

Commissioners of the State Ins. Fund v Ramos

2012 NY Slip Op 31674(U)

June 6, 2012

Supreme Court, New York County

Docket Number: 402464/05

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Milton A. Tingling

PRESENT: _____

PART 44

Justice

Commission of State Tns

INDEX NO. 902464/05

JMR Concrete Corp et al

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

No(s) _____

Answering Affidavits — Exhibits _____

No(s) _____

Replying Affidavits _____

No(s) _____

Upon the foregoing papers, it is ordered that this motion is

*Decided in accordance with memorandum
of decision*

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

Dated: 6/12/12

MAT J.S.C.
JUDGE MILTON A. TINGLING

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

PRESENT: Honorable Milton A. Tingling
Justice

Part 44

-----X
The Commissioners of the State Insurance Fund,

Index Number: 402464-2005

Plaintiff,

-against-

DECISION

Manuel Ramos, Lenny Pereira and J. M. R. Concrete Corp.,

Defendants,

-and-

J. M. R. Concrete of Long Island Corp.,

Judgment Debtor.
-----X

After trial, the Court hereby finds and decides the following:

In an action captioned The Commissioners of the State Insurance Fund vs. J. M. R. Concrete of Long Island Corp., Index No.: 404300-1997, Supreme Court, New York County, the Plaintiff received a judgment. The judgment was for earned workers' compensation insurance premiums which had been determined to be due for periods ending March 12, 1996, when its coverage was cancelled for Policy No. 692-451-8.

In a complaint dated July 25, 2005, the Plaintiff brought an action against Manuel Ramos, Lenny Pereira and J. M. R. Concrete Corp., Defendants and J. M. R. Concrete of Long Island Corp., Judgment Debtor. The complaint alleged that Defendants Ramos and Pereira were two of the three shareholders of Officers and Directors of the Judgment Debtor; that State Insurance Fund ("SIF") issued a policy providing workers' compensation insurance coverage to the Judgment Debtor (the "Policy"). On March 12, 1996, SIF cancelled the Policy for non-payment of premiums due.

J. M. R. Concrete Corp. ("J. M. R.") was and still is a domestic corporation. J. M. R. was incorporated on January 11, 1996 shortly before the Policy was cancelled by S I F. Ramos

and Pereira caused J. M. R. to be incorporated; at all times relevant to this action Ramos and Pereira were and still are the sole shareholders, officers and shareholders of J. M. R. J. M. R. was incorporated because the Judgment Debtor has accumulated debts and obligations which Ramos and/or Pereira wanted to avoid paying, including the debt due to SIF, and Ramos and/or Pereira wanted to continue the business operations that the Judgment Debtor has previously conducted.

In the aforementioned action, Plaintiff received a judgment entered May 6, 2004 for the sum of \$411,026.35 together with interest thereon from May 6, 2004 which remains due and unpaid.

SIF is a creditor of the Judgment Debtor whose claim has matured under Debtor and Creditors Law section 278.

Ramos and/or Pereira caused and directed the Judgment Debtor to transfer certain personal property including construction equipment, money, accounts receivable, office furniture, telephone numbers, their office space, corporate opportunities, indeed the Judgment Debtor's entire business operation, short of the liabilities and other property to J. M. R., as well as causing J. M. R. to adopt a new name which is strikingly similar to the name of the Judgment Debtor.

All of the property referred to as mentioned in the prior paragraph is referred to as the "Transfers".

Simultaneous with the making of the Transfers, the Judgment Debtor ceased its business operations.

At the commencement of its business operations, J. M. R. used substantially the same employees as were used by the Judgment Debtor prior to the time its business operations ceased, continued to perform substantially the same type of work that was performed by the Judgment Debtor and served the same clients as were serviced by the Judgment Debtor.

J. M. R. is a continuation of the Judgment Debtor's business, albeit under a different corporation.

The Transfers were made without consideration.

The Transfers were not made in good faith.

The Transfers were made with Ramos and or Pereira's approval and at their direction.

The Transfers were fraudulent as to SIF.

As a result, SIF is unable to collect the Judgment from the Judgment Debtor.

Defendants submit three affirmative defenses. 1) That the Plaintiffs claims for fraudulent conveyance pursuant to Debtor and Creditor Law are barred by the applicable Statue of Limitation; 2) The Plaintiffs cause of action should be dismissed based on the equitable doctrine of laches; 3) The Plaintiff's Verified Complaint fails to state a cause of action for piercing the corporate veil or alter ego theory.

Defendant Lenny Pereira alleged twenty-three (23) affirmative defenses and two (2) cross claims.

The only relevant affirmative defenses are: 1) failure to state a cause of action; 2) the claims are barred by the appropriate statute of limitations; 3) the claims are barred by the equitable doctrine of laches; 20) the claims are barred in whole or in part because the Plaintiff failed to reasonably attempt to collect its judgment from the judgment debtor; 21) Plaintiffs claim for interest is barred by the doctrine that interest if any is to be awarded in this type of action only from the date of judgment if any; 22) Defendant is not liable for the debts of the judgment debtors or any other party; 23) Defendant did not exercise complete domination over either corporate defendant, nor did he use either corporate defendant or others as his alter egos.

Defendant Pereira also alleges as a cross claim; 1) that if he is liable to Plaintiff in the manner alleged in the complaint, all of which are denied by the Defendant, then such damages and injuries were caused by the negligent and or intentional actions of Defendants Manual Ramos and J. M. R. Concrete Corp.; 2) Cross Claim Defendant Manuel Ramos owed Defendant Lenny Pereira a fiduciary duty on account of their business relationship.

Prior to trial on this matter, Plaintiff settled individually all claims against Defendant Lenny Pereira.

Trial was held and testimony taken from examinations before trial of several persons including the Defendants, employees of the Defendants and employers of the Plaintiff. Defendants Pereira and Ramos also testified.

The testimony of Lenny Pereira was in a nutshell, that he had been a one third partner in J. M. R. Concrete of Long Island Corp; that one day Manuel Ramos approached him and told him they were going to shut down that Corporation and form J. M. R. Concrete Corporation in which he and Ramos would be 50 percent equal owners. Pereira testified that although a one third owner in J. M. R. Concrete of Long Island Corporation, he was primarily a laborer and had little or no contact with office administration or administrative decisions. His testimony was that he signed documents put in front of him; but relevantly he knew he was a one third partner in J. M. C. Concrete of Long Island and then a 50% partner in J. M. R. Corporation.

Pereira also testified that there was a seamless transition from J. M. R. Concrete of Long Island to J. M. R. Corporation. Employees of Old J. M. R. Concrete of Long Island worked for the New J. M. R. Corporation. All accounts receivable from J. M. C. Concrete of Long Island were deposited as J. M. R. Corporation.

He testified that the New J. M. R. had the same employees, the same officers, same address and that co-defendant Ramos ran the Old J. M. R., the New J. M. R. and made all decisions. He further testified that the Old J. M. R. wrote checks to the New J. M. R. and that the New J. M. R. had no money. He stated that he personally invested no money in the New J. M. R.

Parts of the depositions testimony of Nina Palumbo, secretary at Old and New J. M. R. and Manny Ramos were read into the record. The deposition of Nina Palumbo indicated nothing changed, salary or job, from Old to New J. M. R.

The deposition of Manny Ramos stated that a fire in the offices of the New J. M. R. in the year 2000 which destroyed all records before 2000, that the New J. M. R. was named after his son Jason Michael Ramos and that Old J. M. R. ceased doing business in 1996.

He testified that the New J. M. R. began in 1997 and no stock certificates were issued. He also stated that he, Pereira and Lenny Seidin were one third partners in Piedmont Realty which owned the building in which the Old and New J. M. R. had offices. The phone numbers for the Old and New J. M. R. were the same, with the same furniture. Ramos alleges that the New J. M. R. purchased some furniture from the Old J. M. R. but the records were destroyed in the fire.

To paraphrase famous legal dicta, this Court cannot define b.s. but it knows it when it smells it.

The Court finds as a matter of law that The State Insurance Fund is a creditor of the judgment debtor and Debtors and Creditors Law sect 278. Ramos and Pereira made transfers from the Judgment Debtor simultaneously while shutting down the business of same.

The transfers to the New J. M. R. were made without consideration. The transfers were not made in good faith. The transfers made the Judgment Debtor insolvent. The transfers

were fraudulent as to The State Insurance Fund. The Court finds that the New J. M. R. is the alter ego of the Judgment Debtor.

The cross claims of Pereira are hereby dismissed.

The Court also finds that the New J. M. R. is the alter ego of the Judgment Debtor and that Ramos and Pereira are severally liable for one half each of the judgment with interest.

Judgment is awarded to Plaintiff for \$ 411,026.35 plus interest from May 6, 2004.

Settle Judgment on Notice.

Date: June 6, 2012

mat
J. S. C.

JUDGE MILTON A. TINGLING