

SGB Packaging Group, Inc. v Saverglass SAS
2021 NY Slip Op 31198(U)
April 12, 2021
Supreme Court, New York County
Docket Number: 650844/2020
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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SGB PACKAGING GROUP, INC.,

Plaintiff,

- v -

SAVERGLASS SAS, SAVERGLASS INC., HEINZ-GLAS
GMBH & CO. KGAA, HEINZ GLAS USA INC., HEINZ-GLAS
PERU S.A.C.

Defendant.

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INDEX NO. 650844/2020

MOTION DATE 08/14/2020,
12/09/2020

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 41, 42

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and for the reasons set forth on the record (4/12/2021), (i) Heinz-Glas USA (**Heinz US**), Heinz-Glas GmbH & Co. KGaA (**Heinz Germany**), and Heinz-Glas Peru S.A.C.'s (**Heinz Peru**, together with Heinz US and Heinz Germany, hereinafter, collectively, **Heinz**) motion to dismiss (Mtn. Seq. No. 001) is granted solely to the extent that the declaratory judgment (sixth) cause of action is dismissed and (ii) SGB Packaging Group, Inc.'s (**SGB**) motion to compel (Mtn. Seq. No. 002) Saverglass SAS (**Saverglass France**) and Saverglass Inc.'s (**Saverglass US**, together with Saverglass France, **Saverglass**) production of responses to its First Set of Interrogatories and First Request for Production of Documents is granted.

The Relevant Facts and Circumstances

This action arises from Heinz's attempt to walk away from Saverglass's alleged relationship and fiduciary duties to SGB. More specifically, the complaint alleges that SGB was the North American sales agent for Saverglass France and its subsidiary Saverglass US, a multinational glass manufacturer that produced high end bottles for perfumes and beauty products, known as flacons (NYSCEF Doc. No. 1, ¶¶ 2-9). Although SGB admits that the parties never reduced their agreement to writing, SGB alleges that based on their agreement, from 2009 to 2019, SGB invested significant time and resources in the parties' relationship (*id.*, ¶¶ 38-49). Among other things, SGB alleges that they shared their customers and confidential information, annual budgets and business forecasts to assist Saverglass France with assessing its own production and inventory, responded to all of Saverglass France's customer inquiries in North America, and was instrumental to introducing Saverglass products in North America and expanding its customer base (*id.*, ¶¶ 52-68).

There came a time when Saverglass decided to sell its flacon business to Heinz Germany. Saverglass did not disclose the sale to SGB prior to a public announcement. In fact, SGB learned for the first time on October 2, 2018 that Saverglass would sell its business to Heinz Germany during the LuxePack trade show in Monaco (*id.*, ¶ 70).

Subsequently, SGB's President, Shoshana Gibli, had lunch with the Chief Sales Officer of Heinz Germany, Virginia Elliott, to discuss the parties' relationship. On October 5, 2018, three days after the announcement, Ms. Elliott advised Ms. Gibli that "[w]e look forward to working with

SGB Packaging in the near future” (*id.*, ¶¶ 75-76). Based on this assurance, the complaint alleges that SGB continued to invest in this relationship (*id.*, ¶¶ 76-82). However, although Ms. Gibli emailed Heinz Germany a proposed letter of agreement in February 2019, Heinz Germany did not respond and it closed the purchase of Saverglass in May 2019 (*id.*, ¶¶ 77-78).

From 2019 onwards, Heinz allegedly obtained SGB’s confidential information from Saverglass and used such information to facilitate direct sales to customers that SGB had previously managed on behalf of Saverglass (*id.*, ¶¶ 79-80). In addition, Heinz allegedly used certain flacon molds that were custom created at SGB’s expense for its own customers, without approval from SGB (*id.*, ¶¶ 81, 86).

On February 6, 2020, SGB sued Saverglass and Heinz alleging (1) breach of fiduciary duty against Saverglass France (first), (2) aiding and abetting breach of fiduciary duty against Saverglass US and Heinz (second), (3) quantum meruit against Saverglass France (third), (4) unjust enrichment against Saverglass France (fourth), (5) unjust enrichment against Heinz Germany (fifth), (6) a declaratory judgment against Heinz Peru (sixth), and (7) termination of agency (seventh) (NYSCEF Doc. No. 1).

Discussion

- I. **Heinz’s Motion to Dismiss (Mtn. Seq. No. 001) is Denied Pursuant to CPLR § 3211 (a)(8) but Granted Solely to the Extent of the Declaratory Judgment (Sixth) Cause of Action Pursuant to CPLR § 3211 (a)(7)**
 - A. **SGB Alleges Sufficient Facts to Assert Personal Jurisdiction Pursuant to CPLR § 302 (a)(1) as to Heinz**

Pursuant to CPLR § 302 (a)(1), a court may exercise personal jurisdiction over a non-domiciliary where its activities are purposeful and there is a substantial relationship between the transaction and the claim asserted, even if only one transaction takes place in New York (*Fischbarg v Doucet*, 9 NY3d 375, 380 [2007]; *Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]). In other words, the defendant must avail “itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws” (*Fischbarg*, *id.*).

SGB alleges that Heinz Germany, Heinz Peru, and Heinz US transacted business in New York by manufacturing flacons that were directly shipped to SGB’s former New York customers (NYSCEF Doc. No. 1, ¶¶ 79, 86, 94-100). According to the well plead complaint, SGB’s confidential customers and flacons specifically designed for Saverglass were provided to Saverglass pursuant to their exclusive distribution relationship which Heinz seeks to avoid post acquisition of this business at SGB’s expense. The complaint further alleges that Heinz usurped SGB’s business relationships by supplying flacons to New York customers that SGB had previously generated for Saverglass including, Le Labo, Ellis Brooklyn, The 7 Virtues, Verla International, Ltd., Batallure Beauty, LLC, Raymond Matts, LLC, and Bath & Body Works (*id.*, ¶¶ 22-37). These transaction form the basis for SGB’s aiding and abetting breach of fiduciary duty claim. Accordingly, the branch of Heinz’s motion to dismiss for lack of personal jurisdiction under CPLR § 302 (a)(1) is denied.¹

¹ For the avoidance of doubt, SGB’s argument that jurisdiction should be conferred over Heinz based on the conduct of Heinz US, their subsidiary, fails. The complaint merely alleges that Heinz US took direction from Heinz Germany at times. This is insufficient to ground jurisdiction. The complaint does not allege sufficient facts of domination and control or alter-ego jurisdiction to suggest that the subsidiary was a mere department of the parent or otherwise to establish a ground to assert jurisdiction over Heinz (*Cf. Starr Russia Invs. III B.V. v Deloitte Touche Tohumatsu Ltd.*, 169 AD3d 421, 422 [1st Dept 2019] [plaintiff made sufficient showing of facts that might give rise to alter ego jurisdiction]).

B. The Doctrine of Forum Non Conveniens Also Does Not Support Dismissal

Pursuant to CPLR § 327, a court may exercise its sound discretion to dismiss an action if it “finds that in the interest of substantial justice the action should be heard in another forum.” (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984]). In making this determination, courts consider the burden on New York courts, potential hardship to the defendant, the unavailability of an alternative forum in which the plaintiff may bring suit, the residency of the parties, and whether the transaction at issue arose primarily in a foreign jurisdiction, with no one factor controlling (*id.*). Ultimately, the plaintiff’s choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant (*Waterways, Ltd. v Barclays Bank PLC*, 174 AD2d 324, 327 [1st Dept 1991]).

The balance of factors here does not favor dismissal. New York has a substantial nexus to the claims asserted. As discussed above, the gravamen of the complaint arises out of Saverglass France’s alleged breach of fiduciary duty and the aiding and abetting of that breach which caused damage to SGB here in New York. In addition, Heinz will not suffer any significant hardship by having to defend this lawsuit in New York as Heinz US, its US subsidiary, is a New York corporation. The burden on this court in interpreting French law is *de minimus* as the Commercial Division is often called upon to apply the laws of a foreign jurisdiction (*see Intertec Contr. A/S v Turner Steiner Intl.*, 6 AD3d 1, 6 [1st Dept 2004]). Finally, dismissal is also not warranted where the burden on the parties would be increased because they would be required to participate in dual litigation concerning overlapping issues in separate fora (*see Elmaliach v*

Bank of China Ltd., 110 AD3d 192, 209 [1st Dept 2013]). Accordingly, the branch of Heinz's motion to dismiss for forum non conveniens is denied.

C. Dismissal Pursuant to CPLR § 3211 (a)(7)

1. Aiding and Abetting Breach of Fiduciary Duty by Heinz (Second Cause of Action)

A claim for aiding and abetting fiduciary duty requires (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach (*Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 809 [2d Dept 2011]).

SGB alleges that Saverglass France breached its fiduciary duty to SGB and that Heinz aided and abetted this breach. The fiduciary duty between Saverglass France and SGB is premised upon allegations that the parties shared a relationship of trust and confidence pursuant to which SGB provided Saverglass France with confidential business information for ten years and SGB served as Saverglass France's exclusive US distributor during this time. To wit, in support of this exclusive relationship, the complaint alleges that Saverglass France required SGB to submit confidential annual budgets, business forecasts, and customer information (NYSCEF Doc. No. 1, ¶¶ 6-13, 38-53). Additionally, the complaint alleges that SGB helped develop Saverglass France's brand equity and goodwill by making its products known in the US, serving as a business reference, sharing SBG customers, handling Saverglass's North American customer inquiries, and taking part in joint marketing efforts (*id.*, ¶¶ 56-68). As such, the complaint adequately pleads the existence of a fiduciary duty between Saverglass France and SGB (*see Zimmer-Masiello, Inc. v Zimmer, Inc.*, 159 AD2d 363, 365 [1st Dept 1990], citing *A. S. Rampell, Inc. v Hyster Co.*, 3 NY2d 369 [1957]) [noting that fiduciary duty exists between manufacturer

and distributor where manufacturer dominates distributor, distributor invests time to develop business for manufacturer, and distributor obliged to make customer lists and business records available to manufacturer]).

SGB also sufficiently pleads that Heinz had actual knowledge of the fiduciary duty owed by Saverglass and that Heinz aided and abetted Saverglass' alleged breach of fiduciary duty. Among other things, SGB alleges that it had discussions with Ms. Elliott of Heinz Germany where she acknowledged that SGB would remain a distributor for Heinz after the acquisition of Saverglass and that Heinz used confidential information that it received from Saverglass to steal SGB customers in New York (NYSCEF Doc. No. 1, ¶¶ 17, 75-77, 79-82, 98-101; NYSCEF Doc. No. 25, ¶ 14). According every favorable inference as the court must on a motion to dismiss, SGB states a claim for aiding and abetting breach of fiduciary duty as against Heinz and the branch of the motion to dismiss this claim is denied.

2. Unjust Enrichment Against Heinz Germany (Fifth Cause of Action)

The elements of unjust enrichment are “(1) the other party was enriched, (2) at that party’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” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]).

The complaint alleges that Heinz Germany was enriched at SGB’s expense by using flacon molds that SGB paid approximately \$350,000 to develop and create (NYSCEF Doc. No. 1, ¶¶ 81, 86, 119-122). Heinz’s argument that the court should dismiss the unjust enrichment claim

because it is a bona-fide purchaser for value rings hollow (*Cf. Georgia Malone, supra* at 519 [a good faith purchaser for value does not support an unjust enrichment claim]). In *Georgia Malone*, the plaintiff broker introduced the defendant developer to a seller of residential apartments and the plaintiff contracted to provide confidential due diligence materials to the developer. The developer later sold the due diligence materials to the Rosewood defendant who ultimately received a commission for facilitating a sale with a new buyer. In dismissing the plaintiff's unjust enrichment claim against Rosewood, the Court of Appeals noted Rosewood had no dealings with the plaintiff, was not aware of the developer's improper actions, and appeared to "fit the criteria of a good-faith purchaser for value which ... would not support an unjust enrichment claim" (*id.* at 517-519).

The allegations set forth in this complaint are quite different. Critically, the complaint alleges that Heinz was aware of the exclusive relationship between Saverglass, the company it acquired, and SGB and that SGB developed these flacon molds for Saverglass (NYSCEF Doc. No. 1, ¶¶ 75-76, 80, 84, 86, 119-122; NYSCEF Doc. No. 25, ¶ 14). As discussed above, on October 5, 2018, Ms. Elliott wrote to reassure SGB that the relationship would continue post-acquisition: "[t]his acquisition will be win/win for both companies as we will look to expand our portfolio" (*id.*). In contrast to *Georgia Malone*, SGB states a claim for unjust enrichment because it had dealings with Heinz at or around the time of the acquisition where Heinz had specifically assured SGB that the parties would continue to work together. Accordingly, the branch of Heinz's motion to dismiss the fifth cause of action for unjust enrichment is denied.

3. Declaratory Judgment Against Heinz Peru (Sixth Cause of Action)

SGB seeks a declaratory judgment that it may withhold payment to Heinz Peru until Heinz Peru compensates SGB for the damages incurred in the present action. However, SGB cannot seek to prematurely offset a liability past due against a disputed liability it claims against Heinz Peru (*see New Haven Props. v Grinberg*, 293 AD2d 386, 387 [1st Dept 2002]). In any event, SGB fails to set forth any opposition with respect to this claim such that the sixth cause of action for a declaratory judgment must be dismissed.

II. SGB's Motion to Compel as against Saverglass is Granted (Mtn. Seq. No. 002)

On October 6, 2006, SGB served Saverglass with its First Set of Interrogatories, First Request for Production of Documents, and Notices of Deposition. Saverglass did not timely respond due to due to law office failure but advises that it will provide a forthcoming response. Accordingly, SGB's motion to compel is granted and Saverglass shall respond within 30 days of this decision and order.

Accordingly, it is

ORDERED that Heinz's motion to dismiss (Mtn. Seq. No. 001) is granted to the extent of the declaratory judgment (sixth) cause of action; and it is further

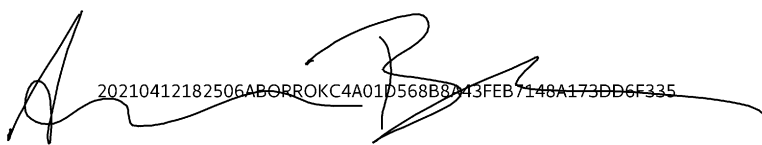
ORDERED that Heinz shall file an answer within 20 days of this decision and order; and it is further

ORDERED that SGB’s motion to compel (Mtn. Seq. No. 002) is granted and Saverglass shall produce responses within 30 days of this decision and order; and it is further

ORDERED that the parties shall attend a remote preliminary conference on May 25, 2021 at 12pm.

4/12/2021

DATE


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ANDREW BORROK, 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