

Colucci v AFC Const.

2007 NY Slip Op 30052(U)

March 5, 2007

Supreme Court, Suffolk County

Docket Number: 0002191

Judge: Arthur G. Pitts

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Supreme Court of the State of New York
IAS Part 43- County of Suffolk

PRESENT:

CORP.

HON. ARTHUR G. PITTS**JUSTICE OF THE SUPREME COURT**

STEVE COLUCCI and MARIE COLUCCI,

ORIG. RETURN DATE: 12/21/06**FINAL SUBMIT DATE: 12/21/06****MOTION SEQ. NO.: 005-MD**

Plaintiffs,

-against-

PLTF'S/PET'S ATTY:**PROKOP & PROKOP****175 Route 25A****East Setauket, New York 11733****DEFT'S/RESP'S ATTY:****MILLER & SKUBIK, LLP****One Suffolk Square, Suite 520****Islandia, New York 11749**

AFC CONSTRUCTION, ANTHONY F.
 CATANZARO, ANTHONY CATANZARO d/b/a
 AFC CONSTRUCTION SOUTHBAYVIEW
 CONSTRUCTION CORPORATION d/b/a AFC
 CONSTRUCTION and TRAVELERS INSURANCE
 COMPANY,

Defendants.

Upon the following papers numbered 1 to 24 read on this motion /summary judgment
 Notice of Motion/OSC and supporting papers 1-9; Notice of Cross-Motion and supporting papers ____; Affirmation/affidavit in
 opposition and supporting papers 10-13; Affirmation/affidavit in reply and supporting papers 14-18/19-22 Other 23-24;
 (~~and after hearing counsel in support of and opposed to the motion~~) it is,

ORDERED that defendant Anthony F. Catanzaro's motion for partial summary judgment is denied under the circumstances presented herein. (CPLR 3212)

The matter at bar is one sounding in breach of contract. On January 3, 2000 the plaintiffs Steven and Marie Colucci contracted with defendant Southbayview Construction Corporation d/b/a AFC Construction to build a one family residence on Dune Road, Westhampton Dunes, Suffolk County, New York. Defendant Anthony F. Catanazaro, the corporate defendant's principal, executed the agreement on AFC's behalf. In or about 2003 and 2004 a water pipe in the subject house burst resulting in substantial water damage. By way of the instant complaint the plaintiffs allege that such damage was the result of negligent design and construction by the defendants. Defendant Catanazaro now moves for partial summary judgment on the grounds that he is not a proper party to this action because only the corporate defendant executed the subject contract and he individually, was not a party to such contract. In opposition thereto the plaintiffs aver that Catanazaro at all times held himself out

as doing business as an individual and not as a corporate entity.

A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact. (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851,853, 487 N.Y.S.2d 316; *Zuckerman v. City of New York*, 49 N.Y.2d 557,562). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action. (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 [1986])

It is well settled that “generally courts will not pierce the corporate veil to reach a shareholder since the corporate form is a legitimate means of avoiding personal liability. (see *Matter of Total Care Health Indus. v. Department of Social Services*, 144 A.D.2d 678) However, a shareholder may be held liable for corporate debts upon a showing that he or she exercised complete dominion and control over the corporation (see, *Matter of Guptill Holding Corp. v. State of New York*, 33 A.D.2d 362, *affd* 31 N.Y.2d 897) or used the corporation to transact personal business. (see *Matter of Total Care Health Indus. v. Department of Social Services*, *supra*) The decision whether to pierce the corporate veil will depend upon the facts and circumstances of each case. Where a plaintiff can establish that the owner exercised complete domination of the corporation with respect to the transaction in question and said domination was used to commit a fraud or wrong against the plaintiff resulting in plaintiff’s injury, the corporate veil may be pierced. (*Matter of Morris New York State Dept. of Taxation and Fin.*, 82 N.Y.2d 135) ” (*Austin Powder Co., v. McCullough*, 216 A.D.2d 825, 826, 628 N.Y.S.2d 855 [3rd Dept 1995])

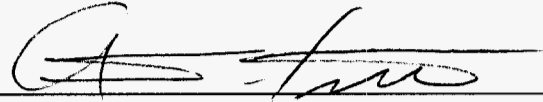
In the matter at bar, defendant Catanzaro at his examination before trial testified that he worked for himself, the office of the defendant corporation is in his home, there are no other officers of the corporation other than himself, he didn’t recall the last time there had been a directors meeting and the corporation did not have an attorney. The function of the Court upon a motion for summary judgment is issue finding, not issue determination. It is a most drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue of fact, or where an issue is even arguable. (*Stevens v. Parker*, 99 A.D.2d 649, 472 N.Y.S.2d 225 [2nd Dept. 1984]) Clearly issues of fact are present as to whether defendant Catanzaro had complete dominion over the corporate defendant and whether he held himself out to the plaintiffs as an individual contractor while knowingly seeking to wrongly avoid personal liability. Accordingly, defendant Catanzaro’s motion for summary judgment is

denied.

This shall constitute the decision and order of the Court.

So ordered.

Dated: Riverhead, New York
March 5, 2007



J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION ____ DO NOT SCAN