

**PT&L Contr. Corp. v Freund, Freund &  
Co.**

2007 NY Slip Op 31796(U)

June 20, 2007

Supreme Court, New York County

Docket Number: 0104063/2007

Judge: Walter Tolub

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

PRESENT: TOLUB  
Justice

PART 15

PT & L CONTRACTING CORP

- v -

FREUND, FREUND & CO.

INDEX NO. 104863/07

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

MOTION SEQ. NO. \_\_\_\_\_

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

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

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

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the accompanying memoranda opinion.

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

**FILED**  
JUN 25 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/20/07

WALTER B. TOLUB J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
PT&L CONTRACTING CORPORATION

Petitioner,

-against-

FREUND, FREUND & CO.,

Respondent.  
-----x

Index No. 104063/07  
Mtn Seq. 001

**FILED**  
JUN 25 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

**WALTER B. TOLUB, J.:**

By this application, petitioner seeks an order pursuant to CPLR 5225(b) directing respondent to pay \$23,111.00 from the monies owed by Freund Freund & Co (respondent) to Gotham Builders and Renovators: CJLNJ Builders, Inc. ("Gotham Builders"). Petitioner seeks these monies as partial satisfaction of an unpaid Civil Court judgment obtained by petitioner against nonparty Gotham Builders and Renovators ("Gotham"). Respondent cross-moves for an order vacating the restraining notice served upon it, and for dismissal of the Petition.

Background

On January 30, 2007, petitioner obtained a money judgment against Gotham<sup>1</sup> in the amount of \$21,311.00 plus interest as calculated by statute, running from August 1, 2003 (Order to Show Cause, Exhibit B). Judgment was entered on April 5, 2007

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<sup>1</sup>The underlying Civil Court action bears the caption, PT&L Contracting Corporation v. Gotham Builders and Renovators, Inc. (Index No. 042886 cv 2006) (Order to Show Cause, Exhibit A).

(Affirmation of Sandra DeFeo, Exhibit A).

At some point following entry of judgment, petitioner became aware of a contract between respondent and an entity operating as Gotham Builders and Renovators: CJLNU Builders, Inc. ("Gotham Builders") (see, Order to Show Cause, Exhibit D). Believing that Gotham and Gotham Builders are, in fact, the same entity, petitioners served respondent with an information subpoena and restraining notice ("the subpoena"), seeking to restrain respondent from paying any monies due or becoming due to Gotham Builders. Ultimately, petitioner seeks to pierce the corporate veil so as to render Gotham Builders liable for the money judgment petitioner obtained against debtor Gotham.

#### Discussion

Petitioner's application is entirely predicated upon the contention that the judgment debtor, Gotham, is related to, or is the same entity as Gotham Builders. In support of this argument, petitioner points out that the two corporations are (1) formed, owned and controlled by the same individual (Christopher Leahy); (2) have the same agent for service of process; and (3) operate in the same line of business (Order to Show Cause, ¶¶ 12-14; Affirmation in Opposition to Cross-Motion ¶¶ 12-13).

However, successful piercing of the corporate veil so as to circumvent the protections generally afforded to corporate owners requires petitioner to establish (1) that the owners of the

corporation "exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the [petitioner] which resulted in [that petitioner's] injury" (Matter of Island Seafood Company, Inc. v. Golub Corporation, 303 AD2d 892, 893 [3<sup>rd</sup> Dept 2003]) quoting Matter of Morris v. New York State Department of Taxation and Finance, 82 NY2d 135, 141-142 [1993]). Moreover, "[e]vidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance" (Id. quoting, TNS Holdings v. MKI Sec. Corp., 92 NY2d 335, 339 [1998]).

In the instant application, it is apparent to the court, based on petitioner's submissions, that Gotham, the non-party judgment debtor and Gotham Builders are strikingly similar in that they are engaged in the construction business in New York, share the same agent in New Jersey for service of process, and were created by Mr. Leahy. This court however, based upon the requirements set forth in the aforementioned cases, remains unconvinced that Gotham Builders exercised complete dominion and control over Gotham so as to warrant granting of the relief sought by petitioner. Accordingly, it is


ORDERED that petitioner's application is denied; and it is further

ORDERED that respondent's cross-motion seeking an order vacating the restraining notice served upon it is granted; and it is further

ORDERED that the within petition is dismissed.

This constitutes the decision and order of the court.

Dated: 6/20/07

  
\_\_\_\_\_  
HON. WALTER B. TOLUB, J.S.C.

**FILED**  
JUN 25 2007  
COUNTY CLERK'S OFFICE  
NEW YORK