

**U.S. Elec. Corp. v USA Elec. Servs. Corp.**

2009 NY Slip Op 32644(U)

October 20, 2009

Supreme Court, Queens County

Docket Number: 3886/08

Judge: Orin R. Kitzes

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**Short Form Order**

**NEW YORK SUPREME COURT -QUEENS COUNTY**

**PRESENT: ORIN R. KITZES**

**PART 17**

**Justice**

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**U.S. ELECTRIC CORP.,  
Plaintiff,**

**Index No.: 3886/08  
Motion Date: 10/14/09  
Motion Cal. No.: 57**

**-against-**

**USA ELECTRICAL SERVICES CORP. and  
DIMITRIOS LADIKOS  
Defendants.**

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The following papers numbered 1 to 12 read on this motion by plaintiff for an order pursuant to CPLR 3212 granting plaintiff partial summary judgment in its favor and against defendants on the first cause of action for a breach of fiduciary duty and for an Order pursuant to CPLR 3211 (b) dismissing each of defendants' affirmative defenses.

	PAPERS NUMBERED
Notice of Motion-Affirmation-Affidavit-Exhibits.....	1-5
Affirmation in Opposition-Affidavit-Exhibits.....	6-9
Reply Affirmation-Exhibit.....	10-12

Upon the foregoing papers it is ordered that the motion is granted for the following reasons:

According to the complaint, this action was commenced by U.S. ELECTRIC against the defendants to recover damages for the breach of fiduciary duty committed by defendant Ladikos USA ELECTRICAL, to enjoin them from continuing to use the name "USA ELECTRICAL SERVICES CORP.", which constitutes an ongoing breach of fiduciary duty and to compel the defendants to account to U.S. ELECTRIC for all business conducted in the name of USA ELECTRICAL and pay over to U.S. ELECTRIC all profits improperly realized by USA ELECTRICAL. U.S. ELECTRIC was formed under the name DCV Maintenance Corp. in March 1993 and in November, 1996, it was renamed U.S. ELECTRIC, with three shareholders, defendant Ladikos, George Miltiadous, and Konstantinos Tsidavis. U..S. ELECTRIC, conducts electrical-contracting business exclusively in New York City and has, over the years, established an extensive electrical-contracting business with extensive activities throughout New York City. It has, in the regular course of its business, entered into and performed, and is in the midst of performing, numerous contracts with New York City, and various of its departments and

agencies.

Defendant Ladikos was an officer and director of U.S. ELECTRIC and was and is the holder of 25% of its stock in U.S. ELECTRIC. He was also a paid employee for work, labor and services performed on U.S. ELECTRIC's behalf and was entrusted with on-site supervision of various electrical-contracting projects. In or about 2005, it was agreed by and amongst the officers, directors and shareholders that, at U.S. ELECTRIC's sole cost and expense, Ladkos would receive whatever additional training and education was necessary for him to obtain a master-electrician's license, and upon doing so, to use his status as a licensed master electrician for the benefit of U.S. ELECTRIC's business. The officers, directors and shareholders of U.S. ELECTRIC all believed this would have been extremely beneficial to U.S. ELECTRIC's business, and would have enhanced U.S. ELECTRIC's financial success, good will and future prosperity. It was believed that, having its own licensed master electrician in charge of its electrical-contracting projects would have allowed it to expand its operations, and to enjoy a greater measure of prosperity and financial success. Defendant Ladikos represented to U.S. ELECTRIC's other officers, directors and shareholders that he would obtain a master-electrician's license for U.S. ELECTRIC's benefit. Thereafter, at U.S. ELECTRIC's sole cost and expense, LADIKOS received training and education necessary to obtain a master-electrician's license from the New York City Department of Buildings.

On July 3, 2006, USA ELECTRICAL was formed and according to its website, defendant Ladikos is the President of USA ELECTRICAL. On January 30, 2007, defendant Ladikos received his Master Electrician License. According to the records of the New York City Department of Buildings, defendant Ladikos began doing business on his own under the name USA ELECTRICAL, without the consent of U.S. ELECTRIC, in March, 2007 and continued to receive a weekly salary of \$1,052.53 from U.S. ELECTRIC until September 2007. At that time, USA ELECTRICAL began doing business in competition with U.S. ELECTRIC, under defendant Ladikos auspices, at 13-07 37th Avenue, Long Island City, New York 11101, which was and still is U.S. ELECTRIC's own place of business. At or about the same time as the formation of USA ELECTRICAL, defendant Ladikos neglected his duties to U.S. ELECTRIC and failed to perform his job function with regard to U.S. ELECTRIC's on-going electrical contracting projects.

In September 2007, defendant Ladikos stopped working for U.S. ELECTRIC altogether, and operated USA ELECTRICAL in competition with plaintiff at a new location – 77-08 21st Avenue, East Elmhurst, New York 1137. U.S. A. ELECTRIC conducted business that was and is identical to the business of plaintiff. When Ladikos left to conduct business at USA ELECTRICAL's new location, he was still an officer, director and shareholder of plaintiff. Thereafter, plaintiff commenced the instant action, claiming in its first cause of action that Ladikos has wrongfully and fraudulently been in breach of his fiduciary duty as an employee and an officer, director and shareholder of U.S. ELECTRIC and has wrongfully used

U.S. ELECTRIC's assets and facilities for his own personal gain, and his own private and selfish purposes. Plaintiff's second cause of action seeks damages for Ladikos' unfair competition. Defendant Ladikos has commenced a proceeding in the Court (Queens Co. Index No. 22731/2008) to dissolve U.S. ELECTRIC under §1104-a of the Business Corporation Law based upon alleged oppressive conduct by his co-shareholders.

Plaintiff has now moved for partial summary judgment to recover damages due to Ladikos' breach of fiduciary duty. Defendants have opposed this motion. It is axiomatic that the Summary Judgment remedy is drastic and harsh and should be used sparingly. The motion is granted only when a party establishes, on papers alone, that there are no material issues and the facts presented require judgment in its favor. It must also be clear that the other side's papers do not suggest any issue exists. Moreover, on this motion, the court's duty is not to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist. *See, Barr v. County of Albany*, 50 NY2d 247 (1980); *Miceli v. Purex*, 84 AD2d 562 (2d Dept. 1981); *Bronson v March*, 127 AD2d 810 (2d Dept. 1987.) Finally, as stated by the court in *Daliendo v Johnson*, 147 AD2d 312,317 (2d Dept. 1989), "Where the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied."

In support of its motion, plaintiff has submitted, *inter alia*, an affidavit of George Miltiadous, tax documents, New York State Department of State documents, USA Electrical Services Corp's web site print outs, and New York City Building Department documents. This evidence supports the allegations set forth in the complaint.

Defendants claim that there are issues of fact which prevent the granting of this motion. They have submitted an affidavit of Ladikos which indicates, *inter alia*, that once he obtained his Master Electrician's license, Dimitrios Ladikos was urged by George Miltiadous, to affiliate his license with USA Electrical Services Corp., which entity would be utilized by Plaintiff to perform electrical work requiring such Master Electrician's license. Ladikos was the person who performed and/or supervised the electrical work for which Plaintiff was hired and the remaining shareholders performed "administrative" functions for Plaintiff such as submission of bids, payroll issues, and other "back office" duties. Ladikos further states that defendant USA Electrical Services Corp. was originally run from the same offices as Plaintiff, with Miltiadous' knowledge, consent and approval. Ladikos claims that his co-shareholders "duped" him into permitting them to invest shareholder monies generated by U.S. Electric Corp. in the purchase of real estate. Thereafter, Miltiadous, and Tsidavis froze Ladikos out of operations and profits of U.S. Electric Corp., and denied that he had any interest in the LLC's holding title to the real properties purchased with U.S. Electric Corp. shareholder monies. Ladikos claims plaintiffs have commence this action and other actions, and filed this motion in an ongoing effort to prevent him from sharing in the profits of plaintiff. He also states that at this time due to the majority shareholders' complete dominion and control over the operations of U.S. Electric Corp., the value of Plaintiff's interest in such company could have already been rendered worthless. He also

states that the actions he has taken, which are complained of by Plaintiff, only occurred after his co-shareholders engaged in oppressive conduct towards Dimitrios Ladikos, the minority shareholder of U.S. Electric Corp.

In his affidavit, defendant Ladikos admits that he did the acts claimed in the complaint under the first cause of action. This includes, his forming USA ELECTRICAL for the purpose of affiliating it with his Master Electrician's License, and performing electrical work requiring a Master Electrician's licence to the exclusion of U.S. ELECTRIC and its other shareholders. Contrary to his claim that his actions are, in essence, excused because he did not do these things until after Miltiadous, and Tsidavis froze Ladikos out of operations and profits of U.S. Electric Corp., and denied that he had any interest in the LLC's holding title to the real properties purchased with U.S. Electric Corp. shareholder monies, his conduct constitutes a breach of the fiduciary duty he owed to plaintiff.

Fiduciary duties are not extinguished by the fact that there is an acrimonious relationship between the fiduciary and the corporation. *See Global Minerals & Metal Corp. v. Home*, 35 A.D.3d 93, 824 N.Y.S.2d 210 (1st Dept. 2006). Because Ladikos did not withdraw from U.S. ELECTRIC he continued to owe a fiduciary duty to the corporation. *Ajettix, Inc. v. Raub*, 9 Misc.3d 908 (Sup.Ct. Monroe Co. 2005), *citing*, *Fender v. Prescott*, 101 A.D.2d 418, 423(1<sup>st</sup> Dept. 1984) *aff'd* 64 N.Y.S.2d 1077 (1985.) Moreover, while Ladikos admits to the acts set forth in the complaint and this motion, his co-shareholders do not admit to freezing him out of the operations and profits of plaintiff and its related real estate venture. In fact, in an Order of this Court, date September 11, 2009, reference was made to the co-shareholders acknowledging defendant Ladikos' ownership interest in those properties purchased by plaintiff. The Court notes that, to accept defendant Ladikos' argument, this Court would have to go against one of the basic tenets of our legal system and our social system; two wrongs do not make a right. Accordingly, there are no issues of fact regarding Ladikos' breach of fiduciary duty and the branch of the motion seeking partial summary judgment in plaintiff's favor and against defendants on the first cause of action is granted. Damages shall be determined at the time of the trial on the remaining cause of action for unfair competition.

The branch of the motion pursuant to CPLR 3211 (b) dismissing each of defendants' affirmative defenses is granted without opposition. Accordingly, defendants' affirmative defenses are dismissed.

**Dated: October 20, 2009**

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**ORIN R. KITZES, J.S.C.**

