

Birch Fashion Inc v Lynn Brands LLC

2026 NY Slip Op 30025(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 654737/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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BIRCH FASHION INC,

Plaintiff,

- v -

LYNN BRANDS LLC, SHAWN WANG, CATHY WANG

Defendants.

-----X

INDEX NO. 654737/2020

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for DISMISSAL.

Defendants’ motion to dismiss the third and fourth causes of action is granted.

Background

This breach of contract case arises out of plaintiff’s contention that defendants intentionally refused to pay for goods they ordered. Plaintiff alleges that it manufactures and sells wholesale apparel and related goods to clothing companies and that in September and October 2019, defendant Lynn Brands, LLC (“Lynn Brands”) placed numerous orders for the manufacture of women’s apparel. It contends that these orders were specially ordered, and that Lynn Brands confirmed the purchased orders. Plaintiff says it made three shipments in late October and early November 2019 with each worth well over \$100,000 accompanied by an invoice. It claims that Lynn Brands accepted these orders but only paid \$54,000 leaving a balance of \$306,242.20. Plaintiff stresses that Lynn Brands did not timely notify it of any issues with the items shipped.

It contends that on November 20, 2019, Lynn Brands first notified plaintiff that its buyer had rejected some of the items, but that Lynn Brands refused to provide the proof concerning the rejection. Plaintiff brings causes of action against Lynn Brands for the outstanding balance as well as claims against Lynn Brands and the individual defendants Cathy and Shawn Wang based on, fraud, conversion, and a corporate veil piercing theory of liability.

Defendants move to dismiss the third and fourth causes of action. They claim that plaintiff did not sufficiently plead allegations sufficient to pierce the corporate veil and hold the individual defendants personally liable. Defendants argue that the third cause of action (which seeks both fraud and to pierce the corporate veil) improperly attempts to recast the breach of contract claim as a fraud claim. They add that the fourth claim—for conversion—is duplicative of the breach of contract claim.

In opposition, plaintiff argues that it has sufficiently plead its claims. It maintains, “upon information and belief” that Lynn Brands “was already insolvent at [the] time of issuing the purchase orders and was unable to make full payments.” Plaintiff argues that defendant lured other entities in, including plaintiff, by repeatedly making false promises and only making a fraction of the payments for the goods ordered.

In reply, defendants emphasize that plaintiff improperly relies upon other cases to detail some sort of broad fraudulent conspiracy without providing any specific details required to satisfy the heightened pleading standard.

Discussion

First the Court must address the elephant in the room: this Court apologizes for the tremendous delay in the issuance of this decision. This motion was fully briefed in April 2021

and yet nothing happened in this case until it was transferred to this part in mid-December 2025. Clearly, it should have been decided by the prior judge a long, long time ago.

Fraud Claim

The Court dismisses the third cause of action for fraud, which is alleged against Lynn Brands as well as the individual defendants. “A fraud-based claim is duplicative of breach of a contract claim when the only fraud alleged is that the defendant was not sincere when it promised to perform under the contract” (*MMCT, LLC v JTR Coll. Point, LLC*, 122 AD3d 497, 499, 997 NYS2d 374 [1st Dept 2014] [internal quotations and citations omitted]).

Here, the fraud claim is based on the exact same set of facts as the breach of contract and plaintiff’s theory is, essentially, that defendants intentionally decided to not make the full payments for the goods it ordered. That does not state a separate and stand-alone fraud claim. The allegations in the amended pleading about Lynn Brands’ purported assertion that it purchased the assets of another well-known apparel company is irrelevant. In other words, plaintiff’s insistence that Lynn Brands failed to disclose the massive debts to suppliers it also acquired when it purchased the assets of this other entity is, in this Court’s view, a distraction from what this case concerns. This action is about the alleged failure to pay for goods ordered by Lynn Brands, not an opportunity to test every claim purportedly made by one of Lynn Brands’ principals.

For the same reason, the claims fail against the individual defendants. There is no basis here to pierce the corporate veil for a straightforward breach of contract case. There were no sufficient allegations to support possible liability for these individual defendants on this record. Plaintiff only offered innuendo and generalized assertions about the business practices of these

defendants. Even if defendants engaged in untoward practices, that does not mean plaintiff can advance a fraud claim in a matter that is about the failure to pay for specific goods.

Conversion Claim

This claim alleges that defendant lied about the customer rejection of the goods and prevented plaintiff from accessing these goods. Plaintiff alleged that it was denied the return of these goods unless it paid the “unreasonable” warehouse fees.

Similarly, this cause of action is dismissed as “A cause of action for conversion cannot be predicated on a mere breach of contract” (*Jeffers v American Univ. of Antigua*, 125 AD3d 440, 443, 3 NYS3d 335 [1st Dept 2015] [internal quotations and citations omitted]).

If plaintiff’s version of events is true, as it must be considered on a motion to dismiss, plaintiff could have paid this “unreasonable” warehouse fee to get some of the goods back and then seek that fee in connection with this case. It is unclear how that fee is separate and distinct from the underlying breach of contract claim as it involves the failure to pay or return the goods in question.

Summary

The Court dismisses the third and fourth causes of action.

On the docket, the Court noticed that the parties uploaded a discovery schedule dated March 8, 2022 that set a March 2022 deadline to finish paper discovery and a June 24, 2022 deadline to complete depositions (NYSCEF Doc. No. 36). Because a great deal of time has passed since that stipulation, the Court assumes that this discovery is over (or should be close to over). Therefore, the Court sets a note of issue deadline of February 26, 2026—that should

provide more than enough time to finish up whatever is remaining and move this case toward a resolution.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss the third and fourth causes of action is granted.

NOI Deadline February 26, 2026.

1/6/2026
DATE



ARLENE P. BLUTH, 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