

**Movement for a New Community Inc. v 174-176 1st
Ave. Owner LLC**

2020 NY Slip Op 33316(U)

October 9, 2020

Supreme Court, New York County

Docket Number: 156214/2019

Judge: Barbara Jaffe

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

PRESENT: <u>HON. BARBARA JAFFE</u>	PART	IAS MOTION 12
<i>Justice</i>		
-----X	INDEX NO.	<u>156214/2019</u>
MOVEMENT FOR A NEW COMMUNITY INC.,	MOTION DATE	_____
Plaintiff,	MOTION SEQ. NO.	<u>002</u>
- v -		

174-176 1ST AVENUE OWNER LLC,
ELI LIEDMAN, DREW POPKIN,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 98-126
were read on this motion for partial summary judgment.

By notice of motion, defendants move pursuant to CPLR 3212 for an order dismissing
the complaint as against the individual defendants, and awarding them costs and fees and
assessing sanctions against plaintiff. Plaintiff opposes.

I. PERTINENT BACKGROUND

The background of this action is set forth in the decision and order dated November 25,
2019 (NYSCEF 91), by which plaintiff's application for a preliminary injunction was partially
granted. As pertinent here, plaintiff sues defendants, including the individual defendants, for
negligence, gross negligence, trespass, and nuisance that resulted in property damage. (NYSCEF
100).

Plaintiff owns property neighboring that owned by defendant 174-176 Owner LLC at
20 West 22nd Street, Suite 1601 and/or 64 Second Avenue, 2nd floor, in Manhattan. Non-party
Highpoint Property Group, founded by its principal, defendant Popkin, allegedly manages that
property. Defendant Liedman is allegedly Highpoint's principal and is also an executive vice

president of Owner LLC. (*Id.*).

By affidavit, Popkin states that as he helped “facilitate the performance of the renovation and construction project” at the premises at issue, he is familiar with the project, but otherwise denies having: (1) taken any action related to the project in his individual capacity; (2) been a member, principal, manager or employee of Owner LLC or any contractor that performed work on the project; (3) owned, leased, possessed, or used the premises; (4) been the party to a contract related to the project; (5) entered or accessed the premises without plaintiff’s permission or consent; (6) performed renovation or construction work at the premises, including the work at issue in this action; and (7) directed or controlled the means and methods of construction or renovation work. (NYSCEF 104). Liedman advances identical assertions. (NYSCEF 103).

II. CONTENTIONS

A. Defendants (NYSCEF 99)

Defendants assert that absent a duty owed or breached to plaintiff, Liedman and Popkin may not be held liable to it in negligence or gross negligence. Nor may they be held vicariously liable absent a relationship to the project or the construction work. And, as they were never members of Owner LLC or a contractor on the project, there is no basis for piercing the corporate veil to hold them liable.

As Popkin and Liedman never entered the premises without plaintiff’s permission, defendants argue that the trespass claim must be dismissed, and absent their relationship to the alleged nuisance, that claim is also not viable.

B. Plaintiff (NYSCEF 123)

Plaintiff contends that Popkin and Liedman made false statements in their affidavits, and in support of its claim that they may be held personally liable, it submits the following:

- (1) a deed recorded with the City of New York on May 24, 2018, reflecting that Popkin, on behalf of Owner LLC, executed a bargain and sale deed dated May 17, 2018, that transferred the premises to Owner LLC (NYSCEF 118);
- (2) the same day, Popkin executed a gap mortgage agreement on behalf of Owner LLC (NYSCEF 119);
- (3) on or about June 22, 2018, Popkin, on behalf of Owner LLC and as the “Managing Director & Principal” to the “Owner,” executed a Department of Buildings (DOB) Plan/Work Application for the project (NYSCEF 120);
- (4) on or about June 28, 2018, Popkin as the “Managing Agent” for the “Building Owner” executed a DOB technical report for the project (NYSCEF 121);
- (5) Liedman, on or about August 29, 2018, executed a DOB plan/work application on behalf of Owner LLC as its Executive Vice President (NYSCEF 122); and
- (6) Liedman, as the project’s “Owner/Manager,” executed a letter for DOB confirming the general contractor of record for the project (NYSCEF 123).

Plaintiff also alleges that Popkin and Liedman held themselves out as Owner LLC’s owners and/or decision-makers when they met with plaintiff to discuss a resolution of this litigation. (NYSCEF 111).

Plaintiff thus argues that the aforementioned documentary evidence contradicts Popkin’s and Liedman’s denials of the extent of their relationship with LLC, and that further discovery in their possession is necessary to determine whether they may be held liable here. Thus, plaintiff maintains, summary dismissal is premature. Given the apparently perjurious statements in the affidavits, plaintiff seeks sanctions.

C. Reply (NYSCEF 126)

Defendants deny that the documents submitted by plaintiff controvert any of the statements made in their affidavits and observe that their execution of documents on behalf of Owner LLC does not prove that they are or were principals of it. In any event, even if the documents create an issue of fact as to whether they are in some way related to Owner LLC, plaintiff provides no factual basis for holding them personally liable here or for piercing Owner LLC's corporate veil.

Moreover, plaintiff has had 14 months to seek discovery from defendants, but did not do so since the case was commenced. And as none of the statements in the affidavits is false, sanctions are unwarranted.

III. ANALYSIS

In order to pierce an LLC's corporate veil and hold its members, owners, and/or principals personally liable for the LLC's actions or inactions, it must be shown that the individual dominated the LLC as to the transaction at issue and that such domination resulted in wrongful consequences (*id.*), provided that the use of the corporate form was intended for the commission of a fraud or wrong upon the plaintiff (*Rose v Different Twist Pretzel, Inc.*, 175 AD3d 597 [2d Dept 2019]).

Here, plaintiff interposes no such allegations against Popkin and Liedman in the complaint, nor does it advance such allegations on this motion. (*See eg, Kahan Jewelry Corp. v Coin Dealer of 47th St. Inc.*, 173 AD3d 568 [1st Dept 2019] [even if defendant completely dominated corporate form, no showing made that he used domination to commit fraud against plaintiffs or that he abused corporate form in any way; mere fact that he was sole shareholder insufficient]). Thus, even if Popkin and Liedman are or were principals in Owner LLC, that in

and of itself is insufficient to pierce the corporate veil and hold them personally liable for LLC's alleged conduct. (*Matias v Mondo Props. LLC*, 43 AD3d 367 [1st Dept 2007]).

Moreover, as plaintiff sought no discovery from defendants for over a year, it may not argue that summary dismissal is premature nor does it identify the discovery it believes may lead to relevant evidence. (*See Jobson v SM Livery, Inc.*, 175 AD3d 1510 [2d Dept 2019] [motion not premature as opposing party had ample opportunity to pursue discovery but did not do so]).

Thus, as it is undisputed that Popkin and Liedman owed no duty to plaintiff and had no personal relationship to the project or premises, they may not be held liable for gross negligence, negligence, or nuisance. Nor does plaintiff allege that they personally trespassed on the premises, and therefore this claim must be dismissed against them as well. Sanctions are not warranted.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants' motion for summary judgment is granted, and the complaint is severed and dismissed as against defendants Eli Liedman and Drew Popkin, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the remaining parties are directed to enter into a preliminary conference order within 30 days of the date of this order, pursuant to the protocols set forth in the notice posted to the action on NYSCEF on October 7, 2020.

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10/9/2020
DATE


BARBARA JAFFE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: