

AHA Sales, Inc. v Creative Bath Prods., Inc.

2007 NY Slip Op 30394(U)

March 13, 2007

Supreme Court, Suffolk County

Docket Number: 0013487

Judge: Jeffrey Arlen Spinner

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SUPREME COURT OF THE STATE OF NEW YORK
IAS PART XXI - COUNTY OF SUFFOLK

PRESENT:

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

COPY

<p>AHA SALES, INC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>CREATIVE BATH PRODUCTS, INC and MATHIAS MEINZINGER,</p> <p style="text-align: right;">Defendants.</p>	<p>INDEX NO.: 2006-13487</p> <p>MOTION SEQ. NO.: 002 - MG</p> <p>ORIG. MOTION DATE: 07/20/06</p> <p>FINAL SUBMIT DATE: 10/25/06</p>
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UPON the following papers numbered 1 to 88 read on this Motion:

- Defendants' Motion & Supporting Papers (Pages 1-27 & Exhibits A and one unmarked exhibit);
- Plaintiff's Opposition (Pages 28-66);
- Defendants' Rely (Pages 67-83);
- Plaintiff's Counsel's Letter, date November 16, 2006 (Page 84);
- Defendants' Counsel's Letter, dated November 20, 2006 (Pages 85-86);
- Plaintiff's Counsel's Letter, date March 6, 2007 (Pages 87-88);

it is,

ORDERED, that the application of Defendants is hereby granted in all respects; and the request of Plaintiff by letter for a conference regarding a preservation deposition is hereby granted, as set forth herein below

Defendants move this Court for an Order, pursuant to CPLR 3211(a), for a judgment as a matter of law dismissing the Complaint as to Defendant MEINZINGER, and dismissing Counts I, II, V, VI, VII, VIII, IX and X of the Complaint as to Defendant CREATIVE BATH.

Plaintiff, by letters dated November 16, 2007, and March 6, 2006, requests a conference regarding the holding of a preservation deposition of an alleged crucial witness who is 85 years of age.

As Counsel for Defendant points out, a party may move to dismiss a cause of action for failing to state a cause of action pursuant to CPLR 3211(a)(7). In rendering such a ruling, the Court must determine whether, accepting the factual allegations of the complaint as true and giving them the benefit of all favorable inference, Plaintiff can succeed on any reasonable view of the facts stated (*See, Campaign for Fiscal Equity, Inc v State*, 86 NY2d 307 [1995]). However, the pleadings must be sufficiently particular to give both the Court and all parties notice of the transactions, occurrences, or series of transactions and occurrences, intended to be proved, and the material elements of each cause of action or defense (*See, Shalmoni v Shalmoni*, 141 AD2d 628, 529 NYS2d 538 [2 Dpt], *app dismissed*, 73 NY2d 851, 537 NYS2d 495 [1988]). Furthermore, where the alleged cause of action is based on fraud, as in a claim to pierce the corporate veil, a particularized statement of the facts constituting the wrong is required pursuant to CPLR 3016(b). The Court finds that Plaintiff's pleadings do not meet these standards regarding Defendant

MEINZINGER, and regarding Counts I, II, V, VI, VII, VIII, IX and X of the Complaint as to Defendant CREATIVE BATH.

In *State of New York v Robin Operating Corp*, 3 AD3d 769, 773 NYS2d 137 [3 Dept 2004], the Appellate Division set forth the elements necessary to prevail in an action, where a party seeking to pierce the corporate veil, stating that said party must show that: (1) the owners of the corporation exercised complete domination thereof with respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the complaining party which resulted in their injury (*See: Morris v New York State Dept of Taxation & Fin*, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157 [1993]; *Island Seafood Co v Golub Corp* 303 AD2d 892, 759 NYS2d 768 [2003]).

Furthermore, in *EDK Enterprises Inc v C&S Wholesale Grocers, Inc*, 30 AD3d 924, 818 NYS2d 319 [3 Dept 2006], the Appellate Division stated that evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance, and significantly, no inference of abuse arises where a corporation was formed for legal purposes or is engaged in legitimate purposes, reminding the parties to that action that it is perfectly legal to incorporate for the express purpose of limiting liability (*See: TNS Holdings v MKI Sec Corp*, 92 NY2d 335, 680 NYS2d 891, 703 NE2d 749 [1998]; *Morris v New York State Dept of Taxation & Fin*, *supra*).

In *Treeline Mineola, LLC v Bergi*, 21 AD3d 1028, 801 NYS2d 407 [2 Dept 2005], the Appellate Division stated that, while the Courts are empowered to pierce the corporate veil in appropriate circumstances, in view of the well established fact that a business can be incorporated for the very purpose of enabling its proprietor to escape personal liability, said corporate form is not lightly to be disregarded, and indeed the precedent is clear that the Courts will pierce the corporate veil only to prevent fraud or illegality, or to achieve equity, even in situations where the corporation is controlled or dominated by a single shareholder (*See: Bowles v Errico*, 163 AD2d 771, 558 NYS2d 734; *New York Assn for Retarded Children, Montgomery County Ch v Keator*, 199 AD2d 921, 606 NYS2d 784). As in the instant situation, Plaintiff therein failed to establish that the sole shareholder/proprietor, through his control and domination over the corporation, perpetuated a wrong or injustice against Plaintiff such that a Court of equity would intervene (*See: Morris v New York State Dept of Taxation & Fin*, *supra*; *Weiss v Marjam of Long Island*, 270 AD2d 455, 705 NYS2d 76; *Kopec v Hempstead Gardens*, 264 AD2d 714, 696 NYS2d 53; *Palisades Off Group v Kwilecki*, 233 AD2d 490, 650 NYS2d 990).

The record herein is devoid of such proof. Plaintiff has not plead the elements necessary to maintain an action to pierce the corporate veil, impose personal liability on the corporate officer, nor demonstrate that such corporate officer engaged in conduct outside his corporate capacity.

With regard to Defendant CREATIVE BATH, the Court notes the following relevant and convincing legal arguments presented by Defendants' Counsel:

A. As to Count I, alleging violation of Labor Law § 191-b, the Courts of this state have previously ruled that this statute provides primarily for enforcement of Labor Law requirements by the Commissioner of Labor, supplemented in certain instances by the Attorney General (*See, Spitzer v Frink America, Inc*, 2 AD3d 1379, 770 NYS2d 225 [4 Dpt 2003]); it is questionable as to whether Labor Law §§ 191-a to 191-c are remedial in nature; and the Court rejected a plaintiff's attempt to use Labor Law § 191-b as an independent basis for a cause of action, when the essence of the claim was for breach of an oral

contract.

- B. As to Count II, alleging violation of Labor Law § 191-c, the Courts of this state have previously ruled that : this statute requires a plaintiff making claim thereunder to set forth with particularity, pursuant to CPLR 3013, the date payment should have been made, Plaintiff's Complaint herein failing to allege that a point had been reached after which Plaintiff's final commissions were deemed earned (*See, Slotnick v RBL Agency Ltd*, 271 AD2d 365, 706 NYS2d 431 [1 Dpt 2000]). In fact, the Court has previously ruled that bare allegations of commissions earned is conclusory in the absence of any statement that sales were made upon the basis of which commissions claimed were in fact earned (*See, Rozay v Hegeman Steel Products, Inc*, 37 Misc2d 10, 234 NYS2d 647 [SupCt NY Co 1962]; *Epstein v Bellfair Hat Co*, 15 AD2d 743, 224 NYS2d 262 [1 Dpt 1962]).
- C. As to Counts III and IV, alleging damages based on the sales representative agreement between Plaintiff and Defendant CREATIVE BATH, which agreement Plaintiff sets forth in detail in the Complaint and Defendant CREATIVE BATH acknowledges the existence of, said Defendant does not seek the dismissal of these Counts at this time, reserving their rights to a motion for summary judgment after disclosure, if merited.
- D. As to Count V alleging damages sounding in quantum meruit and/or unjust enrichment, the Courts of this state have previously ruled that, Plaintiff having chosen to seek damages pursuant to an agreement, the existence of which is acknowledged by all parties, which Plaintiff does not claim was rescinded and does claim to have fully performed, as Plaintiff herein sets forth at Counts III and IV of the Complaint, Plaintiff is now limited to recovery of damages on the contract, and may not also seek to recover based on an alleged quasi contract (*See, Clark-Fitzpatrick, Inc v Long Island Rail Road Co*, 70 NY2d 382, 521 NYS2d 653 [1987]; *Mucerino v Firetector, Inc*, 306 AD2d 330, 761 NYS2d 269 [2 Dpt 2003]; *Moore v Microsoft Corp*, 293 AD2d 587, 741 NYS2d 91 [2 Dpt 2002]).
- E. As to Count VI alleging promissory estoppel pursuant to alleged promises by Defendant CREATIVE BATH to Plaintiff, causing Plaintiff to reasonably rely upon same, to their alleged detriment, once again Plaintiff has chosen to proceed alleging an enforceable contract, which said Defendant acknowledges the existence of, and therefore promissory estoppel cannot apply, because there can be no reasonable reliance on any alleged commitment beyond those set forth in the contract (*See, Triton Partners LLC v Prudential Securities Inc*, 301 AD2d 411, 752 NYS2d 870 [1 Dpt 2003]).
- F. As to Counts VII, VIII and IX, each alleges, and depends upon, the existence of a fiduciary relationship by Defendants to Plaintiff, but Plaintiff's Complaint herein sets forth a conventional business relationship between the manufacturer (Defendant CREATIVE BATH, and Defendant MEINZINGER's unsupported personal liability, as addressed herein above) and its sales representative (Plaintiff), independent business entities that negotiated an agreement with each other at arms length. It is well settled law in New York State that a conventional business relationship does not become a fiduciary relationship by the mere allegation thereof, and that a particularized pleading of special circumstances is required to maintain such a claim (*See, Feigen v Advance Capital Mgmt Corp*, 150 AD2d 281, 541 NYS2d 797 [1 Dpt], *lv dismissed lv denied*, 74 NY2d 874, 547 NYS2d 840 [1989]; *Prestige Foods, Inc v Whale Securities Co, LP*, 243 AD2d 281, 663 NYS2d 14 [1 Dpt 1997]; *Payrolls & Tabulating, Inc v Sperry Rand Corp*, 257 NYS2d 884 [1 Dpt 1965]). Plaintiff's Complaint herein does set forth the special circumstances necessary to convert a conventional business relationship into a fiduciary relationship, such as trust and confidence, resulting in evolution into a partnership-like relationship (*See, Penato v George*, 383 NYS2d 900 [2 Dpt 1976]; *Cody v Gallow*, 214 NYS2d 127 [SupCt Bronx Co 1961]).

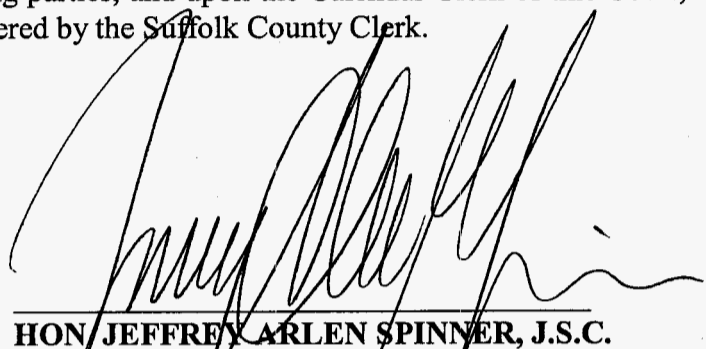
For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

ORDERED, that the application of Defendants for an Order, pursuant to CPLR 3211(a), for a judgment as a matter of law dismissing the Complaint as to Defendant MEINZINGER, and dismissing Counts I, II, V, VI, VII, VIII, IX and X of the Complaint as to Defendant CREATIVE BATH, is hereby granted in all respects, and this matter shall proceed as to Counts III and IV, as set forth against Defendant CREATIVE BATH, only; and it is further

ORDERED, that the request of Plaintiff for a conference regarding the holding of a preservation deposition of an alleged crucial witness who is 85 years of age, is hereby granted, and all parties are hereby directed to appear for said Conference at 2:30 pm on the 25th day of April 2007, in Supreme Court Part 21 of the Courthouse located at 210 Center Drive, Riverhead, New York, and it is further

ORDERED, that Counsel for the moving party herein is hereby directed to serve a copy of this order, with Notice of Entry, upon Counsel for all the remaining parties, and upon the Calendar Clerk of this Court, within twenty (20) days of the date this order is entered by the Suffolk County Clerk.

**Dated: Riverhead, New York
March 13, 2007**



HON. JEFFREY ARLEN SPINNER, J.S.C.

FINAL DISPOSITION	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
<input checked="" type="checkbox"/> SCAN	DO NOT SCAN

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