

ASK Abstract, Inc. v Singh

2011 NY Slip Op 32529(U)

September 22, 2011

Sup Ct, Nassau County

Docket Number: 1728/10

Judge: Joel K. Asarch

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: I.A. PART 17

-----X
ASK ABSTRACT, INC.,

Plaintiff,

- against -

**NICK SINGH a/k/a ARNICK SINGH and
AMERICAN KEY, INC.**

Defendants.
-----X

DECISION AND ORDER

Index No: 1728/10

Motion Sequence No: 003

Original Return Date: 07-12-11

P R E S E N T :

**HON. JOEL K. ASARCH,
Justice of the Supreme Court.**

The following named papers numbered 1 to 4 were submitted on this Notice of Motion on July 12, 2011:

	<u>Papers numbered</u>
Notice of Motion, Affirmation and Affidavit in Support	1-3
Affidavit in Opposition	4

The motion by the Plaintiff for an order pursuant to CPLR 3212 granting Plaintiff summary judgment in its favor and against the Defendants is decided as follows:

On or about January 26, 2010, the Plaintiff commenced the within action by filing a copy of the Summons and Verified Complaint with the Clerk of the County of Nassau. The Plaintiff seeks a money judgment against the Defendants in the sum of \$16,576.64, plus penalties and interest accruing to the County of Nassau as a result of the failure of the Defendants (as Sellers) to pay certain outstanding taxes/liens accrued against certain real property located in Floral Park, New York. The Plaintiff served as the title abstract company in connection with the sale of the subject

real property by the Defendants, and alleges three (3) causes of action based upon various theories arising from the payment by the Plaintiff of additional taxes following the closing of title, to wit: breach of contract, fraudulent misrepresentation and conversion. A previous motion by the Defendants seeking dismissal of the Complaint was denied by the Court by Decision and Order dated January 4, 2011 (motion sequence 002).

The Plaintiff, ASK Abstract, Inc. (ASK) is a title abstract company. Defendant American Key, Inc. sold its property known as 141 Charles Street, Floral Park, New York (the subject property). ASK was the title abstract company engaged by the purchasers of the subject property in connection with the procurement of title insurance. The complaint alleges that Defendant Nick Singh a/k/a Arnick Singh (Singh) is a principal of American Key, Inc. At the closing of title, an affidavit was executed by Singh. The affidavit stated: "I am the President and owner of the premises known as 141 Charles Street, Floral Park, New York, 11001." Plaintiff alleges that at the closing ASK received a tax continuation sheet that showed numerous tax liens. When the plaintiff attempted to remit the taxes to the Village of New Hyde Park and the Town of Hempstead, the respective Receiver of Taxes refused to accept the payments until all prior tax liens were satisfied.

The closing took place on November 20, 2009. Defendant American Key received \$79,563.35 from the closing. (Complaint § 15).

The plaintiff collected \$33,276.80 at the closing from American Key, Inc. which was intended to cover the satisfaction of all outstanding liens against the subject premises. Paragraph 3 of the affidavit stated "there are no unpaid taxes, assessments, water charges of sewer rents against the premises now due and owing."

The complaint (§ 15) alleges the following taxes remained unpaid after the closing:

- Tax Lien Cert #4849/2008 to Nassau County Treasurer - \$9,462.33
 - \$5,914.35 for 08-09 Taxes
 - \$1,241.86 for 09 Taxes
 - \$949.88 for Interest to 11/30/09
 - Interest rate 10%
- Village Lien Cert. #8 to Village of Floral Park - \$2,989.99
 - 2008/2009 Village Taxes
 - Interest rate 1%
- Village Lien Cert. #7 to Village of Floral Park - \$2,340.79
 - 2007/2008 Village Taxes
 - Interest rate 1%
- County Interest on Tax Lien Cert. #3653/2000 - \$1,783.53

The documentary evidence submitted by the plaintiff to substantiate these amounts appears to be Office of the County Treasurer Tax Lien Redemption Bills dated **February 3, 2010**. On March 29, 2010, the Plaintiff paid the total sum of \$17,690.00 to the various taxing authorities to pay off prior tax liens (Affidavit of Balram Kakkar).

The affidavit signed by Singh was to "induce (plaintiff) to insure title to (the subject property) knowing that (the plaintiff) would rely on the representations." The affidavit was an indemnification agreement whereby the obligor agreed and promised to indemnify the Plaintiff in the event outstanding judgments were discovered after closing.

On a motion for summary judgment, the Court's function is to decide whether there is a material issue to be tried, not to resolve it. *Sillman v Twentieth Century Fox Films Corp.*, 3 NY2d 395, 404. A *prima facie* showing of a right to judgment is required before summary judgment can be granted to a movant. *Alvarez v Prospect Hospital*, 66 NY2d 320; *Winegrad v New York University Medical Center*, 64 NY2d 851; *Fox v Wyeth Laboratories, Inc.*, 129 AD2d 611; *Royal v Brooklyn Union Gas Co.*, 122 AD2d 133. On the first cause of action sounding in breach of contract, Plaintiff has made a *prima facie* showing of entitlement to summary judgment against the

[* 4]
corporate defendant.

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Friends of Animals, Inc. v Associated Fur Mfgs., Inc.*, 46 NY2d 1065. Conclusory statements are insufficient. *Sofsky v Rosenberg*, 163 AD2d 240, *aff'd* 76 NY2d 927; *Zuckerman v City of New York*, 49 NY2d 557.

The tax liens on the property at the time of the closing, for which the Plaintiff paid to the respective receivers of taxes, were the responsibility of the owner of the subject property at the time of the closing. The only issue of fact is whether Singh can be held individually liable for the real estates taxes that were liens on the subject property and paid by the Plaintiff subsequent to the closing. Plaintiff has not made a *prima facie* showing that Singh signed the affidavit in his individual capacity, rather than as president so as to bind him personally. Even if Singh can establish that the affidavit was signed in his capacity as President, there is still a question of fact as to whether the Court should pierce the corporate veil and find Singh personally liable.

The Courts will generally not pierce the corporate veil to reach a shareholder since the corporate form is a legitimate means of avoiding personal liability (*see Bartle v Home Owners Co-op.*, 309 NY 103). When, however, a corporation has been so dominated by an individual or corporation, and its separate identity so ignored that it transacts the dominator's business instead of its own, and can be called the other's alter ego, the corporate form may be disregarded to achieve an equitable result (*Dana v Shopping Time Corp.*, 76 AD3d 992 [2nd Dept. 2010]).

In *Morris v New York State Department of Taxation and Finance*, 82 NY2d 135 at pages 141-142, the New York Court of Appeals stated:

Because a decision whether to pierce the corporate veil in a given instance will necessarily depend on the attendant facts and equities, the New York cases may not be reduced to definitive rules governing the varying circumstances when the power may be exercised (*see* Presser, *Piercing the Corporate Veil* § 2.33[1], at 2-291-2-293). Generally, however, piercing 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 (citations omitted).

While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business (*see Walkovszky v Carlton*, 18 NY2d 414), such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required (citations omitted). The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene (citations omitted).

In considering summary judgment, the Court must resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party; the Court's function is to decide whether there is a factual issue, not to resolve it (*See Stillman v Twentieth Century-Fox Films Corp.*, 3 NY2d 395; *Alvarez v Prospect Hospital*, 66 NY2d 320). The Court may not weigh the credibility of affiants on a motion for summary judgment unless it clearly appears that issues are not genuine but feigned (*See Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439). There are questions of fact precluding plaintiff's application for summary judgment against defendant Singh. The theory of piercing the corporate veil involves a fact intensive inquiry that is not well suited for determination on a summary judgment motion. *Perry v United Capital Corp.*, 84 AD3d 1201 (2nd Dept 2011).

Equity may intervene to pierce the corporate veil and permit the imposition of personal liability in order to avoid fraud or injustice (*see Ventresca Realty Corp. v Houlihan*, 28 AD3d 537).

Plaintiff has failed to make a *prima facie* showing of entitlement to summary judgment against any of the Defendants on the second and third causes of action. Except for finding the corporate Defendant liable for breach of the indemnity contract (affidavit), the balance of the motion for summary judgment in favor of the Plaintiff against the Defendants is denied.

Accordingly, after due deliberation, it is

ORDERED, that the Plaintiff, ASK ABSTRACT, INC., shall recover of Defendant AMERICAN KEY, INC. the sum of \$17,690.00, together with interest from March 29, 2010, costs and disbursements on its First Cause of Action; and it is further

ORDERED, that the Causes of Action against Defendant a/k/a ARNICK SINGH are severed and continued; and it is further

ORDERED, that a compliance conference shall be held before the undersigned at the courthouse located at 100 Supreme Court Drive, Mineola, New York 11501 on **October 17, 2011 at 9:30 a.m.** Counsel for the Plaintiff and for the (remaining) Defendant shall attend.

Plaintiff shall settle judgment in accordance herewith.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
September 22, 2011

ENTER:



JOEL K. ASARCH, J.S.C.

Copies mailed to:

Kakkar & Kaddish, Esqs.
Attorneys for Plaintiff
Robert H. Helweil, Esq.
Attorney for Defendants

ENTERED
SEP 23 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE