

Diehl & Diehl Corp. v Shorty's Clinton LLC
2024 NY Slip Op 31594(U)
May 6, 2024
Supreme Court, New York County
Docket Number: Index No. 157058/2023
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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DIEHL AND DIEHL CORP.,

Plaintiff,

- v -

SHORTY'S CLINTON LLC,SHORTY'S RESTAURANTS
LLC,JOHN EDMONDS, ABC COMPANIES

Defendant.

-----X

INDEX NO. 157058/2023

MOTION DATE 12/11/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS.

This action arises out of a commercial lease agreement. Defendants, tenant, guarantor and member of the corporations, now move to dismiss the complaint, pursuant to CPLR §3211 (a)(7) and seeks sanctions against plaintiff. Plaintiff opposes the instant motion and subsequently filed an amended complaint. The Court’s ruling and analysis will be as to the originally filed complaint as the amended filing was not as of right, nor was it made by application to the Court. For the reasons set forth below, defendants’ motion is granted in part.

Background

Plaintiff and defendant Shorty’s Clinton LLC (tenant) entered into a commercial lease agreement, wherein defendant Shorty’s Restaurants LLC (guarantor) was the corporate guarantor of the lease.

Plaintiff contends defendants breached the lease and guarantee. Further, plaintiff contends that individual defendant, John Edmonds, should be held liable for the corporate

defendants' wrongdoing and breach. Specifically, plaintiff contends that defendant Edmonds obstructed plaintiff's ability to relet the premises.

Legal Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.*

Allegations against defendant John Edmonds

The concept of "piercing the corporate veil" is a limitation on accepted principles that corporation exists independently of its owners as a separate legal entity, that owners are normally not liable for debts of corporation, and that it is perfectly legal to incorporate for the express purpose of limiting liability of corporate owners. *Morris v New York State Dep't of Tax'n & Fin.*, 82 NY2d 135 [1993]. Although there are no definitive rules governing circumstances when corporate veil may be pierced, there is generally required showing that: (1) owners exercised complete domination of corporation in respect to transaction attacked; and (2) such domination was used to commit fraud or wrong against plaintiff which resulted in plaintiff's injury. *Id.*

Further, it has been held by the Court of Appeals that, at the pleading stage, a plaintiff seeking to pierce the corporate veil must adequately allege the existence of a corporate obligation

and that the defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice. *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30 [2018].

Here, a thorough review of the complaint establishes that the complaint fails to state a cause of action as against defendant Edmonds for breach of contract. As to the allegations that Edmonds is liable under the piercing the corporate veil theory and alter ego liability, the complaint contains no factual allegations regarding Edmonds' misuse of the corporate form for his own benefit. Accordingly, the complaint is dismissed in its entirety as to defendant John Edmonds.

Fraudulent Conveyance-Third Cause of Action

A party pleading a cause of action for fraudulent conveyance must allege specific facts, including, among other things, the identity of the specific transactions or conveyances that the plaintiff alleges were fraudulent. *Syllman v Calleo Dev. Corp.*, 290 AD2d 209, 210 [1st Dept 2002]. The complaint contains no such factual allegations; accordingly, the Court finds that the complaint fails to state a cause of action for fraudulent conveyance.

Ejectment-Fourth Cause of Action

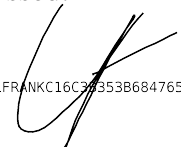
Plaintiff contends that dismissal of the ejectment cause of action pursuant to CPLR § 3211(a)(7) is inappropriate, however admits that the cause of action is now moot as plaintiff has recovered the premises.

As to the defendants' request for sanctions, the Court declines to find plaintiff's conduct so egregious as to warrant sanctions. Accordingly, it is hereby

ORDERED that defendant's request for sanctions is denied; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendant John Edmonds; and it is further

ORDERED that the third and fourth causes of action are dismissed.

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5/6/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE