

**Curtis, Mallet-Prevost, Colt & Mosle LLP v Bay
Capital Fin. LLC**

2022 NY Slip Op 33630(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 651539/2022

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP,

Plaintiff,

- v -

BAY CAPITAL FINANCE LLC,SUNIL SURI, AKHIL SURI,
KARAN SURI, VEENA SURI, THE MENLO COMPANIES,
LLC,LIGHTSPEED CAPITAL MANAGEMENT
LLC,LIGHTSPEED MANAGEMENT SERVICES LLC,JOHN
DOES 1-100

Defendant.

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INDEX NO. 651539/2022

MOTION DATE 06/06/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 39, 40, 41

were read on this motion to/for DISMISS

Upon the foregoing documents, this motion to dismiss is denied in its entirety.

Plaintiff CURTIS, MALLET-PREVOST, COLT & MOSLE LLP ("Curtis") commenced this action for the enforcement of a Confession of Judgement rendered in the County of San Francisco, California ("California Judgement"), as well as for a declaratory judgement declaring that Defendant BAY CAPITAL FINANCE LLC ("Bay Capital") is the alter ego of Defendants SUNIL ("Sunil") SURI, AKHIL SURI ("Akhil"), KARAN SURI("Karan"), and VEENA SURI ("Veena")(collectively "The Suri Family"); that The Suri Family is liable as a debtor on the judgment against Bay Capital, and that Defendants LIGHTSPEED CAPITAL MANAGEMENT LLC ("LCM"), LIGHTSPEED MANAGEMENT SERVICES LLC ("LMS"), THE MENLO COMPANIES, LLC ("TML"), as well as other unnamed parties (John Does 1-100) (Collectively "The Menlo Group" or "TMG") are the alter-ego of defendant Sunil and/or The Suri Family.

Defendants now move, pursuant to CPLR § 3211(a)(7), to dismiss the complaint with regard to counts two through six as to all defendants except Bay Capital (against whom a default judgment has already been entered in this matter), alleging failure to plead with particularity and failure to state a claim, and to dismiss the complaint in full with regards to defendants LCM, LMS, Veena, Akhil, and Karan for lack of jurisdiction. The Court will discuss each count in turn.

Discussion

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. *See Leon v. Martinez*, 84 N.Y.2d 83 (1994). With respect to CPLR§3211(a)(1), a motion to dismiss on the ground that the action is barred by documentary evidence may be appropriately granted only where the documentary evidence utterly refutes a plaintiff's factual allegations, and conclusively establishes a defense as a matter of law. *See Goshen v. Mutual Life Ins. Co. of New York*, 98 N.Y.2d 314, 327 (2002).

Personal jurisdiction

Defendants move to dismiss plaintiff's complaint with regards to Veena, Akhil, and Karan for lack of personal jurisdiction alleging that they are California residents without any substantial relationship to New York. Defendants also move to dismiss plaintiff's complaint with regards to TMC, LCM and LMS alleging that they are Delaware companies with principal places of business in California without any substantial relationship to New York. Defendants do not challenge personal jurisdiction on defendant Bay Capital, as it has consented to New York's jurisdiction. Plaintiff alleges that Sunil, TMG, and The Suri Family are the alter ego of Bay Capital, and are therefore subject to New York's jurisdiction as alter egos.

On a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction. *Coast to Coast Energy, Inc. v. Gasarch*, 149 A.D.3d 485, 53 N.Y.S.3d 16 (2017). In general, alter egos are treated as one entity for jurisdictional purposes. *Transfield ER Cape Ltd. v. Indus. Carriers, Inc.*, 571 F.3d 221 (2d Cir. 2009). The purpose of the alter ego doctrine in the context of a contract is to prevent a company from evading its obligations under the contract through a sham transaction or technical change in operations. The test of alter ego status is flexible, allowing courts to weigh the circumstances of the individual case, while recognizing that the following factors are important: whether the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. *Ferrara v. Smithtown Trucking Co.*, 29 F. Supp. 3d 274 (E.D.N.Y. 2014).

First, Plaintiff argues that Sunil and TMG are the alter ego of Bay Capital, by alleging that, during a prior testimony, Sunil “testified that “Menlo Capital Group,” the “Menlo Group” and the “Menlo Companies” are just names that he uses to describe a group of entities he owns personally. Sunil also testified that Bay Capital is part of the Menlo Group—but was unable to make any distinction between Bay Capital and the Menlo Group” (*See* NYSCEF Doc. 1 ¶ 77). Assuming these allegations as true, it is this court’s opinion that applying the alter ego doctrine could be warranted. Accordingly, this motion to dismiss for lack of personal jurisdiction is denied as to Sunil and TMG.

Plaintiff also alleges in the Complaint that The Suri Family are the alter ego of Bay Capital, by alleging that The Suri Family used funds from the Menlo Group to pay for an apartment in New York, which they use as a personal family residence (*See* NYSCEF Doc. 25), and that each member of the Suri Family—Sunil, Veena, Akhil, and Karan—hold ownership interests in the entities that

comprise the Menlo Group. Sunil, Akhil, and Karan are managers of those entities. (See NYSCEF Doc. 1 ¶¶ 10-12, 36, 98). Assuming these allegations as true, it is this court's opinion that the claim for alter-ego jurisdiction has been adequately pled. Accordingly, this motion to dismiss for lack of personal jurisdiction is denied as to The Suri Family.

CPLR 5225(b)

Defendants move to dismiss plaintiff's count 2 of the complaint by arguing that CPLR 5225(b) is designed to allow a judgment creditor to obtain money from a person in possession or custody of money or other personal property belonging to the judgment debtor, and that nothing in CPLR 5225(b) allows, or even contemplates, adding a party to an existing judgment. The Court respectfully disagrees.

“Statute governing enforcement of money judgments against property not in the possession of judgment debtor provides for an expedited special proceeding by a judgment creditor to recover money or other personal property belonging to a judgment debtor against a person in possession or custody of money or other personal property in which the judgment debtor has an interest in order to satisfy a judgment”. *Rockefeller v. Statement Servs., Corp.*, 204 A.D.3d 920, 167 N.Y.S.3d 516 (2022). Statute allowing proceeding to compel the turnover of property owed to a judgment debtor furnishes a mechanism for obtaining a money judgment against the recipient of a fraudulent conveyance who has, in the interim, spent or dissipated the property conveyed. *Id.*

Here, plaintiff alleges that Bay Capital, against which it has a judgment, has been fraudulently stripped of its assets by what plaintiff considers to be a sham liquidation to the benefit of Sunil and/or TMG, and wishes to recover from them as they are allegedly in possession of money or property that plaintiff has an interest in as a debtor. Assuming these allegations as true,

it is this court's opinion that the claim for alter-ego liability has been adequately pled. Accordingly, this motion to dismiss is denied.

Count #2, #4, and #5

Defendants move to dismiss plaintiff's second, fourth, and fifth counts against defendant Sunil, the Menlo Group, and The Suri Family, alleging lack of allegations of inadequate capitalization or insolvency, lack of allegations that corporate formalities were ignored, lack of allegations that defendants siphoned funds from Bay Capital, lack of adequate allegations that Bay Capital Simply acted as a façade for Sunil, and lack of adequate allegations of an overall element of injustice or unfairness. Plaintiff alleges that Sunil, TMG, and the Suri Family are the alter ego of Bay Capital and that, as such, the application of the alter ego doctrine is warranted.

For the reasons set forth in the personal jurisdiction analysis, the Court finds that applying the alter ego doctrine could be warranted in this case. Accordingly, this motion to dismiss is denied as to the second, fourth, and fifth counts.

Count #3

Defendants move to dismiss plaintiff's third count, alleging lack of particularity in the allegations of fraud. Plaintiff alleges in this third count that defendants Sunil and TMG engaged in concerted actions to defraud it in connection with plaintiff's representation of Capital Bay by misrepresenting and/or omitting material facts to the plaintiff with the intent and effect of benefiting from plaintiff's services.

The elements of a fraud claim are: (1) a misrepresentation or a material omission of fact; (2) which was false and known to be false by the defendant; (3) made for the purpose of inducing the other party to rely upon it; (4) justifiable reliance of the other party on the misrepresentation or material omission; and (5) injury. *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 178

(2011). For purposes of pleading fraud claim with particularity, in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud”.

Pludeman v. N. Leasing Sys., Inc., 10 N.Y.3d 486, 491 (2008).

Here, plaintiff alleges that defendants Sunil and TMG induced it, by numerous misrepresentations of capital and intent, to provide legal services to Bay Capital, and to refrain from commencing involuntary bankruptcy proceedings and defer enforcement of the Judgment against Bay Capital and the other defendants. It is this Court’s opinion that the particularity threshold for plaintiff’s pleadings has been met. Accordingly, this motion to dismiss is denied as to the third count.

Count #6

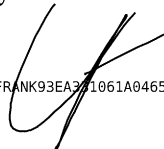
Defendants move to dismiss plaintiff’s sixth count, alleging and failure to state a claim for aiding and abetting fraud against The Suri Family. Plaintiff contends that The Suri Family have aided and abetted Bay Capital’s alleged fraud by being actively involved in its alleged fraudulent activities.

To plead a claim for aiding and abetting fraud, a plaintiff must allege “the existence of an underlying fraud, knowledge of the fraud by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the fraud.” *Fox Paine & Co., LLC v. Houston Cas. Co.*, 153 A.D.3d 673, 676 (2d Dep’t 2017). The Court of Appeals has also held that a reasonable inference can be drawn on other parties related to the party that allegedly committed fraud “despite absence of specific details of each officer’s conduct; allegations gave rise to reasonable inference that officers, in light of key positions that they held, knew of the fraud or were involved in it”. *Pludeman v. N. Leasing Sys., Inc.*, 10 N.Y.3d 486, 890 N.E.2d 184 (2008).

Here, plaintiff alleges that defendants Akhil, Karan, and Veena are shareholders of the Menlo Group, that Akhil and Karan were listed as managers of those companies on the very documents containing many of the alleged fraudulent representations at issue. It is this Court’s opinion that the particularity threshold for plaintiff’s pleadings has been met. Accordingly, this motion to dismiss is denied as to the sixth count.

Accordingly, it is hereby

ADJUDGED that this motion to dismiss is denied in its entirety.


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10/21/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE