

Kane v SDM Enters. Inc.
2012 NY Slip Op 33832(U)
December 4, 2012
Supreme Court, Kings County
Docket Number: 4054/12
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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NANCY KANE,

Plaintiff,

Decision and order

- against -

Index No. 4054/12

SDM ENTERPRISES INC., SALVATORE MENDOLIA
AND DOMINIC MENDOLIA,

Defendants,

December 4, 2012

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PRESENT: HON. LEON RUCHELSMAN

Defendants Salvatore and Dominic Mendolia move seeking dismissal from the case on the grounds they are protected by the corporation and the plaintiff cannot pierce the corporate veil. Moreover, all defendants move to dismiss the action because the claims have previously been litigated. The plaintiff opposes the motions. Papers were submitted by both parties and arguments held. After reviewing the arguments of all parties, this court now makes the following decision.

Background

Plaintiff, Nancy Kane, signed a rental lease for a rent stabilized apartment located at 293 Grove Street, Apartment 3R in Brooklyn, New York from defendant corporation SDM Enterprises to commence July 1, 2011. Salvatore Mendolia is an officer of SDM Enterprises and Dominic Mendolia is a managing agent for SDM Enterprises. Dominic Mendolia signed the lease on behalf of SDM Enterprises. Plaintiff claims that Dominic neglected to include

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the mandatory rent stabilized apartment bed bug disclosure form that certifies that the apartment is free from bed bugs. Plaintiff claims that from the time she moved into the apartment there were bed bug and rodent infestations, and that those infestations were not abated in a timely fashion. Plaintiff commenced the current lawsuit on February 1, 2012 for damages she claims to have incurred as a result of these infestations. Defendants claim that plaintiff stopped paying rent as of November 2011. On or about February 22, 2012 Defendant SDM Enterprises commenced an action in Housing Court for the unpaid rent. A hearing was held on March 7, 2012 in Housing Court regarding defendants' claims for unpaid rent. The record reveals that Judge Morton, the Housing Court judge informed Mrs. Kane that the purpose of the hearing was to determine if the case would go to trial or if it could be settled. When Judge Morton asked Mrs. Kane why she did not pay the rent Mrs. Kane responded because she sustained injuries from bed bugs in the apartment. Mrs. Kane also stated that she had retained a lawyer for her already commenced action in civil court for damages. On April 3, 2012 a stipulation of settlement was reached in Housing Court which begins with the statement that "Respondent consents to the entry of a final judgment of possession only." The parties dispute whether that stipulation was meant to cover exclusively SDM Enterprises claims for lost rent and Mrs. Kane's possession

of the apartment, or if it also included Mrs. Kane's claims of damages from the infestations. This lawsuit and these motions followed. First, the individual defendants argue they cannot be sued personally since they only acted in their capacity as corporate officers. Moreover, all defendants argue the lawsuit must be dismissed since the matter has already been litigated and it has already been stipulated that no violation regarding bed bugs may be pursued.

Conclusions of Law

Generally, courts will consider two factors in determining if they should allow a movant to pierce a corporation's corporate veil. The first is whether the corporation is being used to commit fraud or illegality, and second whether one individual or individuals have complete dominion and control over the company (see, Guptill Holding Corp. v. State, 33 AD2d 362, 307 NYS2d 970 [3rd Dept., 1970]). Defendants claim that Plaintiff did not allege or prove either of these factors. Plaintiff claims that since discovery has just begun they seek additional time to engage in further discovery and determine then whether they could pierce the corporate veil. Plaintiff cites to such cases as Whelan v Port Authority of New York and New Jersey, 19 AD3d 483, 797 NYS2d 113 [2d Dept., 2005] for the legal pronouncement that dismissal motions may be denied at an early stage of the case to

allow the opposing party the opportunity for discovery to substantiate their claims. While that is a true statement of the law is it not controlling in this case. In Whelan, (supra) the opposing party had made probable allegations and needed to substantiate them. In this case the plaintiff has failed to allege any reason why the corporate veil should be pierced. New York courts take piercing the corporate veil very seriously and will pierce the corporate veil only when necessary to prevent fraud or to achieve equity (see, Morris v New York State Department of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807 [1993]). The plaintiff seeks to pierce the corporate veil without even alleging anything that gives the court reason to believe that the corporation is acting as the alter ego of one of its officers. Therefore, based on the foregoing, the motion seeking to dismiss the complaint against the two individual defendants Salvatore and Dominic Mendolia is granted.

Concerning the remaining defendants, the doctrine of res judicata prevents future litigation between the same parties concerning the same cause or causes of action (Hodes v. Axelrod, 70 NY2d 364, 520 NYS2d 933 [1987]). Res judicata bars matters actually litigated as well as matters which could have been litigated (Latham Sparrowbush Associates v. Shaker Estates Inc., 153 AD2d 788, 545 NYS2d 219 [3rd Dept., 1989]).

When a release is unambiguous the intent of the parties must be ascertained from the plain language of the agreement (see, Shklovskiy v. Kahn, 273 AD2d 371, 709 NYS2d 208 [2d Dept., 2000]). When a release appears to be limited to only particular claims, demands or obligations, the instrument will be operative as to those matters alone (Perritano v. Town of Mamaroneck, 126 AD2d 623, 511 NYS2d 60 [2d Dept., 1987]). Indeed, "the meaning and coverage of a general release necessarily depends upon the controversy being settled and upon the purpose for which the release was given. A release may not be read to cover matters which the parties did not intend to cover" (Gale v. Citicorp, 278 AD2d 197, 716 NYS2d 905 [2d Dept., 2000], see, also, Meyer v. Panelli, 266 AD2d 361, 698 NYS2d 311 [2d Dept., 1999], Grab v. Jewish Assn. for Servs. for Aging, 254 AD2d 455, 679 NYS2d 313 [2d Dept., 1998]).

In the case at hand plaintiff clearly did not mean for the stipulation, which deals with the unpaid rent money, to include her damages claims concerning bed bugs. Plaintiff commenced the current lawsuit for damages before defendant started the housing court action. As noted, at the conference before trial for the Housing Court matter, Judge Morton stated she was merely trying to establish the issues, implying the parties were not actually litigating the case and plaintiff specified that she wanted to litigate her damages claims in civil court. When plaintiff

signed the release her belief was definitely not to include her damages claims, thus, the release would not cover the damages claims.

Additionally, the plain language of the stipulation says "Respondent consents to the entry of a final judgment of possession only".

Accordingly, the motion of the defendant's seeking dismissal of the lawsuit based upon res judicata is denied.

So ordered.

ENTER:

DATED: December 4, 2012
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC
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