

Majetti v Maplecrest Lodge, IV, LLC

2008 NY Slip Op 32591(U)

September 30, 2008

Supreme Court, Greene County

Docket Number: 0020070/2921

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
MARK MAJETTI,

COUNTY OF GREENE

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 07-0292
RJI NO. 19-08-3543

MAPLECREST LODGE, IV, LLC,
and ADAM OKONSKI,

Defendants.

Supreme Court Greene County All Purpose Term, September 16, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

James F. Keefe, Esq.
Attorney for Plaintiff
527 Main Street
PO Box 1136
Cairo, New York 12413

Simon & Schneider, PLLC
Sarah Schneider, Esq.
Attorneys for Defendants
PO Box 683
Hunter, New York 12442

TERESI, J.:

On September 9, 2005, plaintiff purchased a parcel of real property, with a newly constructed home thereon, from Maplecrest Lodge, IV, LLC (hereinafter "Maplecrest"), whose sole member and manager was Adam Okonski (hereinafter "defendant Okonski"). Based upon such transaction, plaintiff commenced this action. Plaintiff's amended complaint states causes of action sounding in breach of contract, breach of the General Business Law Article 36B warranty, negligence, and individual liability for defendant Okonski under a corporate "veil piercing"

theory. Issue was joined by defendants and discovery is nearly complete.

Defendant Okonski moves for summary judgment to dismiss plaintiff's amended complaint against him individually. Plaintiff opposes the motion. Because defendant Okonski failed to demonstrate, as a matter of law, that he is shielded from liability by operation of the limited liability company law (hereinafter "LLCL") and that the corporate veil cannot be pierced, his motion is denied.

"Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue." (Napierski v. Finn, 229 AD2d 869, 870 [3d Dept. 1996]). On a motion on for summary judgment, the movant must establish by admissible proof, the right to judgment as a matter of law. (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; Gilbert Frank Corp. v. Federal Insurance Co., 70 NY2d 966 [1988]). Moreover, a movant fails to meet their burden by "pointing to gaps in... proof", rather the movant's obligation on the motion is an affirmative one. (Antonucci v. Emeco Industries, Inc., 223 AD2d 913, 914 [3d Dept. 1996]).

If the movant establishes their right to judgment as a matter of law, the burden then shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact. (Zuckerman v. City of New York, 49 NY2d 557 [1980]). In opposing a motion for summary judgment, one must produce "evidentiary proof in admissible form. . . mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." (Id. at 562)

LLCL §609(a) provides that: "[n]either a member of a limited liability company, [nor] a manager... is liable for any debts, obligations or liabilities of the limited liability company...

solely by reason of being such member, [or] manager...”

Here, plaintiff’s various causes of action all arise from his purchase of an allegedly defective home from Maplecrest, located at 21 Sundance Drive, Windham, New York (hereinafter the “Windham property”). Plaintiff’s contract to purchase the Windham property was with Maplecrest; and, the deed he accepted for the Windham property was from Maplecrest. Neither the contract of sale nor the deed itself named defendant Okonski individually. The contract of sale’s language merged all prior agreements and could not be changed orally. This record is devoid of any proof that demonstrates the contract for the Windham property, or the purchase itself, was between plaintiff and defendant Okonski individually. However, despite LLCL §609’s shield of liability, defendant Okonski must still demonstrate, as a matter of law, that plaintiff cannot pierce the corporate veil.

To “pierc[e] the corporate veil requires a showing that: (1) the owners 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 plaintiff which resulted in plaintiff’s injury” (Morris v. New York State Dept. of Taxation and Finance, 82 NY2d 135, 141[1993]). On this motion for summary judgment, defendant Okonski failed to demonstrate, as a matter of law, that he did not exercise complete domination over Maplecrest nor perpetrate a fraud.

Defendant Okonski failed to demonstrate that he did not “dominate” Maplecrest. Rather, the record demonstrates that defendant Okonski may have “dominated” Maplecrest, as its sole member and only manager. Defendant Okonski’s individual control over Maplecrest was demonstrated by his transferring the Windham property from another similarly named limited liability company (Maplecrest Lodge, LLC) to Maplecrest within minutes of Maplecrest’s

transferring it to plaintiff. Defendant Okonski accounts for only half of the one million two hundred and fifty thousand dollars Maplecrest received from plaintiff for the Windham property. Additionally, although defendant Okonski testified that Maplecrest had an investor, he did not know if any loan documents were drawn. Nor did defendant Okonski produce any documentation to substantiate his “loan” claim. Defendant Okonski, on this record, failed to demonstrate that he did not “dominate” Maplecrest.

Relatedly, Maplecrest did not strictly follow corporate formalities, which further demonstrates defendant Okonski’s “domination”. (Austin Powder Co. v. McCullough, 216 AD2d 825 [3d Dept. 1995]). The record demonstrates that Maplecrest’s members did not enter into an Operating Agreement, despite LLCL §417(a). Nor did Maplecrest publish notice of its organization or file affidavits of publication with the New York State Secretary of State, despite LLCL §206.

Additionally, defendant Okonski also failed to demonstrate, as a matter of law, that he did not perpetrate a fraud. As set forth above, defendant Okonski did not properly account for the funds Maplecrest received from plaintiff, to demonstrate that no fraud occurred. Nor did defendant Okonski demonstrate that no constructive fraud occurred. (EAC of New York, Inc. v. Capri 400, Inc., 49 AD3d 1006 [3d Dept. 2008]).

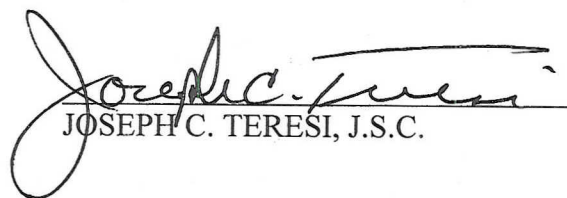
Accordingly, defendant Okonski’s motion for summary judgment is denied.

All papers, including this Decision and Order, are being returned to the attorney for the plaintiff. The signing of this Decision and Order shall not constitute entry or filing under CPLR

§2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: September 30, 2008
Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated August 28, 2008, Affidavit in Support of Motion for Summary Judgment of Adam Okonski, dated August 27, 2008, Affirmation in Support of Motion for Summary Judgment of Sarah Schneider, Esq., dated August 28, 2008, with attached Exhibit A-I;
2. Affidavit in Opposition of James Keefe, Esq., dated September 9, 2008, Affidavit of Mark Majetti, dated September 6, 2008, with attached unnumbered exhibits.
3. Reply Affirmation of William Simon, dated September 11, 2008.