

**Metropolitan Partners Group Admin., LLC v  
Blue Apron Holdings, Inc.**

2024 NY Slip Op 34221(U)

November 20, 2024

Supreme Court, New York County

Docket Number: Index No. 655615/2023

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

METROPOLITAN PARTNERS GROUP  
ADMINISTRATION, LLC, METROPOLITAN PARTNERS  
FUND VI, LP, METROPOLITAN PARTNERS FUND VI  
(3C1), LP, METROPOLITAN PARTNERS FUND VII, LP,  
and METROPOLITAN LEVERED PARTNERS FUND VII,  
LP,

Plaintiffs,

- v -

BLUE APRON HOLDINGS, INC.,

Defendant.

INDEX NO. 655615/2023  
MOTION DATE --  
MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 41, 42, 43, 44

were read on this motion to/for DISMISS

In motion sequence 003, Defendant Blue Apron Holdings, Inc. moves pursuant to CPLR 3211(a)(1) and (7) to dismiss the first amended complaint.

For the reasons stated on the record on November 13, 2024, the first cause of action is dismissed, in part, to the extent premised on Debtor and Creditor Law § 273, and the second cause of action is dismissed, in part, to the extent premised on Debtor and Creditor Law § 274. Plaintiffs fail to allege any connection between Long Live Bruce LLC and New York, as required by Debtor and Creditor Law § 279(b). The remainder of the first and second causes of action predicated on California Civil Code §§ 3439.04 or 3439.05, California's voidable transaction statutes, shall proceed.

Defendant's remaining three arguments for dismissal of the first and second causes of action are rejected. Issues of fact exist as to whether (i) plaintiffs included the

entire transaction in the pleading, (ii) Long Live Bruce LLC was insolvent, and (iii) plaintiffs participated in the alleged fraudulent transfer.

Further, as stated on the record, the unjust enrichment claim is not precluded by a contract. Plaintiff is not alleged to be a party to the contract governing the subject matter at issue, i.e., the Long Live Bruce LLC's purchase of defendant's shares. (See *Van Scoter v Porter*, 193 AD3d 1401, 1403 [4th Dept 2021] ["Inasmuch as plaintiff, individually, was not a party to the operating agreement [that covers subject matter at issue], his first cause of action [for unjust enrichment], insofar as it was asserted by him, individually, is not precluded by the written contract" (citations omitted)]; see also *Marc Contr., Inc. v 39 Winfield Assoc., LLC*, 63 AD3d 693, 695 [2nd Dept 2009] [plaintiff's unjust enrichment claim was not precluded by defendant's operating agreement to which plaintiff was not a party].)

Upon review of the papers following the oral argument, the court notes that defendant offers an alternative argument for dismissal. Namely, defendant argues that because the unjust enrichment claim is predicated on the same facts as the fraudulent conveyance claim, the unjust enrichment claims should be dismissed as duplicative.

"The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in 'equity and good conscience' should be paid to the plaintiff .... In a broad sense, this may be true in many cases, but unjust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled .... An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." (*Corsetto v Verizon N.Y., Inc.*, 18 NY3d 777, 790 [2012] [citations omitted], *rearg denied* 19 NY3d 937 [2012].)

Here, as to fraudulent transfer claims, plaintiffs allege that “LLB did not receive a reasonably equivalent value for the Blue Apron Transfer.” (NYSCEF 35, First Amended Complaint ¶¶ 37, 43.) The unjust enrichment claim is based on the allegations of the same wrongdoing i.e. that defendant was unjustly enriched in the Blue Apron Transfer. (See *id.* ¶ 48.) Thus, the unjust enrichment claim is dismissed as duplicative “because it inherently rises and falls with the [fraudulent conveyance] claims.” (*Stillwater Liquidating LLC v CL Recovery Trading Fund III, L.P.*, 2019 NY Slip Op 33108[U], \*15 [Sup Ct, NY County 2019] [citations omitted]; see *Stillwater Liquidating LLC v Partner Reins. Co., Ltd.*, 2017 NY Slip Op 30257[U], \*19-20 [Sup Ct, NY County 2017] “the possible recovery on the grounds of unjust enrichment ... entirely turn on the merits of the DCL and UCC claims, which are the only proffered bases for finding that it would be ‘against equity and good conscience’ to permit defendants’ recovery of the Law Firm Loans” (citation omitted), *affd* 151 AD3d 585 [1st Dept 2017].)

Moreover, plaintiffs offer no opposition to the argument that the unjust enrichment claim is duplicative. The failure to oppose is an independent ground for dismissal of the unjust enrichment claim. (See e.g. *Butler v City of NY*, 202 AD3d 471, 472 [1st Dept 2022] [granting motion to dismiss to the extent it was unopposed].)

Accordingly, it is

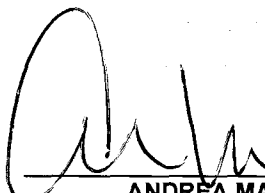
ORDERED that the motion is granted, in part, to the extent that (i) the first cause of action is dismissed, in part, to the extent premised on Debtor and Creditor Law § 273, (ii) the second cause of action is dismissed, in part, to the extent premised on Debtor and Creditor Law § 274, and (iii) the third cause of action is dismissed; and it is further

ORDERED that within 20 days of this decision, defendant shall answer the complaint; and it is further

ORDERED that within 30 days of this decision, the parties shall submit a proposed joint Preliminary Conference order or competing proposed orders if no agreement is reached; and it is further

ORDERED that defendant is directed to submit the transcript to be so ordered.

11/20/2024  
DATE

  
ANDREA MASLEY, J.S.C.

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