

**Santi Borse-I Santi SNC v Dichtenberg**

2005 NY Slip Op 30448(U)

July 29, 2005

Supreme Court, New York County

Docket Number: 604208/04

Judge: Bernard J. Fried

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

**BERNARD J. FRIED**  
J.S.C.

PART 60

PRESENT: \_\_\_\_\_

Justice

0604208/2004

SANTI BORSE - I SANTI SNC.  
VS

DICTENBERG, PETER

SEQ 1

DISMISS

INDEX NO. 604208/04

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_\_\_\_\_, are submitted in support of this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Repeating Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**

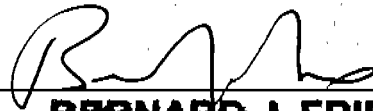
AUG - 2 2005

COUNTY CLERK'S OFFICE  
NEW YORK

This motion is decided in accordance with the  
accompanying memorandum decision.

SO ORDERED

Dated: 7/29/05



**BERNARD J. FRIED** J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

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

-----X

SANTI BORSE – I SANTI SNC.,

Plaintiff,

v.

INDEX NO.: 604208/04

PETER DICTENBERG, PRECIOUS FIBERS LTD.,  
MARGARET LOVES PETER INC. and  
CASHMERE LTD.

Defendants.

-----X

In this action for breach of contract for the sale of goods, defendants Peter DICTENBERG (DICTENBERG), Cashmere London Ltd. (Cashmere) move to dismiss, with prejudice, plaintiff's Santi Borse - I Santi SNC.'s (Santi Borse) breach of contract claim.<sup>1</sup> (Defendants Margaret Love's Peter Inc. and Precious Fibers Ltd. have not moved to dismiss).

DICTENBERG moves for dismissal on three grounds. First, DICTENBERG asserts that the Amended Complaint against him must be dismissed, pursuant to CPLR 3211(a)(8), because he was never personally served. Second, DICTENBERG asserts that CPLR 3211(a)(1) mandates dismissal because the documentary evidence establishes that the transactions were for sales between corporate entities, and that he cannot be held individually liable for corporate obligations. Third, DICTENBERG argues for

<sup>1</sup> Defendants DICTENBERG and Cashmere originally moved to dismiss the complaint. Thereafter, plaintiff filed an Amended Complaint. At a court appearance on February 24, 2005, I granted the parties leave to submit supplemental papers to address the Amended Complaint.

dismissal pursuant to 3211(a)(7) on the grounds that plaintiff has failed to state a valid claim for imposing individual liability.

Cashmere also moves for dismissal on three grounds. First, Cashmere asserts that it, too, was never properly served. Second, Cashmere contends that as a foreign corporation with no business or assets in the US, it is not subject to personal jurisdiction in New York. Third, Cashmere contends that it is independent and separate from the other defendant corporations, and cannot be liable for goods ordered from plaintiff by the other defendant corporations.

As discussed below, Dichtenberg's and Cashmere's motion to dismiss is granted without prejudice.

Santi Borse, in its Amended Complaint, identifies the defendants as: (1) Precious Fibers Inc., "a corporation incorporated under the laws of New York"; (2) Margaret Loves Peter Inc., "a corporation incorporated under the laws of New York"; (3) Cashmere London Ltd., "a corporation which conducts business in New York State"; and (4) Peter Dichtenberg, an individual residing in New York who owns and controls the corporate defendants. (Amended Complaint ¶¶ 2, 3, 4, 5 & 7). This motion only concerns defendants Dichtenberg and Cashmere London.

Santi Borse alleges that between July 28, 2003, and April 22, 2004, defendants, "delivered purchase orders to plaintiff in the name of Defendant Margaret Loves Peter Inc." for a quantity of handbags having an agreed upon price of €821,842.23. (¶ 9). Santi Borse further alleges that although these goods were delivered, defendants have made payments of only €681,790.53, leaving an outstanding balance of €140,051.70 on the delivered goods. (¶¶ 10, 12 & 14). Santi

Borse also claims that as a result of defendants' past due payments on delivered goods, ordered goods worth €93,268.50 were never delivered. (¶¶ 15, 16, 17 & 18). Based on these allegations, Santi Borse claims that it is entitled to judgments against defendants in the amount of €140,051.70 for the delivered goods, and €93,268.50 for the undelivered goods.

Santi Borse contends that all four defendants should be held liable for failure to pay the unpaid balance because “[t]he documentary evidence establishes that in most, if not all, of the sixty eight transactions”: (1) Defendant Margaret Loves Peter Inc. issued the Purchase Order; (2) Dichtenberg instructed plaintiff to invoice defendant Precious Fibers Ltd.; and (3) The invoice was paid by defendant Cashmere London Ltd. or defendant Precious Fibers Ltd. (Pl. Opp. Brief, p. 2). Santi Borse asserts that the way Dichtenberg conducted the transactions suggests that he exercised complete domination and control over the three corporate defendants. (*Id.* p. 3).

Dichtenberg's request for dismissal on the grounds that he was never personally served, is moot, inasmuch as he waived his objection to service at oral argument on March 31, 2005. (Tr., p. 6:22-26).

Cashmere's objection to service and personal jurisdiction is also moot. Cashmere asserts that as a British Company with its principal place of business in London, it cannot be served at the business office of the New York Corporation Precious Fibers Ltd. (Def. Brief p. 6). Additionally, Cashmere claims to be a British Company that does not own assets or do business within the United States, and that as a result, there is no basis for long arm jurisdiction. (Def. Brief p. 7). However, since plaintiff concedes that there is “no independent basis for personal jurisdiction over

Cashmere London in the State of New York absent my argument that all three named defendants are alter egos of Mr. Dichtenberg” (Tr, p. 18:23), I need not consider service and personal jurisdiction.

Therefore, I turn to whether the documentary evidence establishes that the transactions were between corporations, and if so, whether plaintiff Santi Borse has alleged facts sufficient to permit piercing of the corporate veil and to impose liability on defendants Dichtenberg and Cashmere:

Generally, commercial business is transacted between corporations, and it is understood that individual stockholders or officers are not liable for their corporate engagements unless they sign individually. (American Media Concepts Inc. v. Atkins Pictures Inc. 179 A.D.2d 446, 449 [1st Dept. 1992] citing Salzman Sign Co., Inc. v. Beck, 10 N.Y.2d 63, 67). Thus, signing officers are not bound individually “without some direct and explicit evidence of actual intent”. For example, “where individual responsibility is demanded the nearly universal practice is that the officer signs twice - once as an officer and again as an individual.”

Here, the documentary evidence consists of purchase orders, invoices, checks, and letters associated with the transactions. None of these documents offer “direct and explicit evidence” that Dichtenberg intended to bind himself individually. Purchase orders sent to Santi Borse were printed on “Cashmere New York” order forms, indicating that the transactions were entered into in the corporate name. (Pl’s Ex. 6).<sup>2</sup> Numerous invoices sent by plaintiff were addressed to corporate defendants Precious Fibers and Cashmere London rather than to Dichtenberg, indicating that

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Santi Borse, in its supplemental papers, asserts that some purchase orders were made in the name of “Cashmere New York”, and, that no such corporate entity is listed on the website of The New York State Division of Corporations. Such allegations are insufficient to pierce the corporate veil.

\* 6]

plaintiff understood the transactions to be corporate. (Defs' Ex. D). Other invoices were printed on forms reading "Margaret Loves Peter". (Pl's Ex. 5). All of the documents mentioned above are printed on corporate stationary or corporate forms and refer to commercial transactions between corporations.<sup>3</sup> Furthermore, there is no evidence, such as "signing twice", that Peter Dichtenberg intended to bind himself individually. Therefore, the documentary evidence establishes that Dichtenberg signed in his corporate capacity and that the transactions were between corporations.

Plaintiff has failed to allege sufficient facts to "pierce the corporate veil" and impose individual liability on Dichtenberg. Although "the law permits the incorporation of a business for the very purpose of enabling its proprietors to escape personal liability", New York courts will "pierce the corporate veil" by imposing individual liability on corporate owners whenever necessary to "prevent fraud or to achieve equity". (Walkovszky v. Carlton, 18 N.Y.2d 414, 417 [1966]). Santi Borse seeks to pierce the corporate veil and treat the individual defendant, Peter Dichtenberg, and each of the corporate defendant's as a single entity for the purposes of this litigation.

Santi Borse bases its argument on allegations that Dichtenberg "personally conducted all material dealings with plaintiff in a way that suggests he exercised complete domination and control over all three [corporate] defendants." (Pl.'s Opp. Brief p. 3). However, bald allegations of complete domination are not sufficient to permit piercing the corporate veil. (Morris v. State Department of Taxation & Fin. 82

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In addition, a letter faxed by Peter Dichtenberg to I Santi was not written on corporate letterhead and is only signed "Peter". However, this document only concerns alleged defects with the handbags, rather than the actual transactions.

N.Y.2d 135, 142, [1993]). Rather “[t]here must also be proof that the individual completely dominated the corporation, such that it was a mere device to further his personal business, and that such domination was used to commit a fraud or a wrong against the party seeking to pierce the veil.” (Sharon Towers, Inc. v. Bank Leumi Trust Co., 250 A.D.2d 509, 512 [1st Dep. 1998] Citing Morris).

Santi Borse has not made sufficient allegations that would show that Dichtenberg used his control of the defendant corporations to further his own personal business. In Walkolovsky, supra, at 420, the plaintiff sought to pierce the corporate veil to impose personal liability on a corporate owner. Although the plaintiff alleged that owner “organized, managed, dominated and controlled a fragmented corporate entity”, the Court held that these allegations were insufficient to establish personal liability absent “any sufficiently particularized statements that the [the defendant] and his associates are actually doing business in their individual capacities, shuttling their personal funds in and out of the corporations without regard to formality and to suit their immediate convenience.” Similarly, Santi-Borse has not made any particularized allegations that Dichtenberg was doing business in his individual capacity and shuttled personal funds in and out of the defendant corporations. Moreover, Santi Borse has not made sufficient allegations that Dichtenberg used his domination of the corporate defendants to commit a fraud or wrong against plaintiff. Rather, the allegations are that Dichtenberg dominates the corporations, and that the corporations failed to pay on a contract with Santi Borse.

Since there have been insufficient allegations supporting the claim to pierce the corporate veil, the motion to dismiss by defendants Peter DICTENBERG and Cashmere London Ltd. is granted.<sup>4</sup>

Accordingly, it is


ORDERED that the moving defendants', Peter DICTENBERG and Cashmere London Ltd., motion to dismiss is granted without prejudice and the Amended Complaint is dismissed as to the moving defendant; and it is further

ORDERED that the Amended Complaint is severed and continued as to the remaining defendants.

This constitutes the decision and order of the court.

**FILED**  
AUG - 2 2005  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 7/29/05

ENTER:   
J.S.C.  
**BERNARD J. FRIED**  
J.S.C.

<sup>4</sup> The parties' applications for sanctions are denied.