

**Jiyoung Lee v Nature Republic USA, Inc.**

2024 NY Slip Op 34445(U)

December 19, 2024

Supreme Court, New York County

Docket Number: Index No. 153556/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M**

*Justice*

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JIYOUNG LEE,

Plaintiff,

- v -

NATURE REPUBLIC USA, INC., HYUNG JIN PHANG,  
NATURE REPUBLIC CO. LTD., NATURE REPUBLIC  
FLUSHING, INC., NATURE REPUBLIC UNION SQUARE,  
INC., WOON HO JUNG, and CHANG-HO KIM,

Defendants.

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INDEX NO. 153556/2023

MOTION DATE 08/27/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27

were read on this motion to DISMISS.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, defendant’s motion to dismiss the complaint against defendants Nature Republic Co. Ltd. (“Nature Republic”) and Woon Ho Jung for failure to state a cause of action (CPLR 3211 [a] [7]) and lack of personal jurisdiction (CPLR 3211 [a] [8]), and the fifth and sixth causes of action against all appearing defendants<sup>1</sup> for failure to state a cause of action, is granted in part and denied in part, and the complaint dismissed against defendant Jung, for the reasons stated in the moving and reply papers (NYSCEF Doc. Nos. 9-10, 27) and the exhibits attached thereto, in which the court concurs, as summarized herein.

Plaintiff served defendant Woon Ho Jung pursuant to CPLR 308(2) at 40-25 Main Street, Flushing, New York, which the affidavit of service provides is either Jung’s business address or residence (Jung affidavit of service, NYSCEF Doc. No. 12). In opposition, Jung denies that he

<sup>1</sup> Defendants Hyung Jin Phang and Chang-ho Kim have not appeared in the action.

has ever lived or worked at that address, and in fact is domiciled in and works in Seoul in the Republic of Korea (Jung aff., NYSCEF Doc. No. 10, ¶¶ 5-10). Plaintiff argues that the Flushing address is home to defendant Nature Republic USA, Inc. (“NR USA”), a subsidiary of Nature Republic, and therefore should be considered Jung’s place of business because he is a corporate officer of Nature Republic. Service on an affiliate or subsidiary corporation does not confer jurisdiction upon the parent corporation absent evidence that the subsidiary is a “mere department” of the parent entity (*Breakaway Courier Corp. v Berkshire Hathaway, Inc.*, 192 AD3d 501, 502 [1st Dept 2021]). Plaintiff cites no authority for the proposition that under the “mere department” theory, which has not been established here, the officers of the parent corporation are also served by virtue of service upon the corporation. Further, plaintiff submits nothing to controvert Jung’s sworn statements that the address where he was purportedly served is neither his residence nor his place of business. In view of the lack of a factual dispute, the court grants the motion with respect to defendant Jung.

Turning to defendant Nature Republic, plaintiff asserts that service upon NR USA is sufficient, as NR USA is a mere department of Nature Republic and, therefore, an involuntary agent of Nature Republic for service of process. In order to show that a subsidiary is a mere department of a parent for purposes of service of process, a plaintiff must provide evidence that, among other things, the parent corporation “interfered in the selection and assignment of subsidiaries’ personnel, exercised control over the subsidiaries’ marketing and operational policies or that the subsidiaries were financially dependent on BHI” (*Breakaway Courier Corp.*, 192 AD3d at 502). Jung avers that Nature Republic did not control NR USA’s personnel or activities (Jung aff., NYSCEF Doc. No. 10, ¶¶ 19-20). In response, plaintiff argues that Nature Republic is the guarantor of NR USA’s settlement of an earlier unrelated case, and also of NR

USA's lease of the store in Flushing. However, as these guarantees have no relation to this action, which involves purported employment discrimination against plaintiff, they do not factor into the "mere department" analysis (*Breakaway Courier Corp.*, 192 AD3d at 502; *Bank of Tokyo-Mitsubishi, Ltd., New York Branch v Kvaerner a.s.*, 243 AD2d 1, 5-6 [1st Dept 1998] ["the rule established in this Department is that the mere furnishing of a guaranty by a nondomiciliary on behalf of a foreign corporation does not serve to confer in personam jurisdiction upon our courts"]).

Plaintiff, however, also provides the deposition testimony of defendant Hyung Jin Phang, who was questioned under oath in a separate employment discrimination action brought against the same defendants as the instant action by nonparty Minjae Lee, captioned *Minjae Lee v Nature Republic USA, Inc. et al*, bearing index number 655039/2021 and pending before the undersigned. Phang was questioned extensively regarding the relationship between Nature Republic and NR USA, and he testified that NR USA is wholly owned by Nature Republic and buys goods from Nature Republic (Phang EBT tr, NYSCEF Doc. No. 21 at 28-29), and that in his capacity as President of NR USA, Phang reported to Nature Republic's "finance team" and "overseas business team or overseas business operations team" (*id.* at 28-29). The court also notes that, though the act of guaranteeing NR USA's settlement of an earlier action in New York State does not resolve the mere department question, the fact that the same corporate officer signed for both NR USA and Nature Republic is significant. Jung and Nature Republic do not meaningfully contest any of these facts. Accordingly, the court finds that NR USA is, in fact, a mere department of Nature Republic, and thus Nature Republic was properly served by service upon NR USA (*e.g. Taca Intern. Airlines, S. A. v Rolls-Royce of England, Ltd.*, 15 NY2d 97, 100 [1965]).

Because the court finds that NR USA is a mere department of Nature Republic, the court may also properly exercise personal jurisdiction over it by its activities in New York through NR USA (CPLR 302 [a] [1]). Nature Republic sells goods to NR USA to be sold in New York, and NR USA employed plaintiff herein. Further, as set forth above, Nature Republic controls the financial and operational activities of NR USA. Where the New York parties in this action have engaged in purposeful activities within the state for the benefit of and with the knowledge of the nondomiciliary party, and the nondomiciliary party, as here, controls the New York parties, jurisdiction over the nondomiciliary is proper (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]).

Having addressed the court's jurisdiction over Nature Republic, the court now addresses the second half of defendants' motion regarding the sufficiency of the complaint. "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). "[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiff the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory" (*id.* at 87-88).

Ambiguous allegations must be resolved in plaintiff's favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). "The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). "[W]here ... the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration" (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

Plaintiff alleges six causes of action: discrimination and retaliation under the New York City Human Rights Law (“NYCHRL”) (New York City Administrative Code §§ 8-101, *et seq.*); aiding and abetting discrimination and retaliation under the NYCHRL; discrimination and retaliation under the New York State Human Rights Law (“NYSHRL”) (Executive Law § 296); aiding and abetting discrimination and retaliation under the NYSHRL; unpaid wages in violation of the New York Labor Law (Labor Law §§ 190, *et seq.*); and corporate veil piercing. As to the claims against which all the appearing defendants move, as a technical matter plaintiff may not maintain a separate cause of action for veil piercing (*245 E. 19 Realty LLC v 245 E. 19th St. Parking LLC*, 223 AD3d 604, 605 [1st Dept 2024]). Nevertheless, given what has been alleged regarding the relationships among the defendants, veil piercing may nevertheless be appropriate as to the substantive causes of action (*e.g. Open Door Foods, LLC v Pasta Machines, Inc.*, 136 AD3d 1002, 1004 [2d Dept 2016] [veil piercing “is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners”]). Regarding the claim for unpaid wages, plaintiff alleges that she was employed by defendants, that during her employment defendants failed to pay her certain wages and other compensation to which she was entitled. At the pleading stage, that is sufficient to state a cause of action for unpaid wages (*V. Groppa Pools, Inc. v Massello*, 106 AD3d 723, 724 [2d Dept 2013]). Defendants’ citations to federal cases are inapposite, as federal caselaw imposes a higher pleading standard at the motion to dismiss stage (*Williams v Citigroup, Inc.*, 104 AD3d 521, 522 [1st Dept 2013]).

Nature Republic further argues that the motion to dismiss must be granted as to itself because it cannot be liable for the conduct of its corporate subsidiaries and their officers. However, the NYCHRL, NYSHRL, and the Labor Law provide for liability across multiple entities who may be considered plaintiff’s employers (*Brankov v Hazzard*, 142 AD3d 445, 446

[1st Dept 2016]; Labor Law § 190 [3]). Nature Republic's arguments that it should not be so considered are disputed by plaintiff based on Phang's deposition testimony cited above. Thus, Nature Republic merely challenges the facts alleged properly in the complaint and on the motion, which disputes cannot be resolved on a motion to dismiss (*Peacock v Herald Sq. Loft Corp.*, 67 AD3d 442, 443 [1st Dept 2009]).

Accordingly, it is

ORDERED that the complaint is dismissed in its entirety against defendant Woon Ho Jung for lack of personal jurisdiction; and it is further

ORDERED that the sixth cause of action for piercing the corporate veil is severed and dismissed; and it is further

ORDERED that the action is severed and continued as against the remaining defendants on the first through fifth causes of action; and it is further

ORDERED that defendant Nature Republic Co. Ltd. shall file an answer to the complaint within 20 days of the date of filing hereof; and it is further

ORDERED that counsel shall appear for a preliminary conference in Room 1166, 111 Centre Street on February 19, 2025 at 2:15 PM. Prior to the conference, the parties shall meet and confer regarding discovery and, in lieu of appearing at the conference, may submit a proposed preliminary conference order, in a form that substantially conforms to the court's form Commercial Division Preliminary Conference Order located at [https://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary\\_conf\\_forms.shtml](https://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml), to the Principal Court Attorney of this Part (Part 38) at [ssyaggy@nycourts.gov](mailto:ssyaggy@nycourts.gov).

This constitutes the decision and order of the court.

ENTER:

*Louis L. Nock*

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|-----------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|
| <u>12/19/2024</u>     |                          |                            | <u>LOUIS L. NOCK, J.S.C.</u>        |                       |
| DATE                  |                          |                            |                                     |                       |
| CHECK ONE:            | <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
|                       | <input type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | DENIED                |
| APPLICATION:          | <input type="checkbox"/> | SETTLE ORDER               | <input checked="" type="checkbox"/> | GRANTED IN PART       |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/>            | SUBMIT ORDER          |
|                       |                          |                            | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT |
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