

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19933
X/prt

_____AD3d_____

Argued - June 6, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2007-07286

DECISION & ORDER

Janet Carp, et al., appellants,
v David Dunn, respondent.

(Index No. 7331/05)

Daniel E. Bertolino, P.C., Upper Nyack, N.Y., for appellants.

Greher Law Offices, P.C., New Windsor, N.Y. (Warren Greher and John A. McHugh of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract and fraud, the plaintiffs appeal from a judgment of the Supreme Court, Orange County (Alessandro, J.), dated July 9, 2007, which, upon the granting of the defendant's motion pursuant to CPLR 4401 for judgment as a matter of law, made at the close of the plaintiffs' case, is in favor of the defendant and against them, dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

A trial court should grant a motion pursuant to CPLR 4401 for judgment as a matter of law if there is no rational process by which the jury could find in favor of the nonmoving party upon the evidence presented (*see Szczerbiak v Pilat*, 90 NY2d 553, 556; *Kleinmunz v Katz*, 190 AD2d 657). Viewing the plaintiffs' evidence in the light most favorable to them, we find that they failed to establish a prima facie case for piercing the corporate veil of the defendant's corporation. Although the defendant conceded that he exercised complete dominion and control over the corporation, there was no evidence that he used the corporate vehicle to commit fraud or perpetrate a wrong that caused the plaintiffs' injury (*see TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339; *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141; *Sheridan*

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Broadcasting Corp. v Small, 19 AD3d 331, 332). In the absence of any viable defendant and any proof of damages, the trial court properly dismissed each cause of action in the complaint.

The plaintiffs' remaining contentions are without merit.

RIVERA, J.P., LIFSON, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court