS INC., and LMGL LLC,

Defendants.

INDEX NO. 651264/2025

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for DISMISSAL.

In motion sequence 001, defendants The Bathing Club LLC (TBC), LC A&A Holdings Inc. (LC A&A), , and LMGL LLC (LMGL) move pursuant to CPLR 3211(a)(1), (3), (7), (8), and (10), to dismiss Pamela Love Consulting's (PLC's) complaint.[1] (*See* NYSCEF Doc. No. [NYSCEF] 17, Notice of Motion.)

Background

Unless indicated otherwise, the following facts are taken from the Supplemental and Amended Complaint (SAC) and are, for the purposes of this motion, accepted as true.

PLC is a limited liability company organized under the laws of California and is the company for Pamela Love, a jewelry designer. (NYSCEF 10, SAC ¶ 7.) TBC is a

[1] The court rejects defendants' request to strike PLC's opposition because it filed the Memorandum of Law (MOL) twenty-nine minutes past the deadline and the affirmation was unsigned; the affirmation was corrected and refiled. (*See* CPLR 2001.)

limited liability company controlled by Mark Geragos[2], with offices in New York City. (*Id.* ¶ 10.)

LC A&A is a Delaware corporation controlled by Lyndon Lea through his private equity fund, Lion Capital. (*Id.* ¶ 11.)

LMGL is a limited liability company organized under the laws of Delaware and controlled by Lea. (*Id.* ¶ 12.)

Non-party Alex and Ani, LLC (Company) is a jewelry maker and retailer organized under the laws of Rhode Island. (*Id.* ¶ 8.) Sixty-five percent of the Company is owned indirectly by Lea through his private equity fund, Lion Capital. (*Id.*) The remaining thirty-five percent is owned indirectly by Geragos, Esq. through TBC. (*Id.* ¶¶ 8, 10.)

In October 2021, LC A&A loaned the Company $4.5 million, allegedly to bring the Company out of bankruptcy, and recorded a security interest in all of the Company's assets. (*Id.* ¶ 42.) In February 2023, TBC similarly filed a UCC financing statement in Rhode Island, recording a security interest in "all assets of the Debtor [the Company] whether now owned or hereafter acquired," without making a loan. (*Id.* ¶ 41.)

On August 1, 2023, PLC and the Company entered into a consulting agreement (Consulting Agreement). (*Id.* ¶ 17; NYSCEF 13, Consulting Agreement.) Pursuant to the agreement, the Company promised to pay PLC a monthly consulting fee of approximately $21,000 for a term of three years and royalties of up to $2 million per

[2] Geragos & Geragos, ACC represents defendants in this action. Geragos also represented the Company in the arbitration proceeding, allegedly without disclosing his ownership interest in the Company. (NYSCEF 10, SAC ¶ 28.)

fiscal year on the sale of products that Ms. Love contributed to or designed. (NYSCEF 10, SAC ¶ 17; NYSCEF 13, Consulting Agreement at 8-9.)

On March 12, 2024, the Company's Chief Executive Officer (CEO), Prita Kumar, informed PLC's manager that the Company was terminating the Consulting Agreement effective immediately, citing the Company's "financial health." (*Id.* ¶ 25.) The Company's Chief Creative Officer, Kate Robinson, further informed PLC that the jewelry designs PLC had created pursuant to the Consulting Agreement were already in production and could not be returned. (*Id.*) In the summer of 2024, the Company began selling PLC's designs. (*Id*.)

On April 22, 2024, PLC commenced arbitration for unpaid consulting fees and royalties owed by the Company under the Consulting Agreement. (*Id.* ¶ 18; NYSCEF 20, Demand for Arbitration; NYSCEF 21, Statement of Claim.)

While the arbitration was underway, on May 14, 2024, Lea formed LMGL, a Delaware corporation domiciled in New York. (NYSCEF 10, SAC ¶¶12, 48.) PLC asserts that LMGL is controlled by Lea because his signature appears as an "authorized person" on LMGL's certificate of formation. (*Id.* ¶ 12.) Joseph Zorda (Zorda), former Chief Financial Officer of a Lion's Capital portfolio, signed the application to do business in New York. (*Id*.) About two weeks later, on May 29, 2024, LC A&A assigned its security interest in the Company to TBC. (*Id.* ¶ 43.) Then, on July 24, 2024, TBC foreclosed on the Company's assets, and subsequently transferred some of those assets to LMGL. (*Id.* ¶¶ 43, n 12, 47.)

In September 2024, months after the arbitration began, the Company raised an insolvency defense in the arbitration proceeding, claiming that it could not pay PLC due

to its lack of assets. (*Id.* ¶¶ 27-28.) In a September 13, 2024 email, Geragos, counsel for Company in the arbitration, informed PLC and the arbitrator that Larry Meyer, the remaining independent board member of the Company, was in the process of "winding up the entity." (*Id*.)

On November 22, 2024, PLC "moved for summary disposition of its claims that the Company breached the [Consulting] Agreement by failing to provide certain royalty payment reports . . . and by failing to provide access to its books and records." (¶ 21.) PLC requested "a final partial award of specific performance, requiring the Company to produce the reports and open its books and records for inspection." (*Id.*) Additionally, PLC moved "for an interim final award requiring the Company to post security in the form of a bond, letter of credit, or escrow funding." (*Id.* ¶ 22.) On December 23, 2024, the arbitrator granted the motions and rendered the awards. (Id. ¶ 23.)

On March 5, 2025, PLC filed a petition in the California Superior Court, Los Angeles County, to confirm the arbitration award. (*Id*. ¶ 26.) On the same date, PLC initiated this action.[3] Defendants move to dismiss PLC's complaint pursuant to CPLR 3211(a)(1), (3), (7), (8), and (10). (NYSCEF 17, Notice of Motion at 1.)

[3] PLC asserts six causes of action for: (1) voidable transfer (against all defendants); (2) noncompliance with Chapter 9 of the Rhode Island UCC (against TBC); or in the alternative (3) declaratory judgement based on successor liability (against TBC); (4) declaratory judgement based on successor liability (against LMGL); (5) unjust enrichment (against TBC); and (6) unjust enrichment (against LMGL). (*See* NYSCEF 10, AC ¶¶ 50-89.)

Discussion

1. Personal Jurisdiction over LC A&A.

Defendants move pursuant to CPLR 3211(a)(8) to dismiss PLC's sole claim against LC A&A, for voidable transfer[4], on the ground that this court lacks personal jurisdiction over LC A&A. CPLR 3211(a)(8) allows a party to "move for judgment dismissing one or more causes of action asserted against him on the ground that … the court has not jurisdiction of the person of the defendant." On a motion pursuant to CPLR 3211(a)(8), "the party asserting jurisdiction has the burden of demonstrating satisfaction of statutory and due process prerequisites." (*Matter of James v iFinex Inc*., 185 AD3d 22, 28-29 [1st Dept 2020] [internal quotation marks and citation omitted].) A plaintiff meets this burden by presenting affidavits and relevant documents. (*See Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017].) If a plaintiff fails to satisfy its burden but demonstrates that facts may exist to establish personal jurisdiction, the court may order jurisdictional discovery. (*See Peterson v Spartan Indus., Inc.*, 33 NY2d 463, 464 [1974] [citations omitted].)

[4] "As of April 4, 2020, the DCL was amended to repeal the Uniform Fraudulent Conveyance Act (UFCA) and replace it with the Uniform Voidable Transactions Act (UVTA), Article 10, §§ 270-281. Unlike the UFCA, which applies to transfers (or conveyances) of property prior to April 4, 2020, the UVTA applies to all transfers of property thereafter. The UVTA eliminates the category of 'fraudulent conveyances' from the DCL and replaces them with 'voidable transactions' and has amended the burden of proof from 'clear and convincing evidence' to a 'preponderance of the evidence.'" (*Bd. of Managers of 11 Beach St. Condominium v HFZ 11 Beach St. LLC*, 2021 NY Misc LEXIS 51616, *1, n 2 [Sup Ct, NY County, Oct. 5, 2021].) Because this motion relates to transfers that occurred after April 4, 2020, the UVTA applies to the purported voidable transaction.

Here, PLC is arguing that the court has specific jurisdiction over LC A&A pursuant to CPLR 302(a)(2)[6], which provides for personal jurisdiction over a non-domiciliary who "in person or through an agent … commits a tortious act within the state." Specifically, PLC asserts that LC A&A committed a tortious act within the state when LC A&A made a voidable transfer of its security interest in the Company's assets into New York by transferring this security interest to TBC, a limited liability corporation organized and headquartered in New York. (NYSCEF 10, SAC ¶ 14.)

Commission of a voidable transfer within New York entails participation in the conveyance and connection between the conveyance and New York. For example, in *Morgenthau v A.J. Travis Ltd.* (184 Misc 2d 835, 843 [Sup Ct, NY County 2000]) the court found jurisdiction over out-of-state defendants where the "proceeds of . . . alleged criminal enterprise were earned in New York, deposited in . . . New York banking accounts and then fraudulently conveyed to the defendants." Based on these facts, the court concluded that "[s]ince New York was . . . intimately involved in the conveyance [out of New York], the alleged tort may be said to have been committed in this State." (*Id.*) New York has a similar connection to the assets in this case.

PLC alleges that the Company's assets are located in New York and have always been located here. The Company's former CEO, and now LMGL's CEO, Prita Kumar testified, she runs the business from her home in Pelham, New York. (NYSCEF 28, Kumar Tr. at 11:7-14.) LMGL's CFO, Zorda, allegedly a longtime associate of Lea, who resides in New York. (*See* NYSCEF 10, SAC ¶¶ 12, 48; NYSCEF 28, Kumar Tr. at

[6] Since PLC does not assert jurisdiction under CPLR 301 or 302(a)(1), the court does not address defendants' irrelevant arguments.

9:6-7; NYSCEF 29, LinkedIn Profile.) While this evidence may conflict with PLC's allegations that the Company's headquarters are located in Rhode Island (NYSCEF 10, SAC ¶¶ 4, 8), the court finds that PLC has alleged facts sufficient to support jurisdictional discovery. Moreover, this evidence may support a finding that the Company's owners – LC A&A, TBC[8], and now LMGL[9] – are operating the Company in New York. Further, a co-conspirator's actions in New York as the agent for an out-of-state co-conspirator can provide a basis for CPLR 302(a)(2) jurisdiction. (*See Wimbledon Fin. Master Fund, Ltd. v Weston Capital Mgt. LLC*, 160 AD3d 596, 596 [1st Dept 2018] ["defendants are subject to jurisdiction under New York's long-arm statute because they were part of a conspiracy that involved the commission of tortious acts in New York."].)

Alternatively, PLC argues that LC A&A agreed to jurisdiction in New York. PLC relies on an unsigned draft of a promissory note between the Company and LC A&A in which LC A&A agreed to jurisdiction in New York. (NYSCEF 25, Draft Promissory Note § 19 [a].) Defendants argue that PLC lacks standing to enforce the consent-to-jurisdiction[10] clause against LC A&A because PLC is not a party to the draft note. (*See ComJet Aviation Mgmt. LLC v Aviation Invs. Holdings Ltd.*, 303 AD2d 272, 272-73 [1st Dept 2003] [generally, only parties in privity of contract may enforce such clauses].)

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[8] TBC is allegedly "a New York LLC (DOS ID: 4728349)" with offices in New York City. (NYSCEF 10, SAC ¶ 10.)

[9] LMGL allegedly has "offices as located at 3 East Evergreen Rd., Suite 101, New City, New York 10956, which is a co-working space in Rockland County, and LMGL's application for authority to do business in New York designates Rockland County as the location of its in-state, or principal in-state, office." (NYSCEF 10, SAC ¶ 12.)

[10] Defendants argue that "NYSCEF-Doc.25, does not establish the existence of an enforceable forum selection clause," confusing a forum selection clause with consent to jurisdiction. (NYSCEF 36, Defendants' Reply MOL at 4.)

There are, however, three recognized exceptions where a nonparty may enforce a consent-to-jurisdiction clause against one of the contracting parties: (i) when the nonparty is part of a global transaction that encompasses the contract, (ii) the nonparty is a third-party beneficiary of the contract, or (iii) the nonparty is closely related to a signatory. (*Hluch v Ski Windham Operating Corp.*, 85 AD3d 861, 862-63 [2d Dept 2011].) PLC asserts third-party beneficiary status.

Courts have defined a third-party beneficiary as no one other than the third-party who could recover if the promisor breaches, or where the contract clearly evinces intent to allow enforcement by the third party. (*Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 66 NY2d 38, 45 [1985] [citations omitted].) Here, only LC A&A, the promisee, could recover if the Company, the promisor, breaches the conditions of the promissory note, not PLC. Therefore, PLC is not a third-party beneficiary of the note and LC A&A's possible consent to jurisdiction in New York is not a basis for personal jurisdiction or jurisdictional discovery. Accordingly, the Court will order jurisdictional discovery based on CPLR 302(a)(2) only.

2. Failure to Join a Necessary Party

Defendants also move pursuant to CPLR 3211(a)(10) to dismiss the voidable transfer claim against all defendants on the ground that PLC has failed to join the Company, as a necessary party. On a CPLR 3211(a)(10) motion, the burden is on the defendants to demonstrate that the inclusion of the party is necessary to "accord full relief to the parties presently joined or that the [party] would be inequitably affected by any judgment that might result." (*CBS Corp. v Dumsday*, 268 AD2d 350, 353 [1st Dept 2000]; *see also* CPLR 1001 [a].) Joinder rules ensure that absent parties whose rights

may be prejudiced are not "embarrassed by judgments purporting to bind their rights or interests where they have had no opportunity to be heard." (*Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. and Appeals*, 5 NY3d 452, 458 [2005] [internal quotation marks and citation omitted].)

Here, defendants argue that because PLC is the Company's creditor and has yet to obtain a money judgment against the Company, the Company is a necessary party. This is incorrect. Complete relief can be granted without the Company's participation; PLC seeks only to void the transfer LC A&A made of its security interest in the Company's assets to TBC. Further, the Company will not be inequitably affected by any judgment because none of its assets are the subject of this proceeding. Moreover, since the Company was a party to the arbitration, the Company had an opportunity to defend itself against the award that PLC seeks to enforce here. Accordingly, the Company is not a necessary party under CPLR 1001(a) and defendants' motion to dismiss pursuant to CPLR 3211(a)(10) is denied.

3. Failure to State a Claim

Defendants also move pursuant to CPLR 3211(a)(7) to dismiss the first cause of action of voidable transfer against all defendants for failure to state a claim. On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].) "[B]are legal conclusions as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence" cannot survive a CPLR 3211(a)(7) motion.

(*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995].) The court may consider affidavits submitted by the plaintiff to remedy defects in the complaint. (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976].)

First Cause of Action: Voidable Transfer

As a threshold matter, PLC contends that Rhode Island's Uniform Voidable Transactions Act governs this dispute, whereas defendants assert that New York's Uniform Voidable Transactions Act applies. Although the two statutes are identical in substance, this court applies Rhode Island's law because New York's Uniform Voidable Transactions Act provides that, when a debtor corporation has multiple places of business, the law of the state where the corporation's chief executive office is located governs. (Debtor and Creditor Law § 279 [a] [3].) The Company's headquarters is allegedly in Rhode Island. (NYSCEF 10, SAC ¶ 8.) The Rhode Island Uniform Voidable Transactions Act § 6-16-4 states that:

> "A transfer made or obligation incurred 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: (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due."

In the SAC, PLC pleads facts relating to actual fraud. (NYSCEF 10, SAC ¶¶ 51, 56.) However, in its opposition to this motion to dismiss, PLC asserts that it pleads constructive fraud in the SAC. (NYSCEF 35, Plaintiff's MOL in Opposition at 13.) The court considers PLC's claim of actual fraud consistent with its pleadings.

Turning to the requirements, "a creditor has two avenues to seek to void a transaction, either by showing that the debtor acted with actual intent to hinder, delay, or defraud the creditor, or that the debtor acted without receiving a reasonably equivalent value in exchange for the transfer that left the debtor undercapitalized." (*Jackson v J&A Home Improvement, LLC*, 2024 RI Super LEXIS 37, *7 [Super Ct Apr. 22, 2024, No. PC-2022-06754] [internal quotation marks and citation omitted].) Ultimately, "[t]he validity of the conveyance is to be determined, not by the debtor's intention, even if honest, but by the effect on the creditor's right of recovery." (*Harriss v Orr*, 65 RI 369, 375 [1940] [internal quotation marks and citation omitted].) Because "it is often impracticable, on direct evidence, to demonstrate an actual intent . . . courts may infer fraudulent intern from the circumstances surrounding the transfer." (*Jackson*, 2024 RI Super LEXIS 37 at *13 [internal quotation marks, alterations, and citations omitted].) Subsection 6-16-4(b) of the Rhode Island Uniform Voidable Transactions Act provide courts with several factors that can be used to infer actual intent.

> "Similar to the federal courts' badges of fraud, the R.I. statute looks to whether the debtor had been sued or threatened with suit prior to the transfer (§ 6-16-4(b)(4)), whether the debtor transferred all or substantially all the debtor's assets (§ 6-16-4(b)(5)), whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred (§ 6-16-4(b)(9)), whether the transfer was to an insider (§ 6-16-4(b)(1)), or whether the debtor retained possession or control of the property after the transfer (§ 6-16-4(b)(2))." (*Id.* at *14-15.)

Though "a single badge is generally insufficient to show actual intent, a court may nonetheless infer actual intent when several badges considered together afford a basis to do so." (*Id.* at *15 [internal quotation marks and citation omitted].)

Defendants argue that PLC has not sufficiently pleaded that the transfer of LC A&A's security interest to TBC was made with actual intent to hinder, delay, or defraud

or completed without reasonably equivalent value. The court rejects defendants' argument as it finds that PLC pleads facts sufficient to satisfy most of the factors set forth in § 6-16-4(b) of the Rhode Island Uniform Voidable Transactions Act and accordingly affords the court a basis to infer actual fraud.

The first badge indicative of fraudulent intent is that the transfer was between insiders. (*See* RI Gen Laws § 6-16-4 [b] [1].) Each of the defendant entities owns 20% or more of the outstanding voting shares of the Company thus, making them affiliates of the Company. (NYSCEF 10, SAC ¶¶ 53-55.) Further, PLC sufficiently alleges that LC A&A, the majority owner of the Company, and LMGL, the newly formed entity that received a transfer of some of the Company's assets from TBC, are both owned by Lea. (NYSCEF 10, SAC ¶¶ 48-49.) PLC alleges that LC A&A is an entity that belongs to Lion Capital, Lea's private equity fund. (*Id*. ¶ 11.) In addition, PLC alleges that Lea is the owner of LMGL because LMGL's certificate for formation is signed by Lea as an "authorized person." (*Id*. ¶ 12.) Further, LMGL's application for authority to do business in New York was signed by Zorda, the former CFO of another portfolio company owned by Lion Capital. (*Id*.) Therefore, PLC has sufficiently alleged fact to satisfy the first badge of fraud – the transfer was between insiders.

Relatedly, PLC has plead facts sufficient to find a second badge of fraud, namely that the debtor transferred essential assets of the business to a lienor who then transferred those assets to an insider of the debtor. (*See* RI Gen Laws § 6-16-4 [b] [11].) PLC alleges that the Company granted two separate liens on all the Company's assets to LC A&A and TBC, respectively. (NYSCEF 10, SAC ¶¶ 41-42.) Later, "LC A&A Holdings assigned its security interests to [TBC]." (*Id.* ¶ 43.) Because "35% of the

Company is owned indirectly by Mark Geragos through [TBC]," PLC has pled facts sufficient to find that the Company transferred essential assets to a lienor, LC A&A, who then transferred those assets to an insider of the Company, TBC.

A third badge of fraud pleaded is that defendants remained in possession of assets after the transfer was made. (*See* RI Gen Laws § 6-16-4 [b] [2].) In addition to the facts alleged above, PLC pleads that after the transfer, the Company's website was updated and "now states, for the first time, that "[t]he Site is an Internet property of LMGL, LLC (collectively, 'Alex and Ani®,' 'we,' 'our' or 'us')." (NYSCEF 10, SAC ¶ 37.) Thus, PLC satisfies the second badge – defendants remained in possession of assets after the transfer.

The fourth badge of fraud pleaded in the SAC is that the debtor had been sued before the transfer was made. (*See* RI Gen Laws § 6-16-4 [b] [4].) PLC asserts that it commenced arbitration against the Company for unpaid fees pursuant to the Consulting Agreement on April 22, 2024. (NYSCEF 10, SAC ¶ 18.) On May 14, 2024, LMGL was formed. (*Id.* ¶ 48.) Then, on May 29, 2024, LC A&A assigned its security interest in all the Company's assets to TBC. (*Id.* ¶ 43.) On July 24, 2024, TBC foreclosed on all the Company's assets and transferred some to LMGL. (*Id.* ¶¶ 44, 47.) Accordingly, PLC has sufficiently pleaded that the debtor had been sued prior to the transfer.

A fifth badge of fraud successfully pleaded by PLC is the transfer of substantially all the debtor's assets. (*See* RI Gen Laws § 6-16-4 [b] [5].) PLC alleges that the Company granted two separate liens on all the Company's assets to LC A&A and TBC, respectively. (NYSCEF 10, SAC ¶¶ 41-42.) Further, PLC pleads that "LC A&A

Holdings assigned its security interests to [TBC]." (*Id.* ¶ 43.) Based on the foregoing, PLC has plead facts sufficient to infer that all of the Company's assets were transferred.

Finally, PLC pleads facts sufficient to satisfy a sixth badge of fraud, namely that the debtor became insolvent shortly after the transfer was made. (*See* RI Gen Laws § 6-16-4 [b] [9].) As previously set forth, PLC pleads that LC A&A assigned its security interest in all of the Company's assets to TBC on May 29, 2024. (NYSCEF 10, SAC ¶ 43.) PLC further alleges that the Company claimed insolvency in September of 2024, on the grounds that "the lender foreclosed on [the Company]" and "the remaining independent Board member [would] be winding up the entity." (*Id.* ¶ 28.) These allegations satisfy the badge of fraud that the debtor became insolvent after the transfer.

Because PLC sufficiently pleads most of the badges of fraud provided for in § 6-16-4(b) of the Rhode Island Uniform Voidable Transactions Act, the court finds support for the inference that defendants acted with the actual intent to hinder, delay, or defraud creditors. Therefore, defendants' motion to dismiss the first cause of action for voidable transfer against all defendants is denied.

Second Cause of Action: Noncompliance with Chapter 9 of the Rhode Island Uniform Commercial Code Against TBC.

Defendants further move pursuant to CPLR 3211(a)(1) to dismiss the second cause of action against TBC for violating Chapter 9 of the Rhode Island Uniform Commercial Code (UCC), arguing that the action is barred by documentary evidence. A motion under CPLR 3211(a)(1) will be granted "only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." (*Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002] [citation omitted].)

PLC alleges that TBC did not comply with Chapter 9 of the Rhode Island UCC which states:

> "(a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to: (1) Any person from which the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral." (RI Gen Laws § 6A-9-621 [a] [1].)

Defendants correctly argue that TBC was not required to notify PLC that it received a security interest in the Company's assets as collateral because PLC was not a "secured creditor" under Article 9 of the UCC and did not get an arbitration award until well after TBC's UCC filing. A "secured party" is an individual or entity that has a secured interest in an asset. (RI Gen Laws § 6A-9-102 [a] [73].) While PLC had an arbitration award against the Company, PLC did not have a secured interest in the Company's assets. Therefore, TBC was not required to notify PLC before accepting the Company's assets as collateral. Accordingly, defendants' motion to dismiss PLC's second cause of action against TBC is granted, and PLC's second cause of action is dismissed.

Third and Fourth Causes of Action: Declaratory Judgment (Successor Liability)

Defendants' further move pursuant to CPLR 3211(a)(7) to dismiss the third and fourth causes of action for declaratory judgment of successor liability, against TBC and LMGL for failure to state a claim. Defendants argue that PLC fails to allege all the elements of a *de facto merger*.

PLC alleges that either TBC or LMGL is a successor to the Company's debt to PLC. Specifically, PLC alleges that "[i]n the event that the Company's transfers of security interests in all of its assets to LC A&A Holdings and TBC are not avoided, and TBC's strict foreclosure on those assets is not declared ineffective, TBC/LMGL is

nevertheless liable as a successor for the [Company]'s debt to [PLC]." (NYSCEF 10, SAC ¶¶ 65, 69.)

Generally, a successor corporation is not liable for the liabilities of its predecessor. (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 126 [1st Dept 2020].) A *de facto* merger is an exception to this rule. (*Id.*) When determining if a de *facto* merger took place, courts consider whether there is a (1) "continuation of ownership;" (2) "cessation of ordinary business operations and the dissolution of the acquired corporation as soon as possible;" (3) "assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the acquired corporation;" and (4) "continuity of management, personnel, physical location, assets and general business operation." (*Fitzgerald v Fahnestock & Co.*, 286 AD2d 573, 574 [1st Dept 2001] [citation omitted].) Courts do not require the presence of all these factors for a *de facto* merger. (*Id*. at 574-75.)

As to the first factor, PLC sufficiently pleads that there was a continuation of ownership of the Company by TBC or LMGL. There is a continuation of ownership when "the shareholders of the predecessor corporation become direct or indirect shareholders of the successor corporation as the result of the successor's purchase of the predecessor's asset." (*Van Nocker v A.W. Chesterton, Co. (In re New York City Asbestos Litig.)*, 15 AD3d 254, 256 [1st Dept 2005].) Here, PLC alleges that Lea indirectly owned sixty-five percent of the Company through his private equity fund, Lion Capital, and that the remaining thirty-five percent was owned by TBC. (NYSCEF 10, SAC ¶ 8.) When TBC foreclosed on the Company's assets and transferred some of

those assets to LMGL (*id.* ¶¶ 44, 47), which PLC alleges to be controlled by Lea (*id.* ¶ 12), there was a continuation of ownership by both TBC and Lea (*id.* ¶¶ 48-49). Therefore, PLC satisfies the first element of a *de facto* merger.

As to the second factor, PLC alleges that the ordinary business of the Company ceased and that although the Company has not been formally dissolved, there is an intention to dissolve the corporation, which is currently a shell. (NYSCEF 10, SAC ¶¶ 66, 70.) PLC alleges that during the arbitration, Larry Meyer, one of the Company's managers, affirmed that he was "managing the orderly shutdown of the [Company]," "the termination of its 401(k) plan is imminent," and "expect[ed] to wind up the [Company]." (*Id.* ¶ 31.) PLC also alleges that on September 13, 2024, Geragos emailed the arbitrator and opposing counsel stating that Meyer "will be winding up the entity." (*Id.* ¶ 28.) Though these allegations support a finding that the Company ceased business operations, PLC makes several other allegations in the SAC that support an inference that the Company's operations continue.

PLC states that "[t]he supposed foreclosure has not slowed [Company]'s business. Indeed, it does not appear to have affected operations at all." (*Id.* ¶ 33.) In support of this, PLC provides that (i) the Company employees continue to use their @alexandani emails, which do not bounce back (*id.* at 12 n 9), (ii) the company still has a website that uses the Company's name and logo where jewelry is sold (*id.* ¶ 33), (iii) PLC's manager purchased a piece of jewelry recently from the Company's website (*id.* at 10 n 7), and (iv) the Company's CEO, Prita Kumar posted on LinkedIn in early 2025 that the Company had a successful past year, selling to millions of customers, and is now hiring (*id.* ¶¶ 35-36). Therefore, the second factor of a *de facto* merger is not met

because PLC pleads facts that the Company's ordinary business operations continues. (*Van Nocker*, 15 AD3d at 257 [held that the second factor was not satisfied because the entity was not dissolved and remained in existence in a meaningful way by maintaining records and maintaining its corporate existence].)

As to the third factor, PLC sufficiently alleges that TBC or LMGL has assumed the Company's liabilities. Specifically, PLC pleads that "TBC/LMGL has assumed the day-to-day liabilities . . . such as payroll, necessary to continue to operate a jewelry retail business." (NYSCEF 10, SAC ¶¶ 66, 70.)

As to the fourth factor, PLC sufficiently alleges that there was a continuity of management, personnel, physical location, assets and general business operation from the Company to TBC and LMGL. First, PLC alleges that Prita Kumar, continued to be employed by the Company based on her LinkedIn profile, not employed by TBC or LMGL. (*Id.* ¶¶ 29, 35.) In her April 8, 2025 deposition, however, Kumar testified that she now works for LMGL. (NYSCEF 28, Kumar Tr. at 11: 6-7.) Further, PLC alleges that the Company's website contained the address of the Company's headquarters in Greenwich, Rhode Island, until after this action was commenced. (*Id.* ¶ 34.) More currently, the website states LMGL's address in New York. (*Id.* ¶ 4.) Additionally, PLC alleges that during a town hall meeting the Company's employees were informed that they would be laid off and rehired on the same day because ownership of the Company was now under a new LLC. (*Id.* ¶ 33.) Since, three of four factors are sufficiently plead, PLC's cause of action for successor liability survives.

Fifth and Sixth Cause of Action: Unjust Enrichment.

Alternatively, PLC alleges that TBC or LMGL were unjustly enriched by the Company's use of PLC's intellectual property. Defendants move to dismiss PLC's claims of unjust enrichment pursuant to CPLR 3211(a)(3) because PLC lacks standing to bring such a claim. On a motion to dismiss pursuant to CPLR 3211(a)(3), the moving defendant bears the initial burden of demonstrating, *prima facie*, that the plaintiff lacks standing. (*Brunner v Estate of Lax*, 137 AD3d 553, 553 [1st Dept 2016].) To survive such a motion, "the plaintiff's submissions [must] raise a question of fact as to its standing." (*Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 60 [2d Dept 2015].)

"The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in equity and good conscience, should be paid to the plaintiff. (*Corsello v Verizon N.Y., Inc.*, 18 NY3d 777, 790 [2012] [internal quotation marks and citations omitted].) A claim for unjust enrichment requires "a relationship or connection between the parties that is not 'too attenuated.'" (*Georgia Malone & Co. v Rieder*,[11] 19 NY3d 511, 516 [2012] [citation omitted].) While a plaintiff need not allege privity, "a plaintiff cannot succeed on an unjust enrichment claim unless it has a sufficiently close relationship with the other party." (*Id*. at 516.) Unjust enrichment "is not a catchall cause of action." (*Corsello*, 18 NY3d at 790 [2012] [citations omitted].) Rather, it is available only where "the defendant has not breached a contract nor committed a recognized tort, [yet] circumstances create an equitable obligation" to repay money or benefits to which the defendant is not entitled. (*Id.* [citations omitted].) "An unjust

[11] The parties are directed to follow the custom and practice in New York of referencing cases by plaintiff's name.

enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." (*Id.* [citations omitted].)

Here, PLC fails to allege that there was a "sufficiently close" connection between PLC and TBC, or PLC and LMGL. The SAC is silent as to whether PLC had direct dealings with TBC or LMGL. It is not enough that the parties be "tangentially involved." (*Georgia Malone & Co.*, 19 NY3d at 519.) Rather, there must be a "direct connection." (*Id.*) Finding parties with no direct dealings to be "sufficiently close" would "impose a burdensome obligation in commercial transactions" since parties often are tangentially connected through entities but never have an awareness of one another. (*Id*.) Therefore, PLC's fifth and sixth causes of action are dismissed without prejudice.

Accordingly, it is

ORDERED, that the motion to dismiss the first cause of action against LC A&A is denied without prejudice and may be renewed after the completion of jurisdictional discovery; and it is further

ORDERED, that defendants' motion to dismiss the first cause of action against all defendants is denied; and it is further

ORDERED, that motion to dismiss the second cause of action against TBC is granted, and the second cause of action is dismissed; and it is further

ORDERED, that motion to dismiss the third and fourth causes of action against TBC and LMBL is denied; and it is further

ORDERED, that defendants' motion to dismiss the fifth and sixth causes of action against TBC and LMGL is granted, and the fifth and sixth clauses are dismissed; and it is further

ORDERED that defendants shall file answers by December 23, 2025, and parties shall file a proposed preliminary conference order (PCO) or competing PCOs if the parties do not agree by December 23, 2025; and it is further

ORDERED that defendants' time to answer the complaint is stayed pending the completion of jurisdictional discovery; and it is further

ORDERED that on or before December 23, 2025, the parties are directed to submit a proposed discovery schedule to complete the necessary jurisdictional discovery, via e-mail to the part clerk; and it is further

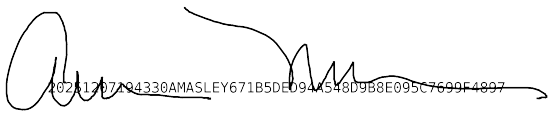
ORDERED that plaintiff shall serve defendants with a demand for the production of documents relevant to the jurisdictional inquiry within 14 days of the entry of this Decisions and Order; and it is further

ORDERED that defendants shall respond to and produce any documents responsive to plaintiff's demand within 30 days of its service; and it is further

ORDERED that defendants shall make themselves available for, and the plaintiff shall conduct, a deposition of defendants concerning any matters relevant to the jurisdictional inquiry within 30 days of defendants' production of documents responsive to the plaintiff's demand, and such deposition may be conducted virtually if the parties so agree; and it is further

ORDERED that defendants may renew their motion to dismiss within 14 days after the completion of their deposition, otherwise the motion is deemed waived; and it is further

ORDERED that no alterations may be made to the forgoing discovery schedule except by Court order.



12/7/2025
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
		GRANTED	**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**