

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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INDEX NO. 653234/2017

SONIA TOLEDO,

MOTION DATE 11/16/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

NISHA SABHARWAL, MOHIT SABHARWAL, PADMA DEOGUN,
VASTRA INC., PEACOCK THRONE LLC, OM VASTRA LLC, OM
VASTRA MIAMI LLC

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39,
40, 41, 42, 43, 44, 47, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents, it is

Defendants' motion for leave to reargue under CPLR 2221(d) is denied. Defendants' motion for
a protective order or, in the alternative, to quash/modify the subpoena is denied. Defendants
argue that the Court misapprehended the law in that the Court denied the motion to dismiss the
fraudulent conveyance causes of action and the request to pierce the corporate veil as to Vastra
Inc., Peacock Throne LLC, OM Vastra LLC, and OM Vastra Miami LLC (the "Entity
Defendants"). Specifically, defendants contend that the facts in the Complaint "were entirely
conclusory and lacking in any particularized facts upon which to support the alter-ego theory."
Defendants offer similar arguments as to the various fraudulent conveyance causes of action,
namely that the Complaint does not contain the requisite details.

First as to Vastra Inc. and Peacock Throne LLC, the Complaint specifies occurrences
wherein those entities are alleged to have received funds in furtherance of the alleged scheme.
Second, the Complaint alleges that the Entity Defendants "are all part of Nisha's and Mohit's

integrated enterprise, constructed by Nisha and Mohit for the express purpose of furthering their fraudulent schemes and sheltering the ill-gotten gains;” that Nisha and Mohit exercised complete domination and control over the operation, management and financial affairs over the Entity Defendants to further their personal interest; that Nisha and Mohit commingled the operations and funds of all such entities; that the Defendant Entities have made payments to each other in furtherance of the scheme and disbursements have been made as part of the scheme. These assertions are enough to sustain the request to pierce the corporate veil (*see MPEG LA, L.L.C. v GXI Intern., LLC*, 126 AD3d 641 [1st Dept 2015]; *Intl. Credit Brokerage Co., Inc. v Agapov*, 249 AD2d 77 [1st Dept 1998]) even before giving plaintiff all inferences.

Further, with respect to a request to pierce the corporate veil a plaintiff is “not required to plead the elements of alter ego liability with the particularity required by CPLR 3016(b), but only to plead in a non-conclusory manner” (*2406-12 Amsterdam Assoc. LLC v Alianza LLC*, 136 AD3d 512, 512 [1st Dept 2016]). This is because a request to pierce the corporate veil is not as a separate cause of action and does not exist independent from the claims asserted against the corporation (*9 E. 38th St. Assoc., L.P. v George Feher Assoc., Inc.*, 226 AD2d 167, 168 [1st Dept 1996]). Rather, it is a theory of recovery (*2406-12 Amsterdam Assoc. LLC* at 513 [1st Dept 2016]). As other Courts have recognized “almost by definition, [the veil-piercing factors] are fact-laden and often do not lend themselves to resolution by means of a pre-discovery motion to dismiss.” *E. Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 131 (2d Dept 2009), *aff’d* 16 NY3d 775 (2011); *Kralic v Helmsley*, 294 AD2d 234, 236 (1st Dept 2002). Thus, veil piercing allegations need only be “plead in a non-conclusory manner”, not with the sort of particularity required by CPLR 3016(b) “(*Taboola, Inc. v FSM Fashion Style Mag, Inc.*, 2016 N.Y. Slip Op. 30428[U], 18 [Sup Ct, New York County 2016]).

For similar reasons, leave to reargue the Court’s decision denying the motion to dismiss the fraudulent conveyance causes of action is denied. Plaintiff has alleged a detailed scheme that properly states those causes of actions. The Court adheres to its reasoning found in the original decision denying the motion.

The motion seeking a protective order or, in the alternative, to quash/modify the subpoena is denied. First, the Entity Defendants are not just defendants through an alter-ego theory but are defendant as part of the overall scheme. Given the allegations, including but not limited to the allegations of direct payments to certain of the entities, payments between the entities, disbursements and transactions between the entities all for the benefit of the Nisha and Mohit and control/domination of the entities by Nisha and Mohit, the subpoena seeking information relating to the transactions of these entities is relevant and not too broad.

Accordingly, it is therefore

ORDERED that defendants’ motion is denied in all respects.

This constitutes the decision and order of the Court.

1/31/2019  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:

**HON. DAVID B. COHEN**  
NON-FINAL DISPOSITION **J.S.C.**  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

