

Andreas v Catskill Mtn. Lodging, LLC

2010 NY Slip Op 30993(U)

April 12, 2010

Supreme Court, Queens County

Docket Number: 11667/05

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IAS PART 14
Justice

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CHRISTOS ANDREAS,	No. 11667/05
Plaintiff,	Motion
-against-	Date February 2, 2010
CATSKILL MOUNTAIN LODGING, LLC,	Motion
CATSKILL RESORT BUILDERS, LLC,	Cal. No. 1
YAKOV BLETNITSKY, JEFF PRINCE	
AND JEFF PRICE REAL ESTATE,	Motion
INC.,	Seq. No. 5
Defendants.	

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Plaintiff commenced this action to recover for personal injuries alleged to have been sustained on March 7, 2005 due to a construction site accident at premises known as Lot #4, Plateau Mountain Estate, located on Plateau Mountain Road, in Greene County, State of New York.

Plaintiff moves for an order pursuant to CPLR § 3124 compelling defendants to produce outstanding discovery, and an order pursuant to CPLR § 3025(c) granting plaintiff leave to amend his complaint and to serve the amended complaint.

Defendants Catskill Mountain Lodging, LLC (Catskill) and Yakov Bletnitsky (Bletnitsky) cross-move for an order pursuant to CPLR 3212 dismissing the action as against defendant Bletnitsky on the ground that he had no ownership interest in the premises at the time of the accident.

Defendants Catskill Resort Builders, LLC, Jeff Prince

and Jeff Prince Real Estate, Inc., have not appeared and are no longer parties to this action.

Contentions of the Parties

Plaintiff asserts that newly discovered facts obtained from counsel for defendants Catskill and Bletnitsky warrant additional discovery as against those defendants. In April of 2009, plaintiff's counsel was advised that the insurance carrier for said defendants intended to disclaim coverage in this matter if there was a finding that there were business activities ongoing at the premises. A notice of disclaimer was apparently sent out. Further, plaintiff's counsel was advised that the property on which plaintiff was working at the time of the accident has been sold and that the sale had occurred subsequent to their examinations before trial which were held on November 14, 2006. Plaintiff served demands seeking discovery with respect to such new facts as well as a demand for supplemental examinations before trial and received no response. Plaintiff also seeks leave to serve an amended complaint setting forth a cause of action for piercing the corporate veil on the basis that defendant Bletnitsky is the alter ego of defendant Catskill. An amended summons and verified complaint is submitted.

Initially, defendant's Catskill and Bletnitsky oppose the plaintiff's motion. Counsel states that at the time of the accident, defendant Catskill was insured by a policy which named Catskill as the insured in care of defendant Bletnitsky. A further examination before trial of defendant Bletnitsky is premature. Plaintiff has not yet obtained a liability verdict against Catskill nor is there any verdict which is in excess of available insurance coverage. The disposition of the premises or the personal assets of defendant Bletnitsky are not relevant at this time. As to the document request, counsel asserts that he has provided documents from Catskill's insurance carrier relating to any disclaimer of any coverage. Counsel does not oppose the request but simply comments on it. As to plaintiff's request for leave to amend the complaint, defendant Bletnitsky has specifically and completely denied any ownership interest in the premises. He has repeatedly stated that the property was owned by Catskill and not by him.

On the defendants' cross-motion to dismiss the complaint as against defendant Bletnitsky individually, it is argued that there is no evidence to show any ownership

interest in the premises by said defendant. All documentation shows that the owner of the premises is Catskill. Information concerning the sale of the property can easily be found in the Greene County Clerk's Office.

In reply, plaintiff asserts that the details of the sale of the premises should be disclosed. The sale of property subsequent to the date of an injury is indicative that it was purchased and owned for commercial gain. Such circumstances would be highly probative of the homeowners exemption. Such discovery is properly performed prior to trial not subsequent to the recovery of a verdict as argued by defendants. Amendment of the complaint should be allowed as there is indicia of a fraudulent transfer of the premises by defendant Catskill for commercial gain. As there are questions of fact as to the applicability of the homeowners exemption, plaintiff is entitled to discovery with respect thereto. Notice of disclaimer has not been received by plaintiff or his counsel and defendants fail to annex said notice to their opposing papers.

In sur-reply, defendants assert that the sale of the property is not relevant to what defendant Bleznitsky's intentions may have been when he bought the premises five to six years prior to the accident. His testimony is clear that this one family home was being built for his own personal use with no investment or re-sale purpose. He cannot be deemed to be engaged in a business merely because he purchased the house for his personal use but later sold it. Again, public documentation is available from the clerk's office. As defendant Catskill presently owes the plaintiff no debt or obligation and may never do so, in the absence of any liability judgment or verdict, there is no basis to allow an amendment to add a cause of action for piercing the corporate veil. While plaintiff asserts that defendant Bleznitsky was occasionally on the premises and conducted some of the subcontractor engagement and materials purchasing, the facts show that all of the purchasing was done by Catskill.

Decision of the Court

The defendants' cross-motion seeking summary judgment dismissing the complaint as against the individual defendant Yakov Bleznitsky is granted.

That branch of plaintiff's motion seeking leave to amend the complaint to state a cause of action to pierce the

corporate veil is denied.

That branch of the motion by plaintiff to compel defendants to provide certain discovery is granted to the extent that defendant Catskill is directed to respond to plaintiff's demand for documentation with respect to a disclaimer of insurance, if any, with respect to the instant matter within 20 days of the service of a copy of this order with notice of entry. While defendants' counsel asserts that such was already provided, no affidavit of service with respect thereto has been submitted to the court. Defendants' counsel does not oppose this branch of the motion on substantive grounds. Further, he apparently had no objection to providing it previously. Therefore, no prejudice will accrue upon his providing the documentation at this time.

That branch of the plaintiff's motion seeking discovery and supplemental examinations before trial as to the occurrence, the alleged sale of the subject premises and the business assets of the defendants is denied without prejudice to seeking relief as to the alleged sale of the subject premises and the business assets of defendant Catskill upon a disposition of this matter in plaintiff's favor as against said defendant.

"A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." Giuffrida v. Citibank, 100 NY2d 72 at 81.

In the instant case, the defendants have sustained their burden of setting forth sufficient proof to warrant dismissal of the complaint as against the individual defendant Bletnitsky.

In opposition to the motion, plaintiff has failed to sustain its burden of establishing that there is a basis to pierce the corporate veil. It is well settled that a business can be lawfully incorporated to enable the proprietors to escape personal liability. Indeed, it is "one of the primary and completely legitimate purposes of

incorporating". Damianos Realty Group, LLC, v. Fracchia, 35 AD3d 344. As noted by the court in Lawlor v. Hoffman, 59 AD3d 499: "A party seeking to pierce the corporate veil must establish 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' (Matter of Morris v. new York State Dept. Of Taxation & Fin., 82 NY2d 135, 141, 603 NYS2d 807, 623 NE2d 1157). It must also be established that the defendants abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the plaintiff such that a court of equity will intervene (see Millennium Constr., LLC v. Loupolover, 44 AD3d 1016, 845 NYS2d 110)."

Here, defendant Bletnitsky formed the corporate defendant Catskill long before plaintiff's accident. There is no specific evidence showing that defendant Bletnitsky transferred any assets of the corporate defendant to himself or that he used it for his own personal benefit rather than the corporation's benefit. Further, it is clear that the corporate defendant was the sole owner of the subject premises at the time of plaintiff's accident. To allow an insufficient cause of action to survive to this stage, would severely impact upon the policy which allows individuals to shield themselves from personal liability through incorporation.

Accordingly, the defendants' cross-motion seeking summary judgment dismissing the complaint as against the individual defendant Yakov Bletnitsky is granted.

That branch of plaintiff's motion seeking leave to amend the complaint to state a cause of action to pierce the corporate veil is denied.

That branch of the motion by plaintiff to compel defendants to provide certain discovery is granted to the extent that defendant Catskill is directed to respond to plaintiff's demand for documentation with respect to a disclaimer of insurance, if any, with respect to the instant matter within 20 days of the service of a copy of this order with notice of entry.

That branch of the plaintiff's motion seeking discovery and supplemental examinations before trial as to the occurrence, the alleged sale of the subject premises and the business assets of the defendants is denied without

prejudice to seeking relief as to the alleged sale of the subject premises and the business assets of defendant Catskill upon a disposition of this matter in plaintiff's favor as against said defendant.

Dated: April 12, 2010

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HON. DAVID ELLIOT