SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 32**

Justice

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INDEX NO. 157066/2017

HONGYING ZHAO, JUAN LIU, SHENSI HE, HONGLEI TIAN, HAIYAN WANG, JINMEI WANG, YIHE SUN, SHAOMIN LU, GE GAO, KUNYUN ZHANG, FENGWEI WANG, DANDONG WU, XIAOLI WANG, PENG WANG, YIMIN YANG, JINGRUI FENG, LING SHEN, CUIRONG LI, HUI ZHENG, CHANGLI XIAO, QIUYUE ZU, XIUHUA WANG, XIAOYUN ZHANG, JINLI QIN, SHUYAN FENG, KANWEN ZHANG, QIAN LU

MOTION DATE N/A

MOTION SEQ. NO. 002

Plaintiffs,

- v -

ARDENT FINANCIAL FUND, LP, BINARY INTERNATIONAL LTD, HARVEY GREEN ASSOCIATES LIMITED, ABC GLOBAL MANAGEMENT SERVICES LTD AS TRUSTEE FOR BLUE STONE TRUST, JAMES DUODU, PRIME DESIGN GLOBAL, INC.,UNIVERSAL VOICETECH INC, PURE GREEN NYC CORP, PURE GREEN NYC CHAMBERS CORP, BULLETPROOF 360, INC.,BEYOND THE BAR FITNESS LLC,XYZ CORP 1-10,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 45, 46, 47, 48, 49, 50, 52, 53, 54, 57

were read on this motion to/for DISMISSAL.

The motion to dismiss by defendants Pure Green NYC Corp and Pure Green NYC Chambers Corp (collectively, "Pure Green Defendants") is granted.

Background

This action arises out of an alleged fraudulent scheme perpetrated by a company known as Bar Works, Inc. ("Bar Works"). Bar Works purportedly induced investors, including plaintiffs, to fund a co-working venture without ever actually setting up the co-working spaces. Plaintiffs allege that the Pure Green Defendants was supposed to set up juice stands in the co-working spaces and that they accepted stolen funds as investments. Plaintiffs bring causes of

action for unjust enrichment, constructive trust and money had and received against the Pure Green Defendants.

The Pure Green Defendants move to dismiss the causes of action against them on the ground that plaintiffs have failed to state a cause of action. The Pure Green Defendants claim that their connection with plaintiffs is too attenuated for plaintiffs to recover against them.

In opposition, plaintiffs claim that their causes of action against the Pure Green Defendants should remain because they have sufficiently stated causes of action and the Pure Green Defendants' assertions about lack of proof are premature.

Discussion

"On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff" (*Alden Global Value Recovery Master Fund L.P. v Key Bank Natl. Assoc.*, 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

"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" (*Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972 [1994]).

Unjust Enrichment

"The essential inquiry in any action for unjust enrichment ... is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. A plaintiff must show that (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. . . . Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182, 919 NYS2d 465 [2011]).

The Pure Green Defendants argue that their relationship with plaintiffs is too attenuated to support this cause of action. The Pure Green Defendants claim that the complaint fails to allege any relationship or dealings between them and plaintiffs.

In opposition, plaintiffs point to deposits made by the 27 plaintiffs into Bar Works' account with Chase. Plaintiffs contend that "Upon information and belief Renwick Haddow a/k/a Jonathan Black used these investment funds that were deposited into the Bar Work account and transferred them to the Pure Green Defendants. Further, Plaintiffs became aware that the transaction between the Pure Green Defendants and Mr. Haddow was made through an online wire transfer on February 6, 2017 with 'Bulletproof 62nd Street Corp.' as the identified beneficiary" (NYSCEF Doc. No. 45, ¶ 7). Plaintiffs claim that the Bulletproof entity is owned by the managing member of Pure Green NYC Corp. Plaintiffs insist that there was no reason for the Pure Green Defendants to have received the money from Bar Works (totaling $54,400).

In reply, the Pure Green Defendants emphasize that the money invested by plaintiffs with Bar Works was pooled with other investors' money and only $54,400 was transferred to the Pure Green Defendants. They also argue that plaintiffs cannot show that the money (the $54,400) sent to the Pure Green Defendants was plaintiffs' money.

Here, the Court finds that plaintiffs failed to state a cause of action for unjust enrichment. While plaintiffs are correct that they need not affirmatively prove the connection between the Pure Green Defendants and Bar Works, the fact is that they failed to allege any facts in the

complaint or in opposition to Pure Green's motion that suggests a close relationship between Pure Green and plaintiffs. "[T]here are no indicia of enrichment that was unjust where the pleadings failed to indicate a relationship between the parties that could have caused reliance or inducement" (*Mandarin Trading Ltd.*, 16 NY3d at 182). The fact is that the complaint only alleges that plaintiffs invested money with Bar Works and that the Pure Green Defendants received some money (possibly from plaintiffs' investments) from Bar Works. That is not enough to establish a relationship sufficient to state a cause of action for unjust enrichment (*see Schroeder v Pinterest Inc.*, 133 AD3d 12, 27, 17 NYS3d 678 [1st Dept 2015]).

The complaint alleges that Bar Works committed wrongdoing and that the Pure Green Defendants accepted some money (presumably to set up their juice stands) from Bar Works. Simply because Bar Works purportedly bamboozled plaintiffs does not mean that the Pure Green Defendants can be held liable on a theory of unjust enrichment. The complaint does not allege that the Pure Green Defendants were a part of the fraudulent scheme or that they were aware that plaintiffs (or other investors) were contributing money for nothing.

Constructive Trust

Similarly, the constructive trust cause of action is also severed and dismissed. "Four elements must be proven to impose a constructive trust; they are: (1) a confidential or fiduciary relation, (2) a promise, (3) a transfer in reliance thereon and (4) unjust enrichment" (*Bankers Sec. Life Ins. Soc. v Shakerdge*, 70 AD2d 852, 852, 418 NYS2d 39 [1st Dept 1979]).

Here, plaintiffs failed to plead facts that could establish a confidential or fiduciary relationship between plaintiffs and the Pure Green Defendants. In fact, there is no allegation that the Pure Green Defendants and plaintiffs had any interactions. Plaintiffs' assertion that the Pure Green Defendants' fiduciary duty arose from Bar Works' purported fiduciary duty to plaintiffs is

misplaced. Under that theory every entity that did business with Bar Works would have a fiduciary duty to every single Bar Works' investor. That renders the concept of a fiduciary relationship meaningless. Moreover, the complaint does not contend that the Pure Green Defendants were involved in any promises made by Bar Works to induce plaintiffs to invest nor do plaintiffs state a cause of action for unjust enrichment.

Money Had and Received

"A cause of action for money had and received is one of quasi-contract or of contract implied-in-law. As this Court has explained, the law recognizes such a cause of action in the absence of an agreement when one party possesses money that in equity and good conscience ought not to retain and that belongs to another It allows a plaintiff to recover money which has come into the hands of the defendant 'impressed with a species of trust' because under the circumstances it is against good conscience for the defendant to keep the money. The action depends upon equitable principles in the sense that broad considerations of right, justice and morality apply to it, but it has long been considered an action at law" (*Bd. of Educ. of Cold Spring Harbor Cent. Sch. Dist. v Rettaliata*, 78 NY2d 128, 138, 572 NYS2d 885 [1991]).

The Pure Green Defendants claim that they had no relationship with plaintiffs and, therefore, this cause of action cannot stand. Plaintiffs admit in opposition that a cause of action for money had and received requires some showing of a relationship that is not too attenuated (NYSCEF Doc. No. 45, ¶ 38). Therefore, the Court severs and dismisses this cause of action because, as stated above, plaintiffs simply failed to articulate the basis for the relationship between the Pure Green Defendants and plaintiffs.

Summary

The Court observes that the $54,400 payment from Bar Works to the Pure Green Defendants, on its face, raises questions about the Pure Green Defendants' involvement with Bar Works. But plaintiffs do not offer anything other than conclusory suppositions about that involvement. Plaintiffs simply contend that "There is no apparent and/or legitimate purpose for the Pure Green Defendants to have received $54,400 of Plaintiffs' money" (NYSCEF Doc. No. 45, ¶ 10). Plaintiffs did not explain why there was no legitimate reason for the payment; according to plaintiffs, the Pure Green Defendants were supposed to run juice stands for Bar Works. Even on a motion to dismiss, it is not the Court's role to imagine inferences about why the payment was part of the fraudulent scheme or how it establishes the causes of action alleged by plaintiffs. It was plaintiffs' burden to do so and they failed to sufficiently allege the connection between the payment, the Pure Green Defendants' role in the alleged Bar Works fraud, and the relationship between plaintiffs and the Pure Green Defendants.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants Pure Green NYC Corp and Pure Green NYC Chambers Corp is granted and the complaint is dismissed in its entirety as against these defendants, with costs and disbursements to these defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly.

Next Conference with remaining defendants: May 14, 2019 at 2:15 p.m.

2/15/19
DATE

ARLENE P. BLUTH, J.S.C.

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