SABR Chems., Group, LLC v Northeast Chems., Inc.
2026 NY Slip Op 31849(U)
April 27, 2026
Supreme Court, New York County
Docket Number: Index No. 650608/2019
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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SABR CHEMICALS GROUP, LLC,

Plaintiff,

- v -

NORTHEAST CHEMICALS, INC., UNITED FOODS CORP. A/K/A UNITED FOODS CORPORATION, JIMMY HSU

Defendant.

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INDEX NO. 650608/2019

MOTION DATE

MOTION SEQ. NO. 014 015 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 014) 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 448, 460, 461, 462, 463, 472, 474, 501, 504, 507

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 464, 473, 475, 502, 505, 508

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 465, 466, 467, 468, 469, 470, 471, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 503, 506, 509

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff's motions for partial summary judgment (motion sequence 014) and for sanctions (motion sequence 015) are granted as described below. Defendants' motion for summary judgment (motion sequence 016) is granted in part and denied in part.

The Hearing on Motion Sequence 015

In the interim order at NYSCEF Doc. No. 506, the Court held motion sequence numbers 014, 015, and 016 in abeyance because the Court determined that a hearing was required as to

motion sequence 015 (plaintiff's motion for sanctions against defendants for the spoliation of discovery documents). The hearing was required because the three defendants took the position that all of their documents were wiped out in two separate ransomware attacks, both during the course of this litigation while document demands were pending and that these attacks occurred three years apart.

Defendants claimed the attack hit one defendant in 2020 (but at the hearing added that it started in late 2019) and then another attack wiped out the other two defendants in 2023. The sought-after documents were only available from defendants and demands therefor were made well before the alleged ransomware attacks. Credibility was an issue for several reasons – one glaring one was that defendants failed to respond to the document demands, and could have, but kept delaying until they said when they were ready to retrieve the documents it was too late because their documents were just wiped out.

As defendants claimed their documents were maintained in India, their "IT guy", Mr. Madhavan, testified remotely from India. Over the course of the litigation, Mr. Madhavan submitted three separate affidavits. As he was present to testify, the affidavits were not admitted into evidence although the parties were free to use them as they could use prior deposition testimony.

Credibility of Defendants' Witness

The Court had plenty of opportunity to observe the demeanor or Mr. Madhavan both before and during his testimony, even if it was remote. Unfortunately, there were extensive technical problems setting up the courtroom. However, Mr. Madhavan remained looking into the camera, patiently waiting, for almost two hours. The Court observed him, initially through embarrassment for making a witness wait that long, then curiously because he did not move

once. Weirdly, he did not get up from his chair, he did not read a paper, he did not take a phone call, he did not scroll on his phone – several times the Court thought the screen had frozen but then saw him blink. Yet when he finally testified, he was constantly fidgeting and looking up and to his right, so much so that it was distracting.

Not only was Mr. Madhavan's demeanor indicative of not being credible, more importantly, his story just did not make sense. He claimed was supposed to be running the servers for Mr. Hsu's businesses. He testified that in February 2020 he got a call from Mr. Hsu that he was locked out of his computer systems. Upon investigation, Mr. Madhavan discovered there was a ransomware attack and a demand for a million dollars to restore the files. Mr. Hsu did not want to pay it, so all documents were lost. In response to the attack, Madhavan installed Symantec software, which he claimed would protect from future attacks. Mr. Madhavan had no proof of the attack – no police report, no picture of the ransom demand. As for the second incident, Mr. Madhavan similarly provided convenient and conclusory testimony; there was another alleged ransomware attack without any supporting documentation. After this alleged attack, however, Mr. Hsu stopped being a client of Mr. Madhavan's firm and the relationship ended in 2023.

And so this Court did not believe that there was a ransomware attack at all. It might be possible that Mr. Madhavan was just ineffectual, that he messed up in some way and lost defendants' data and blamed it on a fictitious ransomware attack. If Mr. Hsu was duped, then he could not produce the documents through no fault of his own. Although the Court observes that because the alleged attacks came well after the demands were made, the supposed attack would not have mattered if he had timely responded.

But other things did not make sense. First, why was Mr. Madhavan so cooperative now, two and a half years after he lost the client? Every experienced litigation knows how difficult it can be to get an ex-employee witnessed (but was not involved) an accident in New York to show up for a deposition. But defendants were able to get a tech worker they fired two and a half years ago in India to voluntarily show up to talk about his incompetence in protecting data? That raised many questions about whether there was something more to the relationship between Mr. Hsu and his companies and Mr. Madhavan and his company that was undisclosed. It just did not make sense that Mr. Madhavan would show up from India for an ex-client to back up a story that did not withstand scrutiny.

Not only was his testimony incredible and his presence fishy, Madhavan testified that defendants' attorney had no input in any part of his three affidavits that he had submitted to Court over the course of this litigation. Instead, he said that his friend in India helped him. And that testimony was purposely elicited by defendants' counsel, specifically distancing himself from Madhavan's affidavits. That is just strange on many levels. First, except for process servers' affidavits, counsel typically interviews the deponent and drafts and redrafts the affidavit in consultation with that witness. To have nothing to do with a major witness' affidavit and just submit it to the Court – three different times – is more than very odd. Ethics even require an attorney to be satisfied that there is no perjury, so to allow major affidavits to be submitted without even interviewing the witness is curious.

Against this backdrop, the Court had to determine whether the failure to produce the documents was willful. In other words, was Mr. Hsu duped, or was he part of this charade? Prior to his testimony, the timing of the alleged attacks right as discovery deadlines approached seemed, at best a little to convenient.

But Mr. Hsu did testify. And when Mr. Hsu testified, it became clear to the Court that he was part of this scam. When he first took the stand, he came across as quite confident. Perhaps trying to help his case, he testified that he started to have computer problems in or about October 2019, three of four months *before* the February 2020 alleged ransomware attack. He testified that he now knows that the hackers started their access to his systems as evidenced by the fact that his computer worked slower and that he could not open certain documents. He testified that he notified Mr. Madhavan about these problems. However, this was new information and neither Mr. Madhavan nor Ms. Kelly Gonczi, a clerical employee of defendants who testified, ever mentioned this purported slow down. Ms. Gonczi said one day in February 2020 she was locked out of the computers and Mr. Madhavan testified that he was called that February because they were locked out of their computers.

Not only was this new "information" uncorroborated, it was also not credible. In fact, it was so incredible that the Court gave Mr. Hsu a chance to explain. It is one thing if the third-party company you trust to keep your data safe is caught unaware with a ransomware attack. A rational actor might give the benefit of the doubt and choose to stay with that company, assuming that service will improve in the future. But if that company was warned months earlier and they failed to take appropriate action, causing a complete loss of your data, then there is little chance any decision maker would stay with that company.

When the Court asked Mr. Hsu how he could stay with Mr. Madhavan, his confidence deflated, seemingly confounded by this obvious and common sense inquiry. He initially responded "that's a good question" before ultimately answering that it was "because he was cheap." That is not credible. This testimony makes the Court conclude that there was no data breach at all and that these documents are still available.

For completeness, the court will discuss the other two witnesses' testimony. Ms. Kelly Gonczi, the clerical employee of the two defendants who worked under Mr. Hsu, was entirely credible. She testified that one day she was locked out of her computer, told Mr. Hsu, he dealt with it, but she never got back in. She has since worked per diem from home for Mr. Hsu and his other companies.

Mr. Zhivov, plaintiff's IT/cybersecurity expert, was credible. From the metadata, obtained from the recipient's side of the emails, which he documented and put into evidence, it shows that Microsoft hosted the servers and not Madhavan's company. This just corroborates the Court's conclusion that Mr. Hsu still has all the information and documents that he has not turned over. But even without Mr. Zhivov's testimony, the Court came to the same conclusion based on the testimony of Madhavan and Hsu and their lack of any supporting documentation whatsoever.

That leaves this Court to decide what the sanction should be for willfully failing to turn over the documents necessary for the ninth cause of action, plaintiff's cause of action to pierce the corporate veil (motion sequence 014 is plaintiff's motion for summary judgment which seeks judgment only on the ninth cause of action; motion 015 is plaintiff's motion for sanctions for the spoliation).

Clearly, Mr. Hsu is in full control of both corporations; he was the president of both corporations, they were in the same building, Ms. Kelly Gonczi worked for both, and Mr. Hsu was the exclusive point person with their IT guy who controlled the companies' data and computer systems. He had the unfettered authority to hinder plaintiff's efforts to obtain documents relating to the companies. The only fair sanction is to dismiss all defenses and denials

and grant summary judgment as to liability on the ninth cause of action – to pierce the corporate veil. This resolves motion sequences 014 and 015.

Defendants' Motion for Summary Judgment

The Court now focuses on motion sequence 016, defendants' motion for summary judgment dismissing eight of the nine causes of action asserted in plaintiff's third amended complaint; defendants do not move to dismiss plaintiff's fourth cause of action, for breach of contract against Northeast Chemicals, Inc. ("Northeast").

Broadly, defendants argue that this Court does not have personal jurisdiction over defendants Hsu and United Foods Corp., so all causes of action asserted against them should be dismissed. Defendants also argue that plaintiff's claims against United Foods Corp. are barred by the six-year statute of limitations in CPLR 213 and the four-year limitation period in UCC §2-275 for contracts for the sale of goods. These arguments are premised on the notion that United Foods Corp. was only made a party to this action pursuant to the Court's decision and order at NYSCEF Doc. No. 381, which allowed plaintiff to amend the caption and change "United Foods Corporation" to "United Foods Corp. A/K/A United Foods Corporation."

Regarding the first cause of action for fraud in the inducement against Northeast, the second cause of action for intentional misrepresentation against Northeast, the fifth cause of action for fraud in the inducement against Hsu and United Foods Corp., and the sixth cause of action for intentional misrepresentation against Hsu and United Foods Corp., defendants argue that plaintiff had the means to inquire as to the quality or veracity of the representation (that Mr. Hsu already had a contract with a third party to purchase the vitamin C), but plaintiff did not do so. Defendants argue that plaintiff's lack of diligence bars plaintiff from maintaining these

causes of action. Defendants also argue that plaintiff's fraud claims are barred, as they are duplicative of plaintiff's breach of contract claims.

Plaintiff argues that it did not have a duty to investigate Mr. Hsu's representations, as they did not have any hints as to the falsity of Mr. Hsu's statements and that there remains a question of fact as to whether the third-party contract ever existed. Plaintiff further details that defendants have failed to establish how Hsu's alleged misrepresentations about the third-party contract relate in any way to a promise to perform the Northeast contract. Plaintiff argues that the fraud claims are meritorious, and not duplicative of the contract claims, because Mr. Hsu fraudulently induced plaintiff to enter into a contract, and there are questions of fact about plaintiff's justifiable reliance on the misrepresentations and damages stemming from the misrepresentations.

Regarding plaintiff's third and seventh causes of action – for rescission against Northeast and Hsu and United Foods Corp., respectively, defendants argue that it is unclear how rescission might be available against Hsu and United Foods Corp., as they were not signatories to the purchase order between plaintiff and Northeast. Defendants argue that plaintiff has an adequate remedy at law – its contract claim against Northeast, and that rescission is unavailable as the status quo cannot be restored. Plaintiff argues that they entered into the contract due to Mr. Hsu's misrepresentations, that they are entitled to complete relief, and "may seek both rescission and damages."

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York*

Univ. Med. Ctr., 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id*.). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York,* 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee,* 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Personal Jurisdiction

As an initial matter, defendants' argument that the Court does not have personal jurisdiction over Hsu and United Foods Corp. is barred by the law of the case. Justice James already found that the Court has jurisdiction over United Foods Corporation and Jimmy Hsu in her decision on motion sequences 001 and 002 under index number 651899/2022, which has since been consolidated under the instant index number. While defendants noted that it was unclear whether United Foods Corp. (as opposed to the similarly named United Foods Corporation) was a party to the instant lawsuit when they submitted their papers, the First Department has since confirmed that United Foods Corp. is indeed a party to this lawsuit:

> "Supreme Court providently exercised its discretion in granting plaintiff's motion to amend the caption and the complaint to change the name of defendant United Foods Corporation to United Foods Corp. also known as United Foods Corporation. Documents in the record—including emails, bank records, a credit reference, and a purchase order—sufficiently link United Foods Corporation and United Foods Corp…Defendants admit that defendant Jimmy Hsu, the president of defendants Northeast Chemicals, Inc. and United Foods Corporation, was also the president of United Foods Corp.…[A]n amended summons naming United Foods Corp. is not necessary because the court already has jurisdiction over it" (*Sabr Chems. Group, LLC v Northeast Chems., Inc.*, 242 AD3d 622, 622-623 [1st Dept 2025] [internal citations omitted])."

Statute of Limitations

The Court finds that defendants' argument that plaintiff's eighth cause of action (its breach of contract claim against Hsu and United Foods Corp.) is barred by the statute of limitations is also barred by the law of the case. Defendants moved to dismiss the since-consolidated matter, which named Hsu and United Foods Corporation, under the theory that plaintiff's claim was barred by the statute of limitations (index number 651899/2022). Justice James denied their motion. That decision was never appealed, the cases have since been consolidated, and the First Department ruled that the Court has jurisdiction over both Hsu and United Foods Corp. – in October of 2025. Defendants are simply repeating arguments that were already made and denied. The Court therefore denies the part of defendants' motion which seeks dismissal based on plaintiff's alleged failure to comply with the statute of limitations.

Plaintiff's Fraud and Misrepresentation Causes of Action (1, 2, 5, and 6)

"To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury" (*Genger v Genger*, 144 AD3d 581, 582 [1st Dept 2016]). "In the context of a contract case, the pleadings must allege misrepresentations of present fact, not

merely misrepresentations of future intent to perform under the contract, in order to present a viable claim that is not duplicative of a breach of contract claim. Moreover, these misrepresentations of present fact must be collateral to the contract and must have induced the allegedly defrauded party to enter into the contract" (*Wyle Inc. v ITT Corp.*, 130 AD3d 438, 439 [1st Dept 2015] [internal citations and quotations omitted]).

Here, plaintiff pled that Mr. Hsu made false representations that induced them to enter into the contract with Northeast. Plaintiff details that prior to entering into the contract, Mr. Hsu represented that Northeast had a contract with a third party to purchase twelve containers of vitamin C, that plaintiff would essentially act as a middleman, and that since there was already a purchaser lined up, that the transaction would be riskless for plaintiff. Plaintiff continues that despite Mr. Hsu's representation that this deal would be riskless, he never really had the third party contract and was only speculating on the market; he had Sabr order the material and take all the risk but he only intended to pay for and take possession of the vitamin C if the market prices were higher than the locked in contract price at which Mr. Hsu could acquire the vitamin C from plaintiff, and his companies could make a profit. Plaintiffs detail that since the market price for vitamin C fell, Mr. Hsu would not have profited off of the transaction, and so he did not honor his contractual obligations and pay for the product. In other words, plaintiff claims it entered into the contract with defendants because defendants falsely assured plaintiff that there was already a firm buyer for the product lined up – a fact that defendants knew was false when they made the representation. There was no firm buyer lined up and so the allegations do not merely evince an intention to breach the contract.

The Court finds that defendants have not met their burden to show as a matter of law that they are entitled to summary judgment dismissing the fraud and misrepresentation causes of

action as duplicative of the breach of contract claims. Plaintiff has alleged that Mr. Hsu misrepresented a present fact that induced it to enter into a contract with Northeast. The Court likewise finds that the record is devoid of any indication that Sabr had a reason to believe that Mr. Hsu's representations were false thereby triggering their obligation to investigate whether or not he was being truthful. The Court therefore denies the parts of defendants' motion which seeks to dismiss the fraud and misrepresentation causes of action asserted against defendants. It will be for the trier of fact to determine if defendants made material misrepresentations which induced plaintiff to enter into a contract, and if so, whether plaintiff suffered any damages collateral to those that resulted from the breach of contract.

Plaintiff's Rescission Causes of Action (3 and 7)

"The equitable remedy of rescission is only to be invoked where the plaintiff has no adequate remedy at law and where the parties can be substantially restored to their status quo ante positions" (*Habberstad Volkswagen, Inc. v GC Volkswagen, Inc.*, 127 AD3d 1019, 1020 [2d Dept 2015]).

Plaintiff does not address defendants' argument that the seventh cause of action, for rescission as against Mr. Hsu and United Foods Corp. must be dismissed, as neither Hsu nor United Foods Corp. were parties to the contract in question – the purchase order was between plaintiff and Northeast. The Court therefore grants the part of defendants' motion which seeks to dismiss plaintiff's seventh cause of action, for rescission against Hsu and United Foods Corp.

As for the third cause of action, for rescission of the purchase order between plaintiff and Northeast, plaintiff has neither shown that it lacks an adequate remedy at law nor has it shown what rescission looks like and how, in this instance, the parties can be substantially restored to

their status quo as it existed before entering into the contract. Plaintiff does have an adequate remedy at law – for breach of contract, and it may recover under this theory. The Court therefore grants the part of defendants' motion which seeks to dismiss plaintiff's third cause of action, for rescission of the purchase order between plaintiff and Northeast.

Summary

After a hearing, the Court determined that defendants engaged in the spoliation of evidence/willful refusal to produce essential discovery and therefore granted motion sequence 014 (plaintiff's motion for summary judgment to pierce the corporate veil as to Jimmy Hsu and United Foods Corp.) and motion sequence 015 (plaintiff's motion for sanctions for spoliation) to the extent that summary judgment is granted on plaintiff's ninth cause of action and the corporate veil has been pierced as against Jimmy Hsu and United Foods Corp. a/k/a United Foods Corporation.

Motion sequence 016, defendants' motion for summary judgment, is granted only to the extent that the Court dismisses plaintiff's third and seventh causes of action for rescission and is otherwise denied.

All other relief sought by either party is denied.

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment on the ninth cause of action to pierce the corporate veil (MS 014) is granted; and it is further

ORDERED that plaintiff's motion for sanctions for spoliation (MS 015) is granted the extent that defendants' answer is stricken inasmuch as it asserts defenses to the ninth cause of action; and it is further

ORDERED that the part of defendants' motion (MS 016) for summary judgment is granted only to the extent that plaintiff's third and seventh causes of action for rescission are severed and dismissed; and it is further

ORDERED that all other relief sought is denied.

4/27/2026
DATE

ARLENE P. BLUTH, J.S.C.

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