

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

JOSE BAUTISTA,

Index No.: 21446/2018

Plaintiff,

- against -

DECISION AND ORDERHACH & ROSE, LLP, HACH ROSE SCHIRRIPIA &
CHEVERIE LLP, MICHAEL ROSE, and GREGORY
HACH,

Defendants.

	<u>PAPERS NUMBERED</u>
Defendants' Notice of Motion, Affirmation in Support, Memorandum in Support, Exhibits	1, 2, 3, 4
Plaintiff's Affirmation in Opposition, Exhibits	5, 6
Defendants' Affirmation in Further Support	7

Upon the enumerated papers, Defendants' motion to dismiss is partially granted in accordance with the annexed decision and order.

Dated: 10/25/18Hon. **LUCINDO SUAREZ, J.S.C.**
LUCINDO SUAREZ, J.S.C.**Check one:**

- ☐ Case Disposed in Entirety
☒ Case Still Active

Motion is:

- ☐ Granted ☐ GIP
☐ Denied ☒ Other

Check if appropriate:

- ☐ Schedule Appearance ☐ Settle Order
☐ Fiduciary Appointment ☐ Submit Order
☐ Referee Appointment

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DECISION AND ORDER

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HACH,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Defendants' motion is whether Plaintiff's amended complaint should be dismissed due to: (1) the documentary evidence presented in its motion; (2) the doctrine of law of the case; and (3) the applicable statute of limitations.

The court finds based on the documentary evidence provided that this matter must be dismissed as to Defendants, Hach Rose Schiripa & Cheverie, LLP., Michael Rose, and Gregory Hach. Similarly, the court finds Plaintiff's fraud claim to be unavailing.

However, Defendants, Hach & Rose, LLP., failed to produce any evidence that its failure to move the court for appropriate relief after Justice Stinson's order dismissing the underlying matter bearing Index Number 308157/2010, on default, was not negligent or that it ever terminated the attorney-client relationship with Plaintiff in accord with CPLR §321(b)(2). Further, the court rejects Defendants' argument that the CPLR §214(6) three-year statute of limitation is applicable here.

A. Dismissal Against Defendant, Hach Rose Schiripa & Cheverie, LLP.

The doctrine of law of the case stands for the proposition that once the parties had a "full

and fair" opportunity to litigate their respective claims and a judicial determination results parties will later be precluded from relitigating those issues that have been already been decided. *See People v. Evans*, 94 N.Y.2d 499, 727 N.E.2d 1232, 706 N.Y.S.2d 678 (2000); *see also Chanice v. Fed. Express Corp.*, 118 A.D.3d 634, 989 N.Y.S.2d 468 (1st Dep't 2014).

The court in its prior order dismissed Plaintiff's complaint against Defendant, Hach Rose Schirripa & Cheverie, LLP., for its failure to state a cause of action as it found that there existed no attorney-client relationship or privity between said parties. Plaintiff failed to timely appeal, file a motion to reargue or seek leave to renew.

Therefore, Plaintiff is now estopped from asserting the identical claims against said Defendant requiring a dismissal of same.

B. Dismissal Against Defendants, Michael Rose and Gregory Hach

The instant action must be dismissed against Defendants, Michael Rose, and Gregory Hach.

New York law disfavors disregard of the corporate form. *Cobalt Partners, L.P. v. GSC Capital Corp.*, 97 A.D.3d 35, 944 N.Y.S.2d 30 (1st Dep't 2012). A director, corporate officer or partner is not personally liable for a corporation's breach of an agreement merely by virtue of his or her actions that resulted in the corporation's promise being broken." *See Wald v. Graev*, 137 A.D.3d 573, 27 N.Y.S.3d 535 (1st Dep't 2016); *see also Hixon v. 12-14 E. 64th Owners Corp.*, 107 A.D.3d 546, 968 N.Y.S.2d 449 (1st Dep't 2013). Accordingly, to hold a corporation's director, corporate officer or partner personally liable a plaintiff will have to "pierce the corporate veil," which requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury. *Id.*

Plaintiff in its amended complaint concedes that Defendants, Michael Rose and Gregory

Hach, are principals of Defendant, HACH & ROSE, LLP. Further, no privity existed between Plaintiff and said Defendants in their personal capacity as the retainer agreement named only Defendant, HACH & ROSE, LLP. Plaintiff also failed to proffer any evidence that would warrant piercing the corporate veil.

Therefore, this action must be dismissed against Defendants, Michael Rose and Gregory Hach.

C. Dismissal of Plaintiff's Fraud Claim

Plaintiff's allegations of fraud were asserted without a sound basis and lacked specificity as required by CPLR §3016(b).

Where a cause of action is based upon misrepresentation or fraud, the circumstances constituting the wrong shall be stated in detail. CPLR §3016(b); *see also Wholey v. Amgen, Inc.*, 2018 NY Slip Op 06692 (1st Dep't 2018).

As a preliminary matter, Plaintiff lacked standing to assert a fraud claim, which purportedly Defendants committed against Justice Stinson. Moreover, Plaintiff's cause of action for fraud contained in its amended complaint was bare-bone and devoid of any specific details of the circumstances underpinning its claims.

Therefore, Plaintiff's fraud claims must be dismissed.

D. Plaintiff Possesses a Viable Legal Malpractice Claim

The court previously concluded in its prior order that Defendants failed to terminate the attorney-client relationship pursuant to CPLR §321(b)(2), therefore, it had a duty to move the court for appropriate relief after Justice Stinson's order dismissed the underlying action bearing Index Number 308157/2010 due to its default. The court also found the three-year statute of limitations under CPLR §214(6) for legal malpractice did not apply to Defendants' inaction after

Justice Stinson's order dismissing the underlying matter.

Defendants failed to challenge this court's prior order as it did not seek an appeal, file a motion for re-argument or sought leave to renew. Moreover, Defendants do not present any new evidence or facts that would have altered this court's prior determination.

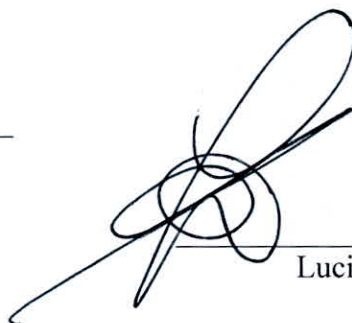
Accordingly, it is

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of Defendants, Hach Rose Schirripa & Cheverie, LLP., Defendant, Michael Rose, and Defendant, Gregory Hach, dismissing all of Plaintiff's causes of action; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of all Defendants dismissing against them Plaintiff's cause of action for fraud.

This constitutes the decision and order of the court.

Dated: 10/25/18



LUCINDO SUAREZ, J.S.C.

Lucindo Suarez, J.S.C.