

**Pacific Indem. Ins. Co. v Blahout**

2008 NY Slip Op 30420(U)

February 11, 2008

Supreme Court, New York County

Docket Number: 0115322/2005

Judge: Martin Shulman

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

MARTIN SHULMAN

PRESENT: J.S.C.

PART 1

Justice

Index Number : 115322/2005  
**PACIFIC INDEMNITY INSURANCE**  
 VS.  
**PETR BLAHOUT**  
 SEQUENCE NUMBER : # 001  
 SUMMARY JUDGMENT

INDEX NO. 11532205  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. #001  
 MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ... A-5  
~~Answering Affidavits~~ — Exhibits \_\_\_\_\_

PAPERS NUMBERED	
1	_____
2,3	_____
4,5	_____

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

Cross-Motion:  Yes  No

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

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

**FILED**  
 FEB 14 2008  
 NEW YORK  
 COUNTY CLERK'S OFFICE

Dated: FEB 11 2008

  
 MARTIN SHULMAN 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: I.A.S. PART 1

-----X  
PACIFIC INDEMNITY INSURANCE COMPANY  
as subrogee of Ronnie and Terry Turner,  
Plaintiff,

Index No. 115322/05

DECISION AND ORDER

-against-

PETR BLAHOUT a/k/a PETER BLAHOUT, PETER  
BLAHOUT CORPORATION, CAMPION A. PLATT  
ARCHITECT, P.C. and CONAN O'BRIEN,  
Defendants.

**FILED**  
FEB 14 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X

**SHULMAN, MARTIN, J:**

Plaintiff commenced this property damage subrogation action against defendants Petr Blahout a/k/a Peter Blahout ("Blahout"), Peter Blahout Corporation ("PBC"), Campion A. Platt Architect, P.C. ("Campion") and Conan O'Brien ("O'Brien") based upon damage to plaintiff's insured's apartment allegedly caused by construction in the above apartment.<sup>1</sup> Plaintiff seeks to recover approximately \$33,450 paid to its insureds pursuant to its policy with them. Campion moves for summary judgment dismissing the complaint and all cross-claims asserted against it and for summary judgment on its cross-claim for breach of contract against O'Brien. Blahout<sup>2</sup> cross-moves to dismiss the complaint and all cross-claims. Prior to the submission of the motion and cross-motion, plaintiff discontinued the action with prejudice against Campion and O'Brien and Campion withdrew the portion of its motion seeking dismissal

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<sup>1</sup> Defendant O'Brien is the owner of the apartment above plaintiff's insured, who hired PBC as a general contractor and Campion as architect in connection with a gut renovation of his apartment. Blahout was the president and sole shareholder of PBC, which is now allegedly inactive and/or dissolved.

<sup>2</sup> Although Blahout and PBC appeared in this action by the same counsel, they answered separately. The cross-motion is brought solely by Blahout.

of the complaint and O'Brien's cross-claims, leaving only Champion's motion to dismiss Blahout's cross-claims and the cross-motion to be determined.

### **SUMMARY JUDGMENT**

"Where there is no genuine issue to be resolved at trial, the case should be summarily decided . . ." *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The proponent of a motion for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact." *JMD Holding Corp. v. Congress Financial Corp.*, 4 N.Y.3d 373, 384 (2005). The movant's failure to make a prima facie showing, requires denial of the motion regardless of the sufficiency of the opposing papers. *Id.* However, if the movant makes such a showing, the burden shifts to the non-movant to demonstrate the existence of factual issues requiring trial. *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1<sup>st</sup> Dept., 2007). Summary judgment is appropriate where the non-movant's opposition to the motion is entirely conjectural and there is no genuine issue of fact to be resolved. See, *Shaw v. Time-Life Records*, 38 N.Y.2d 201, 207 (1975).

Champion moves to dismiss all cross-claims interposed against it. Having withdrawn its motion with respect to O'Brien's cross-claim, only Blahout's cross-claim remains. Although alleged as a single cross-claim against all of his co-defendants (including PBC), Blahout's cross-claim seeks contribution and/or indemnification for breach of contract, breach of warranty, strict liability and/or negligence.

The court first considers Blahout's cross-motion to dismiss the complaint and Champion's and O'Brien's cross-claims. The basis for Blahout's cross-motion is that he

cannot be held individually liable for PBC's negligence and/or breach of its contractual obligations to O'Brien.

In opposition to Blahout's cross-motion, plaintiff argues that Blahout has submitted only his self-serving affidavit without any corporate documentation to support his allegation that he acted only as a representative of PBC rather than in his individual capacity. Campion offers neither facts nor legal arguments to refute Blahout's claims and O'Brien has submitted no written opposition in this round of motion practice.

Generally, piercing the corporate veil requires a showing that: 1) a corporation's owners exercised complete domination of the corporation in respect to the transaction attacked; and 2) such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury. *Shisgal v. Brown*, 21 A.D.3d 845, 848, 801 N.Y.S.2d 581, 583 (1<sup>st</sup> Dept., 2005). Under New York law, the corporate veil can be pierced where there has been, *inter alia*, a failure to adhere to corporate formalities, inadequate capitalization, use of corporate funds for personal purpose, overlap in ownership and directorship, or common use of office space and equipment. *Forum Ins. Co. v. Texarkoma Transportation Co.*, 229 A.D.2d 341, 342, 645 N.Y.S.2d 786, 787-788 (1<sup>st</sup> Dept., 1996).

Generally, the "fact-laden claim to pierce the corporate veil is particularly unsuited for resolution on summary judgment." *Id.* Here, however, contrary to plaintiff's claim that Blahout's affidavit is insufficient, deposition testimony also supports his claims and plaintiff fails to proffer any evidence to refute such claims. As previously stated, Campion offers nothing to refute Blahout's allegations. Blahout having

established his prima facie right to summary judgment dismissing the complaint and Champion's and O'Brien's cross-claims, the burden shifted to plaintiff and Champion to establish an issue of fact requiring a trial, which they have failed to do. Accordingly, the cross-motion is granted and the complaint and cross-claims of Champion and O'Brien are dismissed as against Blahout.

The court having found no individual liability on Blahout's part and dismissed all claims against him individually, it follows that Blahout's cross-claim for indemnification and contribution against Champion, O'Brien and PBC must also be dismissed. The remainder of this action, consisting of plaintiff's claims against PBC, is transferred to Civil Court pursuant to CPLR §325(d).

Accordingly, it is

ORDERED that Blahout's cross-motion for summary judgment dismissing the complaint and all cross-claims asserted against him is granted in its entirety; and it is further

ORDERED that the complaint and cross-claims are hereby dismissed as against Blahout; and it is further

ORDERED that Champion's motion is granted and Blahout's cross-claim for indemnification and contribution against Champion, O'Brien and Peter Blahout Corporation is dismissed; and it is further

ORDERED that the Clerk enter judgment accordingly; and it is further

ORDERED that the action is severed and continued as to defendant Peter Blahout Corporation and is transferred to the Civil Court of the City of New York, County of New York pursuant to CPLR §325(d).

This constitutes this court's decision and order. Courtesy copies of this decision and order have been sent to counsel for the parties.

DATED: New York, New York  
February 11, 2008



HON. MARTIN SHULMAN, J.S.C.

**FILED**  
FEB 14 2008  
NEW YORK  
COUNTY CLERK'S OFFICE