

**Kaye Scholer LLP v Protec Universal Tool Co. LLC**

2008 NY Slip Op 30333(U)

February 4, 2008

Supreme Court, New York County

Docket Number: 0601978/2007

Judge: Jane S. Solomon

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

PRESENT: Hon. Jane S. Solomon  
Justice

PART 55

Index Number : 601978/2007

KAYE SCHOLER LLP

vs.

PROTEC UNIVERSAL TOOL CO. LLC

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO.

601978/2007

MOTION DATE

12-7-07

MOTION SEQ. NO.

001

MOTION CAL. NO.

on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-4

5-9

10-12

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

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

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

**FILED**

FEB 06 2008

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 2/4/08

*Jane S. Solomon*  
**JANE S. SOLOMON**

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):

[\* 2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X

KAYE SCHOLER LLP,

Plaintiff,

INDEX NO. 601978/2007

-against-

PROTEC UNIVERSAL TOOL COMPANY LLC and  
CRAIG F. KNIGHT,

DECISION and ORDER

Defendants.

-----X

CRAIG F. KNIGHT,

Counterclaim Plaintiff,

-against-

KAYE SCHOLER LLP,

Counterclaim Defendant.

-----X

JANE S. SOLOMON, J.

In this action for legal fees, plaintiff Kaye Scholer LLP ("Kaye Scholer") moves for summary judgment against defendants ProTec Universal Tool Company LLC ("Universal") and Craig F. Knight ("Knight"). Knight cross-moves to dismiss the Complaint as against him and for sanctions against Kaye Scholer. The motions are decided as follows.

Knight was a client of Richard Kronthal ("Kronthal"), one of Kaye Scholer's partners. Knight alleges that Kronthal

[\* 3 ]

advised him to form a limited liability company for his proposed business venture with a patent inventor, Peter Maznicki ("Maznicki"). On April 23, 2003, Knight executed on behalf of Universal an engagement letter ("Engagement Letter"), which states that Universal would pay Kaye Scholer's fees "in connection with certain corporate formation and related matters." In the event, on or around May 15, 2003, Kaye Scholer formed a Delaware limited liability company named "ProTec Tools, LLC" ("Tools"), with Knight owning a 45% interest and Maznicki owning the remainder.

Kaye Scholer then continued to provide legal services for Tools without executing a new retention letter. These services continued until at least September 19, 2007, and included the drafting of Tools' company documents, the drafting of a promissory note pursuant to which Knight lent Tools \$150,000, and various intellectual property matters relating to the trademarks and patents used by Tools. Maznicki submits an affidavit stating that he managed Tools' day-to-day operations and worked with Kaye Scholer patent lawyers on Tools' behalf. Maznicki categorized himself as the "business and product development officer of the company" while "Knight functioned as the marketing officer." Affidavit of Peter Maznicki, ¶ 6. He also confirms that Tools' business failed.

[\* 4 ]

Beginning in April 2003, Kaye Scholer sent invoices to "Craig Knight c/o ProTech [sic] Tools" at Knight's home address. It claims that although the invoices were initially paid, defendants began defaulting in June 2004, and that no payment was made after December 2004, leaving an accumulated debt of \$98,737.84.

Kaye Scholer seeks to hold Knight personally liable not only because no entity existed when the Engagement Letter was signed, his residence was the address used on the Engagement Letter and subsequent invoices, and the work performed for the establishment of Tools was of direct benefit to him, but also because it alleges that Knight was the primary individual communicating with Kaye Scholer, Knight paid the majority of Kaye Scholer's bills either from his personal account or from that of another corporate entity owned by him, and because Knight attributed payment delays to his own deteriorating financial condition.

Kaye Scholer commenced this action against Knight and Universal alleging breach of contract, account stated and quantum meruit. Knight answered, denying the Complaint, alleging six affirmative defenses, and counterclaiming for legal malpractice and fraud. Kaye Scholer now moves under CPLR § 3212 for summary judgment, seeking final judgment against both Knight and the non-

[\*5]  
existent Universal in the amount of \$98,737.84 plus interest.

Knight cross-moves under CPLR § 3211 to dismiss the Complaint as against him and for sanctions against Kaye Scholer in the form of costs and attorneys fees.

### Discussion

#### Knight

Kaye Scholer's claim against Knight is premised on his signature on the Engagement Letter and/or a piercing of Tools' "corporate veil." Both theories fail.

Kaye Scholer correctly argues that an individual signing a contract on behalf of an entity prior to its coming into existence ordinarily is personally liable for that contract, even after the company is formed, absent a novation or other agreement between the parties. See Hayden v. P. Zarkadas, P.C., 18 A.D.3d 500 (2<sup>nd</sup> Dep't 2005); Clinton Investors Co., II v. Watkins, 146 A.D.2d 861 (3<sup>rd</sup> Dep't 1989). Here, the Engagement Letter refers to "corporate formation and related matters." Kaye Scholer drafted the Engagement Letter, and accordingly, any ambiguity in the letter must be construed against it. See 67 Wall Street Co. v. Franklin Nat'l Bank, 37 N.Y.2d 245 (1975). Kaye Scholer's invoices support a finding that Tools and/or Knight have made payments satisfying the formation and related services of a limited liability company under the name of Tools.

[\* 6]

Moreover, even if the Engagement Letter does cover additional legal services, because Kaye Scholer owed Knight a duty as his lawyer, personal liability simply cannot be imposed as it otherwise would be imposed on a promoter who signs a lease or other preincorporation contract on behalf of a yet-to-be-formed entity. Once Tools was formed, Kaye Scholer knew or should have known to draft a novation agreement, or alternatively, to inform Knight that it would hold him personally liable for all legal fees of the company.

With respect to the second theory, the "alter ego" doctrine provides that the corporate form may be disregarded "[w]hen a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own." Rohmer Assocs., Inc. v. Rohmer, 36 A.D.3d 990, 991 (3<sup>rd</sup> Dep't 2007). Here, Kaye Scholer fails to make out an alter ego argument sufficient to pierce Tools' veil.

Accordingly, Kaye Scholer's motion for summary judgment must be denied, and Knight's motion is granted to the extent of dismissing the Complaint as to him, but this court declines to sanction Kaye Scholer.

[\* 7 ]

**Knight's Counterclaims**

Knight's counterclaims provide an interesting argument. Specifically, he contends that one of the purposes of establishing a limited liability company was to shield him from the debts of that company, and if he is now found liable for that company's legal fees, Kaye Scholer should be liable to him in malpractice or fraud because it failed to provide him with the adequate protection. Because Knight is not personally liable, however, these counterclaims must necessarily be dismissed.

**Universal**

Since it is undisputed that an entity named "ProTec Universal Tool Company LLC" was never formed, upon searching the record, the action must also be dismissed as to it, without prejudice to Kaye Scholer bringing an action against the appropriate party.

Accordingly, it hereby is

ORDERED that Kaye Scholer's motion for summary judgment is granted to the extent of dismissing Knight's counterclaims, and is otherwise denied; and it further is

ORDERED that Knight's cross-motion is granted to the extent of dismissing the Complaint, but is otherwise denied; and the Complaint is dismissed as to both defendants, with costs and disbursements to Knight as taxed by the Clerk of the Court; and the Clerk is directed to enter judgment accordingly.

Dated: February 4, 2008

ENTER:



J.S.C.

**JANE S. SOLOMON**

**FILED**

FEB 06 2008

NEW YORK  
COUNTY CLERK'S OFFICE