Nil Orme San. Ve Tic. As. v Solar Star Apparel, Inc.
2026 NY Slip Op 31941(U)
May 5, 2026
Supreme Court, New York County
Docket Number: Index No. 652967/2021
Judge: Ashlee Crawford
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 38

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NIL ORME SAN. VE TIC. A.S.,

Plaintiff,

- v -

SOLAR STAR APPAREL, INC.,MORRIS TAWIL, NEHIRLI TEKSTIL GIYIM SAN. VE TIC. A.S.

Defendants.

INDEX NO. 652967/2021

MOTION DATE 03/28/2023, 05/01/2023[1]

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

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HON. ASHLEE CRAWFORD:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 131
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 113, 114, 115, 116, 117, 118, 119, 130, 132, 133
were read on this motion to/for DISMISS.

Plaintiff Nil Orme San. Ve Tic. A.S. seeks recovery under contract, quasi-contract, and tort theories arising out of its sale of goods to defendant Solar Star Apparel, Inc. ("Solar Star") via an agreement brokered by defendant Morris Tawil ("Tawil").

Tawil moves pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss the claims asserted against him in the second amended complaint, as well as the cross-claim asserted against him by defendant Solar Star in its verified answer to the first amended complaint, which is no longer the operative complaint (motion seq. 003).

[1] This action was transferred to the undersigned in 2025.

Tawil separately moves pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss Solar Star's cross-claim asserted against him in its verified answer to the second amended complaint. Both motions are opposed and are consolidated for disposition herein.

ALLEGATIONS

Plaintiff is a Turkish corporation based in Istanbul engaged in the manufacture of textile fabrics and garments for export to the United States and elsewhere. Tawil allegedly serves as an agent for defendant Nehrili Tekstil Giyim San. Ve Tic. A.S. ("Nehirli"), another Turkish textile manufacturer that also exports goods to the United States. Solar is a New York corporation that imports and sells clothing (Second Amended Complaint ["SAC"] ¶¶ 2-5 [NYSCEF Doc. 91]).

Plaintiff alleges that, in early 2020, Solar's president contacted Tawil for help in sourcing certain clothing items ("the Goods") (*id.* ¶ 6). Tawil allegedly told Solar that the Goods could be produced in Turkey by Nehirli, which he claimed was his company (*id.* ¶ 7). However, Tawil instead arranged for Plaintiff to produce and ship the Goods to Solar (*id.* ¶¶ 8-14). Plaintiff manufactured and shipped the Goods to Solar from June to October 2020, and included with each delivery an invoice with payment instructions (*id.* ¶¶ 16-17). Plaintiff was unaware of Tawil's representations to Solar that Nehirli was the manufacturer of the Goods, or that Nehirli had any involvement in the sale of the Goods (*id.* ¶ 15).

Solar paid Plaintiff the full amount due under the June and July 2020 invoices, and then stopped paying Plaintiff after Tawil allegedly instructed Solar to direct future payments to Nehirli instead of Plaintiff (*id.* ¶¶ 19-24). Tawil repeatedly represented to Plaintiff that he was in touch with Solar about obtaining payment for the July and August 2020 shipments; Plaintiff, in reliance on Tawil's representations, continued shipping the Goods to Solar in September and October 2020 (*id.* ¶¶ 26-27). After Solar received the last shipment of Goods, Tawil allegedly stopped replying to

Plaintiff's inquiries, leaving Solar with an unpaid balance of $149,338.59 for the delivered Goods (*id.* ¶¶ 28-29).

Plaintiff alleges that Tawil made other misrepresentations during this time. For instance, Tawil purportedly misrepresented to Solar that Plaintiff was "his factory", Nehirli was "his company," the Goods would be sourced from Nehirli, and, thus, Solar should pay Nehirli for the Goods (*id.* ¶¶ 20-21, 31-32, 37, 79). Plaintiff claims that Tawil intentionally did not make it aware of his misrepresentations to Solar, as to induce Plaintiff to continue manufacturing and shipping the Goods to Solar, which Plaintiff did in reliance on Tawil's omissions (*id.* ¶¶ 79-82).

Plaintiff asserts twelve causes of action in the SAC. Pertinent to the instant motions, its fifth, sixth, seventh, and eleventh causes of action are brought against Tawil for, respectively: unjust enrichment, fraud, tortious interference with contract, and civil conspiracy to commit fraud along with Nehirli. Plaintiff seeks to recover damages of at least $149,338.59, plus interest, attorneys' fees, costs, and punitive damages on the fraud claims (SAC [NYSCEF Doc. 91]). Solar, in its Verified Answer to the SAC, asserts cross-claims against both Tawil and Nehirli for common law indemnification and contribution on the grounds that Solar placed all orders for the Goods through Tawil and made each payment pursuant to his instructions (Answer to the SAC [NYSCEF Doc No. 112]).

DISCUSSION

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" Leon v Martinez, 84 NY2d 83, 87 [1994], citing CPLR 3026). "We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (id. at 87-88). Allegations consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (Godfrey v Spano, 13 NY3d 358, 373 [2009]). "In assessing a motion under

CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (id. [internal citation omitted]). "Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (Leon v Martinez, supra at 88).

Fraud (Sixth Cause of Action)

Tawil argues that plaintiff fails to state a claim for fraud, because the allegations are not plead with the particularity required by CPLR 3016 (b); the alleged misrepresentations or omissions we directed to Solar, not Plaintiff; and Tawil had no duty to disclose, as plaintiff does not allege a fiduciary or other relationship between Tawil and Plaintiff (Memo of Law in Supp. at 8-10 [NYSCEF Doc. 89]). Tawil further contends that the fraud claim arises out of Plaintiff's transaction with Solar and that a claim cannot lie against him as a third-party, as there is no connection between his alleged omissions and the damages caused by Solar's failure to pay Plaintiff's invoices (*id.* at 10). Tawil maintains that his alleged misrepresentations amount to nothing more than a "mere allegation of an insincere promise to perform under an agreement in the future" which cannot form the basis of a fraud claim (*id.*). Last, Tawil claims that emails between himself and Solar provide a conclusive defense to the fraud claim as they show him negotiating with Plaintiff and Nehirli, which disproves the allegation that he misrepresented to Solar that he owned either Plaintiff or Nehirli, and that the emails show there was a subcontracting agreement between the two (*id.* at 11-13).

A plaintiff states a claim for fraud by pleading "a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016][citation omitted]). "CLR 3016(b) requires that 'circumstances constituting the wrong shall be

stated in detail'" (Epiphany Community Nursery Sch. v Levey, 171 AD3d 1, 9 [1st Dept 2019], lv withdrawn 34 NY3d 927 [2019]). "The statutory provision is satisfied when the facts suffice to permit a 'reasonable inference' of the alleged misconduct" (id.).

To the extent the fraud cause of action against Tawil is based on his alleged misrepresentations to Solar (*see* SAC ¶¶ 15, 20, 73, 79), such averments cannot support a claim for fraud as there is no allegation that Solar communicated these statements to Plaintiff or that Tawil even intended for such communications to take place (*cf. Loreley Fin. (Jersey) No. 28, Ltd. v Merrill Lynch, Pierce, Fenner & Smith Inc.*, 196 AD3d 434, 436 [1st Dept 2021] ["no fraud action may be maintained against a defendant for misrepresentations made by a defendant to a third party where the third party did not communicate any negative information to the plaintiff"]; *see also Pasternack*, 27 NY3d at 829). Indeed, plaintiff alleges just the opposite: "Throughout these email and telephone communications [in 2020], Plaintiff was unaware at the time of any of Tawil's representations to Solar Star regarding [Nehirli]" (SAC ¶ 15).

However, plaintiff also alleges that Tawil represented in various emails "that he was following up with Solar Star concerning outstanding payments to Plaintiff" and that Plaintiff continued producing and Shipping the Goods in reliance on these messages, all while Tawil was actually instructing Solar to render payments to Nehirli instead (*id.* ¶¶ 83-85). The Court finds that the October and November 2020 emails submitted by Tawil, between himself and Solar (NYSCEF Doc. 105), do not utterly refute Plaintiff's allegations about Tawil's representations. Rather, the emails show that Tawil directed Solar to render certain payments to Nehirli and that other outstanding balances owed to Plaintiff were subject to negotiations between the parties about discounts and chargebacks stemming from delays and nonconforming goods delivered by Plaintiff (*id.* at 10/28/20 email from Tawil to Solar; 11/8/20 email from Tawil to Solar).

Plaintiff also sufficiently pleads Tawil's material omissions in failing to tell it about his instructions to Solar, which were made to induce plaintiff's reliance, and upon which plaintiff relied (SAC ¶¶ 80-82). Finally, Plaintiff's justifiable reliance on the alleged misrepresentations and omissions and its resulting injury is plead with sufficient specificity (SAC ¶¶ 82-87; CPLR 3016[b]).

Thus, that part of Tawil's motion seeking dismissal of the sixth cause of action for fraud is denied.

Unjust Enrichment (Fifth Cause of Action)

To state a claim for unjust enrichment, "plaintiff must show that (1) the other party was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal quotations omitted]). "[T]he existence of a valid contract governing the subject matter generally precludes recovery in quasi contract for events arising out of the same subject matter" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 23 [2005]; *see Parrott v Logos Capital Mgt., LLC*, 91 AD3d 488, 489 [1st Dept 2012]; *cf. Sergeants Benevolent Assn. Annuity Fund v Renck*, 19 AD3d 107, 112 [1st Dept 2005]). "A nonsignatory to a valid contract . . . cannot be held liable for unjust enrichment when the claim covers the same subject matter as covered in the written agreement" (*Capone v Castleton Commodities Intl. LLC*, 148 AD3d 506, 507 [1st Dept 2017]; *see Board of Mgrs. Of 15 Union Square West Condominium v Azogui*, 220 AD3d 405, 405-406 [1st Dept 2023]).

Here, Plaintiff's contract with Solar covers the same subject matter as its unjust enrichment claim against Tawil. The contract claim against Solar alleges that Plaintiff entered an agreement with Solar for delivery of the Goods, that it performed thereunder by manufacturing and delivering them, and that Solar breached the agreement by failing to pay in full causing $149,338.59 in damages (SAC ¶¶ 49-54). The unjust enrichment claim against Tawil is premised on the allegation that he made

certain misrepresentations to Solar that induced it to render the outstanding payments to himself and Nehirli rather than Plaintiff, thereby enriching Tawil and Nehirli in the same amount as the damages allegedly caused by Solar (SAC ¶¶ 72-75). Plaintiff's contention that the benefit retained by Tawil could have been some other benefit of his alleged collusion with Nehirli is unavailing as it is only raised in its Memorandum of Law and not at all pled in the Second Amended Complaint. Dismissal of the fifth cause of action for unjust enrichment against Tawil is therefore granted.

Tortious Interference with Contract (Seventh Cause of Action)

"Tortious interference with contract requires the existence of a valid contract between plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom" (*Lama Holding v Smith Barney*, 88 NY2d 413, 424 [1996]). "[O]nly a stranger to a contract, such as a third party, can be liable for tortious interference with a contract" (*Bradbury v Israel*, 204 AD3d 563, 564 [1st Dept 2022][citation omitted]). Although "[i]t is true that an agent cannot be held liable for inducing a principal to breach a contract with a third party where the agent was acting on behalf of the principal and within the scope of the agent's authority," an agent may be held liable for tortious interference with contract where they "were acting outside the scope of their authority and in furtherance of their own interests" (*Tekton Bldrs. LLC v 1232 S. Blvd LLC*, 180 AD3d 616, 617 [1st Dept 2020]).

Plaintiff sufficiently states a claim for tortious interference with contract against Tawil. To the extent the pleading alleges Tawil was acting as Solar's agent in facilitating the purchases from Plaintiff (SAC ¶ 77), it also alleges that he acted faithlessly towards Solar by making certain misrepresentations to it (SAC ¶¶ 7-12, 20-21, 37, 79; *see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 416 [2001] [fundamental to agency relationship that agent is "prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good

faith and loyalty in the performance of his duties"] [internal quotations and citations omitted]). Plaintiff therefore sufficiently alleges that Tawil acted outside the scope of his authority as Solar's agent and in furtherance of his own interest (*cf. Tekton Bldrs. LLC*, 180 AD3d at 617).

Additionally, Tawil's proffered documentary evidence is inconclusive and does not vitiate the well-pled tortious interference claim against him. Although he claims the documents show that he did not improperly receive any payments from Solar (Memo of Law in Supp. at 17), such claim is immaterial because Plaintiff is merely required to allege that it sustained damages from Tawil's interference, not that he personally benefited from his own interference (*see Lama Holding v Smith Barney*, 88 NY2d at 424). Moreover, the payment records do not show that all payments were made to Plaintiff (*see* NYSCEF Docs. 94-102). Finally, the Court does not consider those documents submitted in original Turkish unaccompanied by an English translation (CPLR 2101[b]; NYSCEF Doc Nos. 107-108).

The Court therefore denies that part of the motion seeking dismissal of the seventh cause of action for tortious interference.

Civil Conspiracy to Commit Fraud (Eleventh Cause of Action)

"Although New York does not recognize an independent cause of action for civil conspiracy, allegations of civil conspiracy are permitted 'to connect the actions of separate defendants with an otherwise actionable tort'" (*Cohen Bros. Realty Corp. v Mapes*, 181 AD3d 401, 404 [1st Dept 2020], quoting *Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986]). To plead a civil conspiracy claim, plaintiff must allege "the primary tort, plus the following four elements: an agreement between two or more parties; an overt act in furtherance of the agreement; the parties' intentional participation in the furtherance of a plan or purpose; and resulting damage or injury (*Cohen Bros. Realty Corp*, 181 AD3d at 404). "A cause of action sounding in civil conspiracy

cannot stand alone, but stands or falls with the underlying tort" (*Romano v Romano*, 2 AD3d 430, 432 [2d Dept 2003]).

Tawil argues that the eleventh cause of action for civil conspiracy to commit fraud should be dismissed as this claim is not recognized as an independent tort. In response, Plaintiff avers that allegations of conspiracy are permitted to connect the actions of different defendants with an otherwise actionable tort; and that the Second Amended Complaint does this with respect to Tawil and Nehirli, insofar as it alleges that Tawil wrongfully directed payments from Solar to Nehirli, which Nehirli then accepted and refused to turn over to Plaintiff.

As discussed *supra*, Plaintiff has pled the underlying fraud as against Tawil. Plaintiff also pleads that Tawil and Nehirli had an agreement and engaged in overt and intentional acts in furtherance of the fraudulent scheme, resulting in harm to plaintiff (SAC ¶¶ 112-115).

That part of the motion seeking to dismiss the eleventh cause of action for civil conspiracy against Tawil is denied.

Common Law Indemnification & Contribution Cross-Claim

Last, Tawil moves to dismiss Solar's cross-claim for common law indemnification and contribution, arguing that Solar's Answer to the Second Amended Complaint is conclusory as it only alleges the purchase orders were made pursuant to Tawil's instructions.[2] He also argues that Solar fails to make any allegation of negligence or a duty of care on his part. In opposition, Solar argues that it is entitled to indemnification because Tawil breached his duty to it because he was negligent in failing to credit it for payments made to Plaintiff and/or by directing that Solar's payments be made to Nehirli.

[2] The Court denies as moot the portion of Motion Sequence 003 seeking the same relief as against Solar's Cross-Claim in its Verified Answer to the First Amended Complaint, as that pleading is superseded by its Answer to the Second Amended Complaint.

"Common-law indemnification may be pursued by parties who have been held vicariously liable for the party that actually caused the negligence that injured the plaintiff" (*Chatham Towers, Inc. v Castle Restoration & Constr., Inc.*, 151 AD3d 419, 420 [1st Dept 2017]). However, "in general, common-law indemnification is not available when the primary claim alleges breach of contract resulting from the breaching party's own conduct" (*Board of Mgrs. of the Porter House Condominium v Delshah 60 Ninth LLC*, 192 AD3d 415 [1st Dept 2021]). Here, Solar is being sued, *inter alia*, for breaching its contract with Plaintiff by failing to pay Plaintiff for the Goods. Common law indemnification is therefore unavailable to Solar. Similarly, it may not pursue its cross-claim for contribution because the underlying claim seeks purely economic damages resulting from a breach of contract (*Lehr Associates Consulting Engineers, LLP v Daikin AC (Americas) Inc.*, 133 AD3d 533, 534 [1st Dept 2015]; *Children's Corner Learninng Ctr. v A. Miranda Contr. Corp.*, 64 AD3d 318, 324 [1st Dept 2009]). The Court therefore grants Tawil's motion seeking dismissal of Solar's cross-claim against him.

Accordingly, it is hereby:

ORDERED that that part of the motion by defendant Morris Tawil seeking dismissal of the claims asserted against him in the Second Amended Complaint is GRANTED IN PART only as directed to the fifth cause of action for unjust enrichment, and is otherwise DENIED (motion seq. 003); and it is further

ORDERED that the remainder of the motion by defendant Morris Tawil seeking dismissal of the cross-claim for common law indemnification and contribution asserted in the answer to the first amended complaint is DENIED as moot (motion seq. 003); and it is further

ORDERED that the motion by defendant Morris Tawil seeking dismissal of the cross-claim for common law indemnification and contribution asserted in the answer to the Second Amended Complaint is GRANTED and the cross-claim is DISMISSED (motion seq. 004); and it is further

ORDERED that defendant Morris Tawil shall file and serve an answer within 20 days of service of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a status conference to be calendared by the Clerk of the Court.

This constitutes the decision and order of the Court.

5/5/2026
DATE

ASHLEE CRAWFORD, 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