

**Wasilewski v Clove Rd. Enters., LLC**

2011 NY Slip Op 31253(U)

April 13, 2011

Supreme Court, Richmond County

Docket Number: 100033/2009

Judge: Judith N. McMahon

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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**LUKASZ WASILEWSKI, TADEUSZ WASILEWSKI,  
ELIZABIETA WASILEWSKA, and WOJCIECH  
WASILEWSKI,**

**DCM PART 5**

**Plaintiff(s),**

**-against-**

**Present:  
HON. JUDITH N. MCMAHON**

**DECISION AND ORDER**

**CLOVE ROAD ENTERPRISES, LLC AND  
ALEX GRINBERG,**

**Index No. 100033/2009  
Motion No. 001**

**Defendant(s).**

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The following papers numbered 1 to 3 were used on this motion this 15<sup>th</sup> day of February, 2011:

[001]Notice of Motion [Defendants](Affirmation in Support) .....	1
Affirmation in Opposition [Plaintiff].....	2
Reply Affirmation [Defendants] .....	3

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**On or about February 27, 2008, the plaintiffs entered into a written contract with defendant Clove Road Enterprises, LLC, [hereinafter referred to as “Clove Road”] for the construction of a home located at 52 Giffords Lane, Staten Island, New York [hereinafter referred to as “the home”]. Defendant Alex Grinberg signed the purchase agreement and several other documents, in his capacity as member and representative of Clove Road. The home was one of six built by the defendants and it was constructed in 2006 or 2007.**

**Plaintiffs obtained title to the home on April 8, 2008. On or about June 17, 2008, the plaintiffs submitted a “Notice of Warranty” claim, pursuant to their contract, to defendant Clove Road. The claim contended that the oak floor was excessively squeaky and the windows leaked. The notice also states that plaintiffs had previously notified the defendant of**

the defects on April 25, 2008, but that no response had been received. Thereafter, on or about July 14, 2008, the defendant Alex Grinberg met with plaintiffs to discuss remediation. The plaintiffs ultimately rejected the defendants proposed method of remediation and sent a second notice of warranty on or about October 30, 2008. This action was commenced on or about January 7, 2009, contending that defendants Clove Road and Alex Grinberg, *inter alia*<sup>1</sup>, breached the contract, committed fraud, and violated General Business Law §§ 777-a and 349. Presently discovery is complete and the note of issue has been filed. Defendants are moving for summary judgment pursuant to CPLR § 3212.

Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of triable issues of fact (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept., 2003]). The party moving for summary judgment bears the initial burden of establishing its right to judgment as a matter of law (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]), and in this regard “ the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference” (Cortale v Educational Testing Serv., 251 AD2d 528, 531 [2d Dept., 1998]). Nevertheless, upon a prima facie showing by the moving party, it is incumbent upon the party opposing the motion to produce “evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (Alvarez v Prospect Hosp., 68 NY2d at 324; see Zuckerman v

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<sup>1</sup>Specifically, the plaintiff’s eight causes of action are: (1) Breach of the purchase agreement, (2) Violation of General Business Law § 777-a, (3) Violation of General Business Law § 349, (4) Fraud, Deceit and Misrepresentation, (5) Breach of the Implied Warranty of Habitability, (6) Breach of Fiduciary Duty, (7) Negligence/Recklessness, and (8) Breach of the Duty of Good Faith and Fair Dealing.

City of New York, 49 NY2d 557, 562 [1980]).

**I. Claims against Alex Grinberg, Individually**

Generally, where a corporate contract is entered into by an individual, in his capacity as a representative of the corporation, he cannot be held personally liable (Metropolitan Switch Board Co., Inc., 20 AD3d 455, 455 [2d Dept., 2005]). The exception or ‘piercing the corporate veil’ is however, allowed where “(1) the owners exercised complete domination of the corporation in respect to the transaction; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury” (Morris v. State Dep't of Taxation & Fin., 82 N.Y.2d 135, 141 [1993]). In order to establish a fraud occurred the plaintiff must prove “(1) a misrepresentation or a material omission of fact which was false and known to be false by the defendant, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) justifiable reliance of the plaintiff on the misrepresentation or material omission, and (4) injury” (Shao v. 39 College Point Corp., 309 AD2d 850, 851 (2d Dept., 2003)).

Here, the defendant Alex Grinberg, has established a prima facie entitlement to dismiss the complaint as against him in his individual capacity (Rosen v. Watermill Development Corp., 1 AD3d 424, 425 [2d Dept., 2003]). He has presented evidence that the contract was executed between plaintiffs and himself, in his capacity as representative of Clove Road. In opposition, the plaintiffs have failed to establish that defendant Alex Grinberg acted in his personal capacity at any point in the transaction, or exercised complete control over the corporation and used that control to commit a fraud (Metropolitan Switch Board Co. Inc., 20 AD3d at 455; Shao v. 30 College Point Corp., 309 AD2d at 851). As such,

defendant Alex Grinberg's motion to dismiss the complaint as against him in his individually capacity is granted, in its entirety.

## II. Plaintiff's Cause of Action for Fraud

With respect to the plaintiff's cause of action alleging fraud; in order to establish a fraud occurred the plaintiff must prove "(1) a misrepresentation or a material omission of fact which was false and known to be false by the defendant, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) justifiable reliance of the plaintiff on the misrepresentation or material omission, and (4) injury" (Shao v. 39 College Point Corp., 309 AD2d 850, 851 (2d Dept., 2003]). Here the plaintiffs have failed to provide any evidence of a misrepresentation or omission of fact that was known to be false by defendant and made for the purpose of inducing the plaintiff's to rely upon it. Further, plaintiffs have failed to pled the fraud causes of action with particularity, as required (Hu v. Shen, 57 AD3d 616, 619 [2d Dept., 2008]; RBE N. Funding Inc. v. Stone Mtn. Holdings, LLC, 78 AD3d 807, 809 [2d Dept., 2010]). As a result, the causes of action alleging fraud in the plaintiff's complaint are hereby dismissed.

Accordingly, it is

**ORDERED** that defendants motion [001] is granted to the following extent; all causes of action against defendant Alex Grinberg in his individual capacity are dismissed and plaintiff's fraud causes of action are also dismissed, and it is further

**ORDERED** that any and all additional requests for relief are hereby found without merit and are denied, and it is further

**ORDERED** that the Clerk enter judgment accordingly,

**THIS IS THE DECISION AND ORDER OF THE COURT.**

**Dated: April 13, 2011**

**E N T E R,**

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**Hon. Judith N. McMahon**  
**Justice of the Supreme Court**