

Weissy v Paz
2026 NY Slip Op 31193(U)
March 24, 2026
Supreme Court, New York County
Docket Number: Index No. 651614/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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DAVID WEISSY,

Plaintiff,

- v -

DAVID S. PAZ, AEH-VSLV, LLC, 225 BOWERY LLC, VNAA, LLC, KAL REALTY PARTNERS LLC, DW CONSTRUCTION SERVICES LLC (NOW KNOWN AS CMG SERVICES LLC), TLLULE LLC

Defendants.

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INDEX NO. 651614/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 47, 48

were read on this motion to/for DISMISS.

Defendants’ motion to dismiss is granted in part as described below.

Background

Plaintiffs David Weissy (“Mr. Weissy”) and his company, DW Construction Consulting LLC (“DW LLC”) claim that defendant David S. Paz (“Mr. Paz”) and his affiliated corporate entities engaged in scheme to avoid paying Mr. Weissy for his work as project manager and consultant on the large-scale renovation of a building at 225 Bowery Street. This was a complicated project which included a hotel, a café restaurant, a rooftop bar, and a ground floor garden. Mr. Weissy details that planning began in or around 2013 and construction began in early 2015. He contends that as his time on the project was nearing its end in 2017, the parties

entered into an agreement whereby Mr. Paz would pay Mr. Weissy \$250,000 for the rest of his work on the project.

Mr. Weissy was paid half of that amount in monthly installments but claims he is still owed another \$125,000, which he alleges was due to him no later than six months after the completion of the project. The hotel opened for business in March 2019, and Mr. Weissy sent Mr. Paz an invoice dated August 1, 2019 which is addressed to “CMG Services/Omnia Group” and is from DW Construction Consulting LLC (“DW LLC”) (NYSCEF Doc. No. 5). Plaintiffs bring causes of action for 1) breach of contract asserted on behalf of Mr. Weissy, 2) breach of contract asserted on behalf of his company, DW LLC, 3) account stated with respect to the August 1, 2019 invoice for \$125,000 on behalf of DW LLC, 4) alter ego liability against the corporate defendants, and 5) unjust enrichment asserted on behalf of both plaintiffs.

Defendants move to dismiss all causes of action asserted against 225 Bowery LLC pursuant to CPLR 3211 (a) (1) and (7), to dismiss all causes of action brought by DW Construction Consulting LLC (“DW LLC”) pursuant to CPLR 3211 (a) (1), (3) and (7) and New York Limited Liability Law § 808 (a), to dismiss the first and second causes of action pursuant to CPLR 3211 (a) (7), to dismiss the third cause of action for account stated pursuant to CPLR 3211 (a) (1), and to dismiss the fourth cause of action for alter-ego liability pursuant to CPLR 3211 (a) (7). Defendants do not move to dismiss the fifth cause of action for unjust enrichment except to the extent that they argue that all causes of action should be dismissed against 225 Bowery LLC.

Defendants argue that documentary evidence conclusively establishes a complete defense as to defendant 225 Bowery LLC – they claim that the affidavit of Mr. Paz at NYSCEF Doc. No. 12 establishes that 225 Bowery LLC was formed in Delaware in January of 2019 and was

authorized to do business in New York a month later – well after the alleged agreement was entered into in 2017.

Defendants also argue that all claims asserted by DW LLC should be dismissed, as DW LLC is a foreign limited liability company with its principal place of business in New Jersey and that it does not have the right to maintain a lawsuit in New York. They detail that even if it were allowed to maintain a lawsuit, the breach of contract claim asserted on behalf of DW LLC must fail because the complaint states that Mr. Weissy entered into the alleged agreement in his individual capacity and that any unpaid compensation is “owing and due to Mr. Weissy.” Defendants further detail that the AIA agreement annexed to the complaint at NYSCEF Doc. No. 6 was signed only by Weissy individually.

Regarding the first and second causes of action, defendants argue that both fail to state a cause of action for breach of contract. Defendants further contend that the third cause of action for account stated cannot stand, as Mr. Paz immediately rejected Mr. Weissy’s August 1, 2019 invoice for the remaining \$125,000. They contend that Mr. Weissy abandoned the project and took a project manager with him, which further hurt defendants’ ability to finish the project on time.

With regard to the fourth cause of action, for alter ego liability, defendants contend that the language in the complaint which alleges that “Mr. Paz should be liable for the debts of all of the corporate defendants” and the fact that plaintiffs claim that Mr. Paz entered into the agreement render this cause of action moot as duplicative of the breach of contract claims. Defendants also contend that this cause of action cannot survive as New York does not recognize a separate cause of action to pierce the corporate veil. They continue that plaintiffs have not met

their heavy burden to sustain this cause of action – they do not allege any fraud or malfeasance, but merely allege breach of contract.

In opposition, plaintiffs do not address the defendants’ arguments that all causes against 225 Bowery LLC should be dismissed, nor do plaintiffs address defendants’ arguments that DW LLC is a foreign corporation that cannot maintain suit in New York.

Turning to the first and second causes of action for breach of contract, plaintiffs argue that they have adequately pled all of the elements of breach of contract in both instances. Regarding the third cause of action for account stated, plaintiffs admit that Mr. Paz objected to the final invoice, but they claim that this does not resolve all factual issues or conclusively dispose of the claims. They further argue that the email does not qualify as documentary evidence. Plaintiffs ask why, if Mr. Weissy quit, would Mr. Paz continue to make the installment payments to Mr. Weissy. Plaintiffs also contend that Mr. Paz should have objected earlier and point to a May 17, 2017 email attached at NYSCEF Doc. No. 24 in which Mr. Weissy requests that Mr. Paz pay him \$250,000 as a bonus for the work he completed on the project.

Regarding the fourth cause of action, plaintiffs argue that dismissing alter ego causes of action are generally disfavored. Plaintiffs argue that their complaint adequately claimed that Mr. Paz exercised complete domination of the defendant corporations which he used to avoid paying Mr. Weissy \$125,000.

Plaintiffs request that, in the event that the Court determines that any of their pleadings are inadequate, they should be granted leave to replead pursuant to CPLR 3211(e).

In reply, defendants point out that plaintiffs do not address their arguments that 225 Bowery LLC did not exist at the time the deal was allegedly made and that all claims should therefore be dismissed against 225 Bowery LLC. Defendants then point out that plaintiffs do not

address the argument that DW LLC is a foreign corporation and lacks capacity to maintain this action. Defendants reiterate their entitlement to the dismissal of the account stated claim based on the August 1, 2019 email where Mr. Paz objected to the invoice. Defendants then say that, regarding the claim for alter ego liability, that plaintiffs have only pled a “garden variety breach of contract dispute” which does not constitute a fraud or wrong warranting the piercing of the corporate veil.

Discussion

DW LLC’s Status as a Foreign Corporation Is Not Jurisdictionally Fatal

Defendants argue that all causes of action asserted on behalf of DW LLC should be dismissed, as it is a foreign corporation registered in the state of New Jersey, has not obtained a certificate of authority to do business in New York, and therefore it cannot maintain this lawsuit pursuant to New York Limited Liability Company Law § 808 (a). Plaintiffs admit that DW LLC is a foreign corporation, and they do not address, let alone rebut, defendants’ argument that it is therefore unable to maintain this lawsuit. However, the Court must deny the part of defendants’ motion which seeks to dismiss all causes of action asserted on behalf of DW LLC.

The First Department has opined that it is not necessarily a fatal jurisdictional flaw where a foreign LLC fails to obtain a certificate of authority to do business in New York before commencing a lawsuit (*see Basile v Mulholland*, 73 AD3d 597, 597 [1st Dept 2010]). The Second Department has analogized New York Limited Liability Company Law § 808 (a) to Business Corporation Law § 1312 (a), which requires corporations (rather than LLCs) to obtain a certificate of authority to do business before bringing a lawsuit in New York (*Matter of Mobilevision Med. Imaging Servs., LLC v Sinai Diagnostic & Interventional Radiology, P.C.*, 66 AD3d 685, 686 [2d Dept 2009]). When ruling on the requirements of the analogous Business

Corporation Law § 1312 (a), the Second Department opined that, “The purpose of this statutory provision is to regulate foreign corporations which are doing business within the State, not . . . to enable the avoidance of contractual obligations...The party relying upon this statutory barrier bears the burden of proving that the corporation's business activities in New York were not just casual or occasional, but so systematic and regular as to manifest continuity of activity in the jurisdiction" (*Forethought Life Ins. Co. v 1442, LLC*, 244 AD3d 1076 [2d Dept 2025] [internal citations and quotations omitted]).

A case with facts similar to those in the present matter came before the Second Department in *Eng'g & Tech. Resources, Inc. v Xcel Dev. Corp.*, (139 AD3d 661 [2d Dept 2016]). There, the trial court had granted defendants’ motion to dismiss the complaint of a New Jersey Corporation which performed engineering services related to the development of real property in New York. The plaintiff corporation appealed, and the Second Department ruled that the trial court erred because, “the defendants failed to demonstrate that [the plaintiff’s] business activities in New York were so systematic and regular as to manifest continuity of activity in New York...Consequently, the defendants did not overcome the presumption that [the plaintiff] does business in New Jersey, its state of incorporation, and not in New York (*id.* at 662).

The Court agrees with the Second Department that these statutory provisions should not be used to enable the avoidance of contractual obligations and further finds that defendants have not met their burden of proving that DW LLC’s business activities in New York were “so systematic and regular as to manifest continuity of activity in the jurisdiction.” The Court therefore denies the part of defendants’ motion which seeks to dismiss all claims brought by plaintiff DW LLC on the basis that it is a foreign corporation.

Defendants Have Not Shown that Claims Against 225 Bowery LLC Should be Dismissed

The Court of Appeals has ruled that in order to grant a motion to dismiss based upon documentary evidence, such motion “may be appropriately 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]).

Defendants argue that documentary evidence conclusively establishes a complete defense as to defendant 225 Bowery LLC. Defendants provide an affidavit from Mr. Paz in which he swears that 225 Bowery LLC was formed in Delaware on January 14, 2019 – well after the alleged agreement was entered into in 2017. Plaintiffs do not rebut this point. However, defendants did not cite to one case which supports their proposition that this case should be completely dismissed as against 225 Bowery LLC, nor does the Court find that the documentary evidence is so clear that it completely refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law. Plaintiffs contend that 225 Bowery LLC was one of Mr. Paz’s shell companies that he used to avoid contractual obligations. Plaintiffs claim that “In order to avoid paying Weissy...Mr. Paz caused defendants VNAA, KAL, and TLLULE to transfer ownership of the Property to defendant 225 Bowery, all of which are alter-egos of Mr. Paz” (NYSCEF Doc. No. 3 at 9-10). So, while 225 Bowery LLC may have been incorporated after the alleged agreement was made, that is not dispositive. The Court does not find that defendants have conclusively shown that all claims asserted against 225 Bowery LLC are improper. If what plaintiffs allege is true, and 225 Bowery LLC is another corporation controlled by Mr. Paz and received the assets and the real estate that is the subject of this litigation from the other corporations controlled by Mr. Paz, then plaintiff should have the chance to prove that 225 Bowery LLC was used to avoid fulfilling any of the other defendants’ contractual obligations. In

other words, 225 Bowery LLC should not be able to escape liability merely because it was formed after the agreement was allegedly entered into. The Court therefore denies the part of defendants' motion which seeks to dismiss all claims asserted against 225 Bowery LLC.

Plaintiffs' First and Second Causes of Action for Breach of Contract Survive

“It is settled that a motion for dismissal pursuant to CPLR 3211(a)(7) must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. The pleading is to be liberally construed. The court must accept the facts alleged in the pleading as true and accord the opponent of the motion... the benefit of every possible favorable inference to determine only whether the facts as alleged fit within any cognizable legal theory” (*Siegmund Strauss, Inc. v E. 149th Realty Corp.*, 104 AD3d 401, 403 [1st Dept 2013] [internal quotations and citations omitted]).

The elements of breach of contract are “the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages.” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

Defendants assert that plaintiffs have failed to state a claim and that the first and second causes of action for breach of contract should be dismissed. Defendants contend that the fact that plaintiffs did not allege whether the alleged agreement was oral or written is in and of itself fatal to the breach of contract claim. Furthermore, defendants contend that the complaint is vague – it does not state what the obligations are, whether he brought the project to completion, and they point to the August 1, 2019 email where Mr. Paz rejects Mr. Weissy's \$125,000 invoice; defendants argue that the e-mail makes it appear as though Mr. Weissy quit before the project was completed and did not perform under the agreement.

Plaintiffs contend that they adequately pled breach of contract; the complaint alleges that the parties had an agreement, that plaintiffs performed, that defendants breached the agreement by failing to pay, and plaintiffs were therefore damaged in the amount of \$125,000 – the amount they claim they were owed under the agreement for their services.

Defendants point to the First Department’s decision in *Sud v Sud*, (211 AD2d 423 [1st Dept 1995]) which does conclude that a claim for breach of contract was impermissibly vague, partly because plaintiff did not state whether the contract was written or oral. However, that court did not find that this one factor was determinative; it was listed among other factors that the First Department considered in rendering its decision in that instance.

In this instance, the Court finds that plaintiffs have adequately pled a cause of action for breach of contract. The complaint very clearly alleges the elements for breach of contract, and the Court does not find that it is fatal that plaintiffs did not allege whether the original agreement was oral or written. Additionally, defendants’ arguments essentially admit a contract – they say that the email makes it seem like Mr. Weissy quit before the project was completed and did not perform *under the agreement*. Clearly, this implies that he was quitting from something and that there was some sort of agreement. Of course, the fact that Mr. Paz admittedly already paid Mr. Weissy \$125,000 also, in and of itself, points to the existence of an agreement between the parties. The Court therefore denies the part of defendants’ motion which seeks dismissal of the first and second causes of action.

DW LLC’s Claim for Account Stated Is Dismissed, Mr. Paz Immediately Rejected the Bill

“[E]ither retention of bills without objection or partial payment may give rise to an account stated (*Morrison Cohen Singer & Weinstein, LLP v Waters*, 13 AD3d 51, 52 [1st Dept 2004]). A party’s vague assertion that it raised the issue of payment with the other party is

insufficient to create an issue of fact (*see LePatner Project Solutions LLC v 320 W. 115 St.*, 192 AD3d 507, 508 [1st Dept 2021] [internal citations omitted]).

Defendants contend that the August 1, 2019 email wherein Mr. Paz immediately rejected the bill for \$125,000 defeats DW LLC's claim for account stated. Plaintiffs point out that Mr. Paz admittedly paid \$125,000 in six invoices, and the fact that he objected to the final one does not resolve all factual issues relating to that claim. Indeed, one of the invoices that was paid does make reference to Mr. Weissy's belief that he was entitled to \$250,000 total; the invoice dated August 17, 2017 shows a total amount paid as "\$83333.35/250k" (NYSCEF Doc. No. 4 at 5). Furthermore, the e-mail provided at NYSCEF Doc. No. 24 dated May 17, 2017 shows Mr. Weissy's clear belief that he was entitled to \$250,000.

Despite this, the fact remains that when plaintiffs sent the actual bill for the remaining \$125,000, Mr. Paz immediately rejected the bill. And no partial payments were made on this particular bill – the entire thing was outright rejected. Since Mr. Paz immediately rejected the bill, and plaintiffs do not contend otherwise, the Court grants the part of defendants' motion which seeks to dismiss the third cause of action for account stated. If plaintiffs and defendants really did have an agreement whereby Mr. Weissy was to be paid an additional \$125,000, plaintiffs may recover under their breach of contract claims.

The Court Declines to Dismiss the Fourth Cause of Action for Alter Ego Liability

“In order for a plaintiff to state a viable claim against a parent or alter ego of the corporation, the plaintiff must allege facts that, if proved, indicate that the parent or alter ego exercised complete domination of the corporation in respect to the transaction attacked and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the

plaintiff's injury" (*Americore Drilling & Cutting, Inc. v EMB Contr. Corp.*, 198 AD3d 941, 944 [2d Dept 2021]).

Here, the Court finds that plaintiffs have stated a viable claim against Mr. Paz as alter ego of the defendant corporations. Plaintiffs alleged that "all of the corporate defendants -- AEH; 225 Bowery; KAL; CMG; and TLLULE – were never intended to have any true existence as separate entities, but instead each of them was organized and designed to act as a device by which Mr. Paz could ultimately avoid all obligations, responsibilities and liabilities to third parties, including plaintiffs, Mr. Weissy and DW LLC, by engaging in unlawful and improper activity without incurring personal liability" (NSYCEF Doc. No. 3 at 7). This clearly alleges that Mr. Paz exercised complete domination over the defendant corporations and that this domination was used to commit a wrong against plaintiffs, which resulted in monetary damages. The Court therefore denies the part of defendants' motion which seeks to dismiss the fifth cause of action for alter ego liability.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted only to the extent that plaintiffs' third cause of action for account stated is severed and dismissed; and it is further

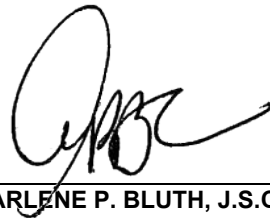
ORDERED that all additional relief sought by either party is denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a conference on April 28, 2026 at 10 a.m. On or before April 21, 2026, the parties shall upload to NYSCEF 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or, 3) letters explaining why no agreement about discovery could be reached. The Court

will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If no discovery update is uploaded by April 21, 2026, the parties will be expected to appear for the conference in person, and failure by any party to appear may result in the Court striking that party's pleading.

3/24/2026
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