Fischer v Frisch
2026 NY Slip Op 31194(U)
March 24, 2026
Supreme Court, New York County
Docket Number: Index No. 653070/2025
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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BRETT ARI FISCHER,

Plaintiff,

- v -

ADAM M. FRISCH, MANTUS REALTY, LLC

Defendant.

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INDEX NO. 653070/2025

MOTION DATE 07/30/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Before the Court is the motion by the defendants Adam M. Frisch ("Frisch") and Mantus Realty, LLC ("Mantus") to dismiss the first, second, and fourth causes of action in the complaint pursuant to CPLR § 3211(a)(1) and (7). The plaintiff Brett Ari Fischer opposes the motion in its entirety. The defendants have not moved to dismiss the third cause of action, which alleges a breach of a personal loan agreement against Frisch.

According to the complaint, the plaintiff is a licensed real estate agent in New York whose license was associated with Mantus (formerly Lee & Associates NYC Residential) from approximately 2018 until May 2024. The plaintiff alleges he was the Senior Managing Director for Sales. On or about October 31, 2021, the plaintiff entered into a written agreement with the firm. Under this contract, the plaintiff operated as an independent contractor and agreed to pay an annual "desk fee" to cover operational costs. In exchange, Mantus agreed to pay him 100% of all commissions generated from the residential real estate sales he closed, and 100% (initially 70%) of the commissions generated by residential leases he secured, minus any third-party referral fees. Because Mantus was the broker of record, all real estate transactions were executed in Mantus's name, and all commission checks were made payable to Mantus.

The plaintiff alleges that starting in October 2024, Frisch—the sole owner and broker of record for Mantus—began converting commission checks belonging to the plaintiff for his own personal use. In February 2025, Frisch allegedly confessed to the plaintiff that he was suffering from personal financial difficulties and had taken the commission funds to cover his personal debts, including his apartment rent and utility bills, causing the Mantus bank account to become overdrawn. On May 13, 2025, after the plaintiff's attorney sent a demand letter for the unpaid commissions, Frisch disassociated the plaintiff's license from Mantus. As a result, the plaintiff claims he is owed at least $229,804.00 in unpaid commissions.

The complaint asserts four causes of action: (1) Violation of the New York City Freelance Isn't Free Act (FIFA); (2) Breach of Contract; (3) Breach of Contract regarding a personal loan; and (4) Conversion. The defendants seek to dismiss the first, second, and fourth causes of action on the ground that they fail to state a cause of action.

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 plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, bare legal conclusions and factual claims which are flatly contradicted by the record or documentary evidence are not presumed to be true (*see Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017]).

Regarding the first cause of action, the defendants move to dismiss the plaintiff's FIFA claim, arguing that the plaintiff, as a real estate broker who worked for commissions, is legally defined as a sales representative" and is therefore explicitly excluded from FIFA's protections. The plaintiff counters that whether he qualifies as a sales representative is a factual question because he handled leases in addition to sales and notes the New York State Association of Realtors advises that FIFA applies to real estate brokers. Under FIFA (NYC Admin. Code § 20-927), a "freelance worker" is defined as any natural person hired or retained as an independent contractor to provide services in exchange for compensation. However, the statute expressly excludes "Any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law." Labor Law § 191-a(d) defines a sales representative as an independent contractor who solicits orders in New York State and is paid in whole or in part by commissions.

Accepting the allegations in the complaint as true, the plaintiff explicitly pleads that he was an independent contractor who solicited real estate sales and leases in exchange for commission-based compensation. The Court rejects the plaintiff's contention that handling leases removes him from the definition of a sales representative, as he was still soliciting orders in exchange for a commission. The non-binding advisory bulletin from a real estate association cannot override the plain, statutory text of the exemption. Because the plaintiff's own factual allegations place him squarely within the statutory exclusion for sales representatives, he is not a covered freelance worker under FIFA. Accordingly, the first cause of action is dismissed.

The second cause of action is for breach of contract. The defendants argue that the breach of contract claim must be dismissed against Mantus because the complaint fails to set forth the material terms of the agreement. They further argue the claim must be dismissed against Frisch personally because the complaint fails to allege sufficient particularized facts to pierce the corporate veil.

"[T]o 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; and (4) defendant's breach resulted in damages" (*34-06 73, LLC v Seneca Ins. Co*., 39 NY3d 44, 52 [2022] [internal citations omitted]). "The test to be applied is whether the complaint gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments" (*JP Morgan Chase v J.H. Elec. of New York, Inc*., 69 AD3d 802, 803 [2d Dept 2010] [citations omitted]). Contrary to the defendants' arguments, the complaint is sufficiently particular. The plaintiff clearly identifies the material terms of the agreement: he agreed to pay an annual fee to cover operational costs, and in exchange, Mantus agreed to pay him 100% of the commissions generated by his residential sales and leases. The complaint further alleges that the plaintiff fully performed under the contract and that Mantus failed to remit the $229,804.00 owed, resulting in damages. At the pleading stage, a plaintiff is not required to attach the contract or plead its terms verbatim (*see 12 Baker Hill Road, Inc. v Miranti*, 130 AD3d 1425, 1426 [3d Dept 2015]). The complaint adequately puts the defendants on notice of the transactions and occurrences intended to be proved.

Generally, a member of an LLC is not personally liable for the company's debts. However, the corporate veil may be pierced when the owner exercised complete domination over the corporation with respect to the transaction at issue,

and such domination was used to commit a fraud or wrong against the plaintiff that resulted in injury (*see Morris v. State Dep't of Finance*, 82 NY2d 135, 141 (1993). While the defendants correctly assert that a simple breach of contract, without more, does not warrant piercing the corporate veil, Plaintiff has alleged substantially more than a simple breach.

Factors to consider in a veil-piercing claim include the failure to adhere to corporate formalities, commingling of assets, and the use of corporate funds for personal use (*see Millennium Constr., LLC v. Loupolover*, 44 AD3d 1016, 1016-1017 [2d Dept 2007]; *Shisgal v Brown*, 21 AD3d 845, 848-849 [1st Dept 2005]). The complaint specifically alleges that Frisch was the only individual with access to the Mantus bank account, that he treated the corporate account as his own, and that he directly admitted to taking the commission funds owed to the plaintiff to pay his personal apartment rent, utility bills, and personal creditors, thereby overdrawing the corporate account. Accepting these allegations as true, the plaintiff has sufficiently pled that Frisch completely dominated the corporate entity and abused the corporate form to commit a wrong—stealing corporate receivables strictly to fund his personal lifestyle—which directly caused the plaintiff injury. As veil-piercing is a fact-laden claim generally unsuited for resolution on a motion to dismiss, the plaintiff is entitled to discovery on this issue (*see Cortlandt Street Recovery Corp. v Bonderman,* 31 NY3d 30, 47 [2018]). Accordingly, the second cause of action shall go forward as against both Mantus and Frisch.

Finally, the defendants seek dismissal of the fourth cause of action for conversion, arguing that a simple breach of contract for unpaid funds cannot be transformed into a tort claim. They contend that because the commission funds were paid directly to Mantus, the plaintiff only ever held a contractual right to receive payment, rather than actual ownership or control over the specific funds. A claim of conversion requires a plaintiff to show a possessory right or interest in the property and the defendant's dominion over the property or interference with it in derogation of the plaintiff's rights (*see Soviero v Carroll Group Intl., Inc.*, 27 AD3d 276, 277 [1st Dept 2007] Crucially, a conversion claim cannot be based only on the allegation that a defendant received money and failed to remit payment to the plaintiff (see *Lynn v. Maida*, 170 AD3d 573, 574 [1st Dept 2019]; *Interstate Adjusters v First Fid. Bank, N.J.*, 251 AD2d 232, 234 [1st Dept 1998]).

Plaintiff's reliance on *Petrone v Davidoff Hutcher & Citron, LLP* is misplaced (*see Petrone v Davidoff Hutcher & Citron, LLP*, 150 AD3d 776 [2d Dept 2017]). In *Petrone*, the funds at issue were deposited into a designated attorney escrow account for the specific benefit of minor children, which the law

firm wrongfully withdrew (*Id.)* Here, the plaintiff explicitly concedes that because Mantus was the broker of record, all commission checks were made payable to Mantus Realty. Thus, the plaintiff never exercised actual ownership, possession, or control over the specific checks deposited into the Mantus account; rather, he possessed an actionable contractual right to collect a share of the firm's receivables. Because the conversion claim is entirely predicated on a mere breach of a contractual obligation to remit payment, it is duplicative and cannot stand. Accordingly, the motion to dismiss the fourth cause of action is granted.

The motion to dismiss the complaint is granted to the extent that the first and fourth causes of action are dismissed. The motion is otherwise denied. The defendants shall file an answer to the complaint within 20 days of the filing of this order with notice of entry. The parties shall appear for a preliminary conference on June 18, 2026 at 2:15 pm at 80 Centre Street, Room 327, New York, New York.

3/24/2026					
DATE			**NICHOLAS W. MOYNE, 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**	