

Fishkin v Lee's Fashion, LLC

2025 NY Slip Op 34889(U)

December 12, 2025

Supreme Court, New York County

Docket Number: Index No. 655645/2024

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 655645/2024

CASSANDRA P. FISHKIN,

MOTION DATE 01/31/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

LEE'S FASHION, LLC, NICK POE STUDIO, LLC, NICHOLAS
POE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL.

FACTUAL BACKGROUND

This action arises from Plaintiff Cassandra Fishkin’s occupancy of the second-floor space located at 27 Allen Street pursuant to a written License Agreement she executed with Defendant Lee’s Fashion, LLC in September 2023. Plaintiff alleges that Defendants Lee’s Fashion, Nick Poe Studio, LLC, and Nicholas Poe individually misrepresented the legality and permitted use of the premises, asserting that the space had been unlawfully renovated to resemble a residential apartment despite the certificate of occupancy authorizing only commercial use. After disputes concerning conditions at the premises and Plaintiff’s use and payment obligations, Defendants commenced a holdover proceeding in Civil Court. That matter was resolved by a Stipulation of Settlement under which Plaintiff agreed to vacate by October 10, 2024. Plaintiff commenced this Supreme Court action shortly thereafter, asserting claims sounding in fraud, declaratory judgment, breach of contract, breach of the implied covenant of good faith and fair dealing, and alter ego/veil-piercing. Defendants now move to dismiss under CPLR 3211(a)(1) and (a)(7).

LEGAL STANDARD

Pursuant to CPLR 3211 (a)(1) “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff’s facts fit within any cognizable legal theory. (*See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (*See Leon v Martinez*, 84 NY2d 83, 87 (1994)).

DISCUSSION

The motion is granted in part to the extent that Plaintiff’s fraud claim is dismissed. Plaintiff does not plead the circumstances constituting fraud with the specificity required by CPLR 3016(b). The complaint identifies no particular misrepresentation, no specific statement, speaker, time, or manner sufficient to support a fraud theory independent of the contract. The generalized allegations regarding the legality of the space, the certificate of occupancy, and the overlease do not satisfy the heightened pleading standard. Additionally, the documentary evidence, including the License Agreement’s express “as-is” clause, permitted-use restrictions, and disclaimers, undermines the element of justifiable reliance. Accordingly, the fraud claim is dismissed.

The motion is denied as to the claims for declaratory judgment, breach of contract, breach of the implied covenant of good faith and fair dealing, and alter ego/veil-piercing.

First, the documents submitted do not conclusively establish a defense as a matter of law under CPLR 3211(a)(1). The License Agreement, certificate of occupancy, and alleged master lease raise questions of fact but do not utterly refute Plaintiff's theories.

Second, accepting the allegations as true and granting every favorable inference, Plaintiff's remaining claims adequately fit within cognizable legal theories under CPLR 3211(a)(7).

Plaintiff seeks a declaration concerning the legality of the underlying transaction, the enforceability of the License Agreement, and the parties' respective rights and obligations. Even if Defendants ultimately argue that declaratory relief may overlap with contract principles, at this early stage Plaintiff alleges a present and justiciable controversy regarding the validity of the License itself and the effect of the overlease, certificate of occupancy, and alleged regulatory violations. Such allegations, taken as true, fit within the scope of CPLR 3001.

As to Plaintiff's breach of contract claim, "To plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations." *34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] (internal citations omitted)

Plaintiff alleges she entered into the License Agreement, performed under it by taking occupancy and paying initial sums, and that Defendants breached by failing to deliver a lawful, usable space consistent with the parties' alleged understanding, by withholding or misrepresenting critical documents, and by failing to address conditions materially affecting her use. Whether Plaintiff can prove those breaches is not the present inquiry but rather the question is whether the allegations state a claim. Accepting the facts as pled, the complaint sufficiently

alleges the existence of a contract by alleging Plaintiff's performance, Defendants' purported nonperformance, and resulting damages.

Although Defendants characterize this claim as duplicative of the other claims, at the pleading stage Plaintiff is entitled to assert it in the alternative. Plaintiff alleges that Defendants acted in bad faith by concealing material aspects of the legal status of the space, providing incomplete or misleading information about the underlying overlease, and frustrating Plaintiff's ability to use the premises for the purpose contemplated between the parties. These allegations, if proven, could support a finding that Defendants exercised contractual discretion in a manner that deprived Plaintiff of the benefit of the bargain. Moreover, Plaintiff may proceed on alternative theories of liability pursuant to CPLR 3014. That is sufficient to withstand dismissal at this stage.

While veil piercing is not a standalone cause of action, the possibility of piercing the corporate veil remains open at this stage. "While the 'decision whether to pierce the corporate veil in a given instance will necessarily depend on the attendant facts and equities ... [g]enerally ... piercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation [or LLC] in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the [party seeking to pierce the corporate veil] which resulted in [the party's] injury'" (*DePetris v Traina*, 211 AD3d 939, 941 [2d Dept 2022])."

Plaintiff alleges that Nicholas Poe is the sole principal of both entity defendants, that the entities were operated interchangeably, that corporate formalities were disregarded, and that Poe used the entities to perpetrate the alleged wrongful conduct. These allegations, if proven, could justify piercing the corporate veil. Accordingly, they are legally cognizable at the pleading stage and should not be dismissed.

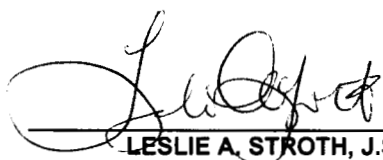
As such, Defendants motion to dismiss is granted in part, to the extent that Plaintiff's cause of action for fraud is dismissed and denied as to the remaining causes of action.

The Court has considered the remaining arguments of the parties and finds such unavailing. Accordingly; it is hereby

ORDERED that Defendants motion to dismiss (Motion Sequence 001) is granted in part, to the to the extent that Plaintiff's cause of action for fraud is dismissed and denied as to the remaining causes of action.

The foregoing constitutes the decision and order of the Court.

12/12/2025
DATE


LESLIE A. STROTH, 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