

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ME AND MY PAL, INC.,

Plaintiff,

-against-

BRYAN C. BUMPAS, D.D.S., P.C. and
BRYAN BUMPAS,

Defendants.

Index: 614479/2024

REPLY MEMORANDUM
IN FURTHER SUPPORT OF DEFENDANTS' CROSS-MOTION FOR DISMISSAL

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**DEFENDANTS' CROSS MOTION TO DISMISS
SHOULD BE GRANTED, BECAUSE PLAINTIFF HAS
NOT SUBMITTED EVIDENCE OF STANDING TO
PROSECUTE THIS ACTION.**

Before filing suit, the Plaintiff, Me and My Pal, Inc. (“Me and My Pal”), assigned away its rights under the contract in issue and thereby divested itself of standing to pursue the present action. *See* Exhibit A. Nevertheless, Me and My Pal now opposes dismissal. Without any record, it claims that the assignment to Signature Financial LLC never actually materialized. *See, e.g.*, NYSCEF Doc. No. 20 (“Smolenski Aff.”) at ¶4 (“that assignment and sale of the loan did not occur”). And it claims that, instead, it assigned the contract to a different third-party—“Channel Partners Capital, LLC”—from whom “MMP Capital, LLC” then repurchased the rights under the contract. *Id.* *See also* NYSCEF Doc. No 21 (claiming reassignment to “MMP Capital, LLC”).

As set forth below, this response from Me and My Pal falls well short of its burden to demonstrate standing to litigate this action. Dismissal should thus be granted.

A. Me and My Pal Does Not Defeat Dismissal Through Its Unsupported and Self-Serving Allegation that The Assignment to Signature Financial LLC Did Not Happen.

Once a defendant makes a prima facie showing that a plaintiff lacks standing to litigate an action, the burden on a motion to dismiss shifts to the plaintiff to “submit evidence which raises a question of fact as to its standing.” *HSBC Bank USA, Nat. Ass’n v. Roumiantseva*, 130 A.D.3d 983, 984 (2d Dept. 2015) (internal quotations omitted). This burden to “submit evidence” is not met through self-serving claims doused in hearsay. Thus, when a plaintiff attempts to rebut a standing-based motion to dismiss, it cannot simply rely on the word of an in-house affiant who promises to be in possession of paperwork that is left off the motion papers; instead, such a gambit

will be met with dismissal. *See Wells Fargo Bank v. Smith*, 197 A.D.3d 532, 533 (2d Dept. 2021).

As the Second Department recently explained these dynamics:

Although the plaintiff submitted the affidavit of ... a contract management coordinator employed by the plaintiff's loan servicer, in which she averred that the plaintiff 'was in possession of the Note at the time of commencement of this action,' this statement constituted inadmissible hearsay as she did not annex a copy of the record from which she obtained that information.

Wells Fargo Bank, 197 A.D.3d at 533.

These mechanics undermine the attempt by Me and My Pal to save this action from its lack of standing, which is evinced by the assignment paperwork it attached to its own motion for summary judgment, and which—using the present tense, not the future tense—stated that Me and My Pal Inc. for “good and valuable consideration ... **hereby transfers and assigns** ... all of [its] right, title and interest ... in and to the Contract. *See* Exhibit A (reproducing Ex. D to NYSCEF Doc. No. 5) (emphasis added). Just as in *Wells Fargo Bank*, the Plaintiff has provided an affidavit from a lending company in an attempt to establish its standing despite the *prima facie* showing to the contrary; and, just as in *Wells Fargo Bank* again, that affidavit does not attach the underlying paperwork to support the self-serving attempt at rebuttal.

That is to say, the affiant here—Mr. Smolenski—simply states, with no evidence, that Plaintiff's own assignment paperwork was false and that the assignment never materialized. He claims that the assignment failed because of Dr. Bumpas, but he provides no correspondence with Dr. Bumpas to corroborate this allegation; and he claims that Signature Financial LLC did not obtain rights to the contract, but he provides no evidence from Signature Financial LLC either. As this affidavit does not “annex a copy of the record from which [Smolenski] obtained that

information,” the “plaintiff [has] failed to raise a triable issue of fact.” *Wells Fargo Bank*, 197 A.D.3d at 533.

Because Me and My Pal has not met its burden to submit competent evidence of its standing, what is left is simply an assignment that Plaintiff issued to a third-party to the rights under the contract in issue. The action should now be dismissed for Plaintiff’s lack of standing.

B. Me and My Pal Does not Defeat Dismissal Through Its Claim that the Contract-Rights Were Repurchased by Non-Party Entity “MMP.”

The upshot of the plaintiff’s argument is that it assigned the contract-rights to a different third-party, “Channel Partners Capital” instead of Signature Financial LLC, and that it subsequently repurchased from Channel Partners the rights arising under the contract. *See Smolenski Aff.* at ¶4. However, there is one problem with this narrative: the purported proof of these dynamics alleges a series of transactions that left the contract-rights with a company called “MMP Capital, LLC”—**not** Me and My Pal Inc. *See* NYSCEF Doc. No. 21 (the “Channel Assignment”).

“Generally, corporations have an existence separate and distinct from that of their shareholders, and an individual shareholder cannot secure a personal recovery for an alleged wrong done to a corporation.” *New Castle Siding Co. v. Wolfson*, 97 A.D.3d 501, 501 (2d Dept. 1983) (internal citation omitted). “The fact that an individual closely affiliated with a corporation (for example, a principal shareholder, or even a sole shareholder), is incidentally injured by an injury to the corporation does not confer on the injured individual standing to sue on the basis of either that indirect injury or the direct injury to the corporation.” *Id.* (parentheses in original).

Under this rule of standing, then, in certain cases it may even be “undisputed that the plaintiff is [the company’s] sole officer and shareholder[.]” *Baccash v. Sayegh*, 53 A.D.3d 636, 639 (2d Dept. 2008). Even then, “a corporation has a separate legal existence from its

shareholders,” and “the courts are loathe to disregard the corporate form for the benefit of those who have chosen that form to conduct business.” *Id.* (internal references omitted). *See also Empleton v. D’Elia Gemstones Corp.*, 46 A.D.2d 751, 752 (1st Dept. 1974) (finding the law “well settled”).

These dynamics destroy Me and My Pal’s attempt to restore its standing over this action. That is because Me and My Pal Inc. and “MMP Capital, LLC” are different entities, with different names, organized as different types of businesses—an “LLC” versus an “Inc.” *Compare* Exhibit A (assignment from “Me and My Pal, Inc.”) *and* the Channel Assignment (alleging assignment to “MMP Capital, LLC”). Indeed, Mr. Smolenski runs a suspiciously large number different entities using similar names in this arena—conduct that corroborates the defense’s broader claim about the plaintiff’s corporate shenanigans. *See* Exhibit B (Department of State records for “Me and My Pal Inc.” and showing Smolenski as service-agent); Exhibit C (Department of State records for “MMP Capital Inc.” and showing Smolenski as service-agent); Exhibit D (Department of State records for “MMP Capital – SPE – WF, LLC,” listing Smolenski as service-agent). *See also* Exhibit E (Department of State records for “MMP Capital 2, LLC,” hiding Smolenski’s name from service-agent listing, but identifying service-address at 19 Engineers Lane in Farmingdale—the same address as all other MMP entities). The notion that “MMP Capital, LLC” purchased the rights to the contract in issue, then, would not identify the standing solution. It would emphasize the standing problem.

Because the plaintiff has not stepped forward with competent evidence to demonstrate that Me and My Pal Inc. has standing to prosecute this action, it should now be dismissed.

CONCLUSION

For these reasons, Defendants respectfully request that their cross-motion for dismissal be GRANTED.

Dated: Garden City, New York
November 14, 2024

Respectfully,

**BARKET EPSTEIN KEARON
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/s/ Alexander Klein

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