

Oasis Sportswear, Inc. v Rego
2008 NY Slip Op 33650(U)
July 2, 2008
Supreme Court, New York County
Docket Number: 115500/07
Judge: Marilyn Shafer
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Marilyn Shafer

PART 8

Index Number : 115500/2007

OASIS SPORTSWEAR INC

vs

REGO, PATRICIA

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

1, 2, 3
4, 5, 6

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Memo

Answering Affidavits — Exhibits memo

Replying Affidavits _____

Cross-Motion: Yes No

*and cross motion are denied in
~~accord with the~~*

Upon the foregoing papers, it is ordered that this motion ~~is denied and the~~

accord with the annexed memorandum.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JUL 08 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7/2/08

MARILYN SHAFER
J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER
Justice

PART 8

OASIS SPORTSWEAR, INC.,

Plaintiff,

-against-

PATRICIA REGO, PAT REGO CONSULTING, INC.,
and PAT REGO, INC.,

Defendants.

INDEX NO. 115500/07
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

PATRICIA REGO, and PAT REGO CONSULTING, INC.,

Thrd-Party Plaintiffs,

-against-

JOSPEH TRACHTMAN,

Third-Party Defendant.

FILED
JUL 08 2008
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 6, were read on this petition under Article 78 of the Civil Practice Law and Rules:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation – Exhibits	1,2
Memorandum of Law	3
Notice of Cross-Motion, Affirmation – Exhibits	4,5
Memorandum of Law	6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion and cross-motion are denied.

This is a dispute between a women's clothing merchandiser and a former employee. The employer moves to dismiss, in part, counterclaims asserted by the employee against its principal. The employee cross-moves to compel discovery.

The record shows that the defendant, Pat Rego, was employed by the plaintiff, Oasis Sportswear, for almost ten (10) years without a written contract. She was compensated for her services through her corporation, Pat Rego Consulting, Inc. When she left Oasis she formed Pat Rego, Inc. to continue to do business in the women's apparel industry.

Oasis initiated an action against Rego and her corporations for: (1) breach of fiduciary duty against Rego and Rego Consulting; (2) Unfair competition against all defendants; (3) unjust enrichment against all defendants; (4) injunctive relief; (5) money had and received against Rego and Rego Consulting (compensation overpayment 2006) ; and (6) money had and received against Rego and Rego Consulting (compensation overpayment 2007).

Defendants counter-claimed against Oasis and Joseph Trachtman, Oasis president and sole shareholder for: (1) breach of contract; (2) unjust enrichment; (3) fraud; and (4) an accounting against Oasis only.

Oasis moves to: (1) dismiss Pat Rego, Inc. as a third-party plaintiff and counter-claimant; (2) dismiss the first and second counterclaims against Trachtman; and (3) dismiss the third and fourth counterclaims on the following grounds:

(1) Oasis never contracted with Pat Rego, Inc., which did not exist until after

Rego left Oasis.

(2) Rego failed to plead facts to substantiate a claim for piercing the corporate veil, the only theory under which liability could be imposed against Trachtman personally.

(3) The third cause of action, Fraud, does not lie where the allegations are merely duplicative of the breach of contract claim.

(4) Defendants are not entitled to an accounting because there is not a fiduciary relationship between the parties.

Defendants filed an amended answer, voluntarily removing Pat Rego, Inc. as a third-party plaintiff, and adding allegations regarding Trachtman's co-mingling of Oasis funds with his own and the absence of any corporate formalities.

Plaintiff urges this Court to disregard defendants' amended pleading due to its untimely service, 10 days too late to be served as of right. In the alternative, plaintiff argues the amended pleading fails to correct the pleading deficiencies.

It is well-settled that on a motion to dismiss pursuant to CPLR 3211, a pleading shall be liberally construed and will not be dismissed for insufficiency merely because it is inartistically drawn. (*Foley v D'Agostino*, 21 AD2d 60 [1st Dept 1964]) The relevant inquiry is whether the requisite allegations of any valid cause of action cognizable by the state courts can be fairly gathered from the four corners of the complaint (*Id.*). Defects shall be ignored if a substantial right of a party is not prejudiced. (21 AD2d at 65). The court must accept the facts as alleged in the pleading to be true and accord the non-movants the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (*Leon v Martinez*, 84 NY2d 83 [1994])

Upon review of the amended third-party complaint, this Court finds that defendants' causes of action are sufficiently stated. Accordingly, the motion is denied.

The cross-claim is denied as moot.

We have considered the other arguments of the parties and find them to be without merit.

This Court notes that Mr. Trachtman and Ms. Rego are very angry with each other. It is hoped that they will, in the future, seek modes of resolution other than inconsequential motion practice.

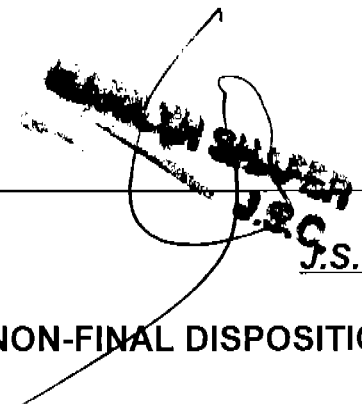
Accordingly, it is

Ordered that the motion is denied; and it is further

Ordered that the cross-motion is denied.

This reflects the decision and order of the court.

Dated: 7/2/08



J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

FILED
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