

Ingrid v V.S. Hunter Assoc., Inc.
2012 NY Slip Op 33463(U)
April 3, 2012
Sup Ct, Bronx County
Docket Number: 305411/09
Judge: Jr., Kenneth L. Thompson
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APR 11 2012

4 Valenti + Sollecito Motion
as Dismiss Granted
TT Motion ST + Sanctions
Denied

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20

HARRIS INGRID, RAYMOND DIGGS, CARLOS
FLORENTINO, GLADYS OWUSU-SAFO, RAMIREZ
VANESSA, GLORIA JACKSON, KYRON COLLINS,
SANTIAGO CASTILLO, IAN RASSOULES, VAT
MORRISON, RAFAEL CASTILLO, LANIS PARRIS,
CEPHAS AMPONG and KOBSON DINA,

Index No. 305411/09

Plaintiff,

DECISION/ORDER

-against-

Present:

V.S. HUNTER ASSOCIATES, INC., ROBERT VALENTI
and ROCCO SOLLECITO,

HON. KENNETH L. THOMPSON, Jr.

Defendants.

ZULMA BETANCOURT,

Plaintiff,

-against-

V.S. HUNTER ASSOCIATES, INC., ROBERT VALENTI
and ROCCO SOLLECITO,

Defendants.

The following papers numbered 1 to ____ read on this motion, _____

	PAPERS NUMBERED
No On Calendar of	_____
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	_____
Answering Affidavit and Exhibits-----	_____
Replying Affidavit and Exhibits-----	_____
Affidavit-----	_____
Pleadings -- Exhibit-----	_____
Stipulation -- Referee's Report --Minutes-----	_____
Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendants' ROBERT VALENTI and ROCCO SOLLECITO motion for an Order pursuant to CPLR § 3211(a)(7) dismissing Plaintiff's Complaint as to those Defendants and Plaintiff's motion for an Order pursuant to CPLR § 3212 granting summary judgment and awarding sanctions are consolidated for Decision herein.

Defendants' ROBERT VALENTI and ROCCO SOLLECITO motion for an Order pursuant to CPLR § 3211(a)(7) dismissing Plaintiffs' Complaint as to these parties is
GRANTED.

Plaintiff's motion for an Order pursuant to CPLR § 3212 granting summary judgment and awarding sanctions is **DENIED**.

Plaintiffs allegedly purchased real property from "Defendant V.S. HUNTER ASSOCIATES, INC, with Defendants ROBERT VALENTI and ROCCO SOLLECITO "[a]cting on their own behalf and on behalf of Defendant V.S. HUNTER ASSOCIATES, INC, as a corporate entity." (*Amend Ver Compl* at ¶ 2.) Plaintiffs claim that Defendants "have breached each contract of sale, with respect to the release of escrow deposits, warranty repairs and issuance of each Certificate of Occupancy." (*Id.* at ¶ 18.) They further contend that Defendants "promis[ed] to each Plaintiff that a Permanent Certificate of Occupancy (PCO) would be secured within two (2) years from the closing date of sale, has been willfully breached," and failed to deliver on that promise. (*Id.* at ¶ 159.)

Defendants ROBERT VALENTI and ROCCO SOLLECITO are moving to dismiss the Complaint because there is no basis to pierce the corporate veil and impute personal liability to them. Plaintiff opposes that motion on the grounds that Defendant V.S. HUNTER ASSOCIATES, INC. was dissolved by proclamation on October 27, 2010, thus, it "was rendered void and non existent at its inception, and only Defendant ROBERT VALENTI and ROCCO SOLLECITO are to be held liable for the consequences of all its activities that concern each plaintiff." (*L.N. Etah Aff Supp* at ¶ 3.) Plaintiff is moving for summary judgment on the grounds that since Defendant V.S. HUNTER ASSOCIATES, INC. was dissolved "all transactions that were conducted on its behalf have been rendered void." (*Id.* at ¶ C(1).)

CPLR § 3211(a)(7)

If the motion for dismissal under CPLR § 3211(a)(7) is made on the face of the pleading alone, then it assumes, *arguendo*, the truth of all the allegations of the cause of action or defense and everything reasonably to be implied therefrom, but when ... the moving party offers matter extrinsic to the pleading the court need not assume the truthfulness of the pleaded allegations, the criterion to be applied in such a case being whether the opposing party actually has a cause of action or defense, not whether he has properly stated one.

Rappaport v. International Playtex Corp., 43 AD2d 393, 394-95.

However,

[A]ffidavits submitted by a defendant will almost never warrant dismissal under CPLR 3211 unless they establish conclusively that the plaintiff has no cause of action. Indeed, a motion to dismiss pursuant to CPLR § 3211(a)(7) must be denied unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it.

Sokol v Leader, 74 AD3d 1180, 1182 (citations omitted).

Piercing the Corporate Veil

"The law permits the incorporation of a business for the very purpose of escaping personal liability." *Bartle v. Home Owners Cooperative, Inc.*, 309 NY 103, 106. "[T]he courts will disregard the corporate form, or, to use accepted terminology, 'pierce the corporate veil', whenever necessary 'to prevent fraud or to achieve equity'. *Morris v. State Dep't of Taxation & Fin.*, 82 NY2d 135, 140 (citations omitted). "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 the plaintiff's injury." *Love v. Rebecca Dev., Inc.*, 56 AD3d 733 (citations omitted). "[T]he party seeking to pierce the corporate veil must also establish that the owners,

through their domination, abused the privilege of doing business in the corporate form." *East Hampton Union Free School Dist*, 66 AD3d at 126. "Factors to be considered by a court in determining whether to pierce the corporate veil include failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use." *Millennium Constr., LLC v. Loupolover*, 44 AD3d 1016.

"[E]ven under the liberal 'notice pleading' requirements of CPLR § 3013 a complaint still must allege, inter alia, the material elements of each cause of action asserted." *East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc.*, 66 AD3d 122, 127. Plaintiffs' Complaint fails to allege the material elements of a claim for piercing the corporate veil. Plaintiffs have also failed to show that they can make out such a claim as to Defendants ROBERT VALENTI and ROCCO SOLLECITO.

Plaintiffs' Complaint does not contain any allegations that Defendants ROBERT VALENTI and ROCCO SOLLECITO either exercised complete domination and control of Defendant V.S. HUNTER ASSOCIATES, INC. or that such dominion was used to commit a fraud.

Plaintiffs do not allege—nor have they shown—that Defendants ROBERT VALENTI and ROCCO SOLLECITO failed to adhere to corporate formalities. To the contrary, the Amended Verified Complaint alleges that Defendants ROBERT VALENTI and ROCCO SOLLECITO maintained different addresses from Defendant V.S. HUNTER ASSOCIATES, INC. (see *Amend Ver Compl* at ¶¶ 6-8). See *Peery v United Capital Corp.*, 84 AD3d 1201, 1202 (finding that an indicia of a situation warranting veil-piercing is "common office space, address and telephone numbers of corporate

entities") (citations omitted). Documents provided by Plaintiffs also indicate that Defendant ROBERT VALENTI was the President and Defendant ROCCO SOLLECITO was the Vice-President Defendant V.S. HUNTER ASSOCIATES, INC.

Plaintiffs' cannot show that Defendants commingled assets, especially in light of their allegation that Defendants "held certain amounts in escrow, for the purpose of obtaining a permanent CFO for each property (*see Amend Ver Compl* at ¶ 10), and there are no allegations that either Defendant ROBERT VALENTI or ROCCO SOLLECITO used corporate funds for personal use. Defendants failure to pay an October 15, 2007, Judgment is insufficient evidence of inadequate capitalization.

Dissolution

There is no basis in the law for counsel's theory that the sales contracts executed in 2005-06 are null and void due to Defendant V.S. HUNTER ASSOCIATES, INC.'s October 27, 2010, dissolution or that this dissolution renders Defendants ROBERT VALENTI and ROCCO SOLLECITO personally liable for those contracts. "The dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution" BCL § 1006(b). Also, the dissolved "corporation may... be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitative or otherwise, in its corporate name, and process may be served by or upon it." BCL § 1006(a)(4). Simply stated, "[a] dissolved corporation retains the inherent power to wind up its affairs including the ability to fulfill or discharge any existing contracts." *IG Second Generation Partners, LP v Broadway*

Meat Market, Fruit, Fish, Vegetable Food Warehouse Ctr., Inc., 2008 NY Slip Op
32806U, *6.

Sanctions

The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part.

22 NYCRR § 130.1(a)

For purposes of this Part, conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false.

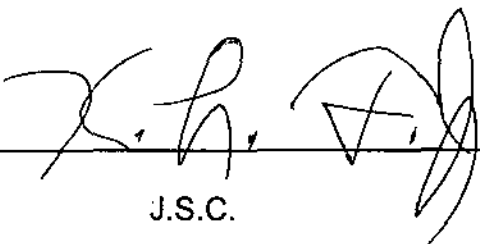
22 NYCRR § 130.1(c)(1)-(3).

The Court does not find any evidence in the record sufficient to support Plaintiffs' contentions that opposing counsel engaged in any activity that may be considered frivolous to the point of exacting sanctions.

The foregoing shall constitute the decision and order of this Court.

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Dated: _____



J.S.C.

KENNETH L. THOMPSON, JR.