AKF, Inc. v MCL & Sal Solutions Inc.

2026 NY Slip Op 30568(U)

February 13, 2026

Supreme Court, New York County

Docket Number: Index No. 651398/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK** **PART** **11M**

Justice

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AKF, INC.,

Plaintiff,

- v -

MCL & SAL SOLUTIONS INC.,ALIZA SHAULSON, MOSHE CHAIM LEHRER, JOHN DOE ONE

Defendant.

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INDEX NO. 651398/2024

MOTION DATE 10/13/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for DISMISS.

This action arises out of allegations, *inter alia*, of breach of contract. Defendants move pursuant to CPLR § 3211(a)(1), (a)(7), seeking dismissal the complaint against Shifra Aliza Shaulson, and Moshe Chaim Lehrer a/k/a Max Lehrer in its entirety, and partially dismissing the complaint against MCL & Sal Solutions Inc. d/b/a Direct Capital Fund, with prejudice. Plaintiff opposes the instant motion. For the reasons set forth below, the motion is granted.

Background

Plaintiff entered into an agreement with the defendant MCL & Sal Solutions Inc., under which it agreed to refer potential merchants to plaintiff in exchange for commission or compensation. The agreement provides in part, that MCL "shall not procure additional same day funding known as 'double funding' for the referral, or procure additional funding for the Merchant to any other funding entity known as 'stacking'." Additionally, section 10 of the agreement, entitled Agent Breach and Non-Interference, specifically provides that MCL shall not "refer to the merchant to a third party […] with which the merchant enters an agreement for the

sale of receipts[…]" MCL "shall not cause or attempt to cause any merchant to terminate its relationship" with plaintiff. Further, the agreement provides that MCL is prohibited from

> "[o]therwise interfere[ing], in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with FundKite's contractual relationship with any Merchant, or knowingly cause or attempt to cause a Merchant to breach its obligations under an existing Merchant Agreement with the FundKite, or induce or attempt to induce any Merchant to do so".

See NYSCEF Doc. 2.

The complaint alleges that defendants violated the agreement by interfering with its merchant and referring its merchants to other funders and inducing those merchants to breach their respective agreements with plaintiff.

Standard of Review

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp*., 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.'" *Id*.

"In a motion to dismiss pursuant to CPLR 3211 (a) (1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Fortis Fin. Servs., LLC v Fimat Futures USA,*

Inc., 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further, dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence "conclusively establishes a defense to the asserted claims as a matter of law." *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 524 [1st Dept 2021].

Discussion

Plaintiff's complaint contains three causes of action: breach of contract, tortious interference with a contract, and breach of fiduciary duty. The court will address each in turn. The Court will first address the breach of contract allegations against the individual defendants.

Breach of Contract

To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages. *VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 A.D.3d 49, 58 [1st Dept 2013].

As to the breach of contract cause of action, the agreement was between plaintiff and MCL, thus based on the plain language of the agreement and the reading of the complaint, the complaint fails to sate a cause of action for breach of contract as against defendants Aliza Shaulson and Moshe Chaim Lehrer.

As to the remaining causes of action against the individual defenses, the complaint alleges, without specific factual allegations, that the individual defendants are personally liable because they are *alter egos* of the corporation. The concept of "piercing the corporate veil" is a limitation on accepted principles that corporation exists independently of its owners as a separate legal entity, that owners are normally not liable for debts of corporation, and that it is perfectly legal to incorporate for the express purpose of limiting liability of corporate owners. *Morris v*

New York State Dep't of Tax'n & Fin., 82 NY2d 135 [1993]. Although there are no definitive rules governing circumstances when corporate veil may be pierced, there is generally required showing that: (1) owners exercised complete domination of corporation in respect to transaction attacked; and (2) such domination was used to commit fraud or wrong against plaintiff which resulted in plaintiff's injury. *Id*.

Further, it has been held by the Court of Appeals that, at the pleading stage, a plaintiff seeking to pierce the corporate veil must adequately allege the existence of a corporate obligation and that the defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice. *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30 [2018].

Here, a thorough review of the complaint establishes that the complaint fails to state a cause of action as against defendants Aliza Shaulson and Moshe Chaim Lehrer. The complaint fails to allege any factual allegations regarding the individual defendants' misuse of the corporate form for their own benefit. Nothing in the complaint alleges the elements of piercing the corporate veil nor, other than the repetitious assertions that the individual defendants and the corporate entity are alter egos, does the complaint contain factual allegations of the individual defedants misuse of the corporate form. Accordingly, the complaint is dismissed in its entirety against Aliza Shaulson and Moshe Chaim Lehrer.

Tortious Interference with Contract

The elements of tortious interference with a contract are: "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to plaintiff" (*Nero v Fiore*, 165 AD3d 823, 825 [2d Dept 2018]).

In support of dismissal of this cause of action defendant cites to the plain language of the agreement. As quoted above, the agreement between the parties prohibits MCL from interfering with its relationship with any of its merchants. The complaint does not allege any factual allegation other than the same conduct that is governed by the contract.

In opposition, plaintiff contends that pleading in the alternative is acceptable at this stage of the litigation, however plaintiff does not address the substance of the argument. Although plaintiff alleges that pleading in the alternative is necessary because MCL is disputing that it breached the agreement, it is not disputing the existence of the agreement, therefore alternative pleading is not required as this cause of action is duplicative of the breach of contract cause of action.

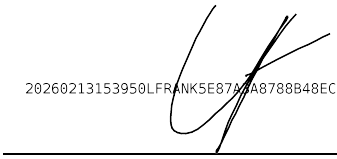
Breach of Fiduciary Duty

The elements of a cause of action to recover damages for breach of fiduciary duty are the existence of a fiduciary relationship, misconduct by the defendant, and damages directly caused by the defendant's misconduct. *106 N. Broadway, LLC v Lawrence* 189 AD3d 733 [2020]. "A cause of action sounding in breach of fiduciary duty must be pleaded with particularity under CPLR 3016 (b)" *Id.*

Similarly, as with tortious interference cause of action, this cause of action is duplicative of the breach of contract cause of action. Based on the allegations made in the complaint, the Court finds that the complaint is devoid of the requisite facts and allegations to establish a cause of action of breach of fiduciary duty. Specifically, the complaint is devoid of factual allegations of establishing a fiduciary relationship and defendant’s misconduct, other than the allegations of the breach of contract. Thus, the cause of action for breach of fiduciary duty is duplicative of the breach of contract claim and is therefore dismissed. Accordingly, it is hereby

ORDERED that the complaint is dismissed in its entirety as against defendants Aliza Shaulson and Moshe Chaim Lehrer, and the matter is severed and continues against the remaining defendant; and it is further

ORDERED that the second and third causes of action are dismissed in their entirety.



2/13/2026
DATE

LYLE E. FRANK, J.S.C.

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