

**2406-12 Amsterdam Assoc. LLC v Alianza LLC**

2014 NY Slip Op 30156(U)

January 15, 2014

Supreme Court, New York County

Docket Number: 151120/2013

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Saliann Scarpulla  
Justice

PART 19

Index Number : 151120/2013  
2406-12 AMSTERDAM ASSOCIATES  
vs  
ALIANZA LLC  
Sequence Number : 001  
DISMISS

INDEX NO. \_\_\_\_\_  
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 determined in  
accordance with the accompanying  
decision/order.

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

Dated: 1/15/14

  
SALIANN SCARPULLA J.S.C.

- 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: CIVIL TERM: PART 19

-----X

2406-12 AMSTERDAM ASSOCIATES LLC,

Plaintiff,

Index No: 151120/2013  
Submission Date: 10/30/13

-against-

**DECISION AND ORDER**

ALIANZA LLC  
ALIANZA DOMINICANA INC.,

Defendant.

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For Plaintiff:  
Sperber, Denenberg & Kahan, PC  
48 West 37<sup>th</sup> Street  
New York, NY 10018

For Defendant:  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, NY 10153

Papers considered in review of the motion to dismiss:

Notice of Motion . . . . .	1
Affidavit in Opp . . . . .	2
Affirmation in Opp . . . . .	3
Reply . . . . .	4

HON. SALIANN SCARPULLA, J.:

In this action, *inter alia*, to recover damages for breach of contract, defendants Alianza LLC (“Alianza LLC”) and Alianza Dominicana Inc. (“Alianza Inc.”) move to dismiss plaintiff 2406-12 Amsterdam Associates LLC’s (“Amsterdam”) second cause of action for piercing the corporate veil, and the third cause of action for violations of the Debtor Creditor Law as asserted against Alianza Inc., and dismissal of the complaint in its entirety as asserted against Alianza LLC.

Amsterdam is the landlord of a building located at 2410 Amsterdam Avenue in Manhattan. Alianza Inc. is a not-for-profit corporation which was established in 1985. Pursuant to a lease agreement dated September 2002, Alianza Inc. leased the “entire second and fourth floors” of Amsterdam’s building for a period of five years. After the lease terminated in August 2007, Alianza Inc. continued to occupy the premises on a month to month basis. Alianza Inc. vacated the premises on or about March 30, 2012.

Amsterdam commenced this action alleging that defendants defaulted in rent payments and owed \$94,604.88 in unpaid rent and additional rent. Amsterdam further alleged that Alianza Inc. created Alianza LLC and transferred its assets into Alianza LLC in order to avoid its liabilities to Amsterdam. Amsterdam asserted causes of action for breach of contract, piercing the corporate veil, violations of Debtor Creditor Law Sections 273, 274, 275, and 276, and for attorneys fees.<sup>1</sup>

Alianza LLC and Alianza Inc. now move to dismiss the complaint. They seek dismissal of the second cause of action for piercing the corporate veil and the third cause of action for violations of the Debtor Creditor Law as asserted against Alianza Inc., and dismissal of the complaint in its entirety as asserted against Alianza LLC.

They first argue that Amsterdam has no cognizable breach of contract claim against Alianza LLC in that Alianza LLC was not a party or signatory to the subject lease

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<sup>1</sup> As a remedy for the alleged Debtor Creditor Law violations, Amsterdam also seeks to set aside any transfers and/or for permission to place a levy or lien on the assets and inventory, pursuant to Debtor Creditor Law §278.

agreement, and was not even in existence at the time the lease was executed. Alianza LLC was only formed on June 13, 2007 and is a separate and distinct corporate entity from Alianza, Inc. Alianza, Inc. is a member/owner of Alianza LLC.

They next argue that the causes of action for piercing the corporate veil and violations of the Debtor Creditor Law were not adequately or properly pled. They maintain that the complaint contains no allegations of any fraudulent or otherwise wrongful transactions between Alianza Inc. and Alianza LLC.

In opposition, Amsterdam contends that it properly stated its claims in its complaint. First, it properly pled a claim for breach of contract in that it alleged that Alianza Inc. failed to pay certain amounts of rent as required by the lease agreement. In addition, Alianza LLC occupied the subject premises and used the address of the subject premises on its corporate filings. Therefore, as an occupying corporation, it would also be liable for the rent obligation.

Second, Amsterdam argues that it properly pled claims for piercing the corporate veil and violations of the Debtor Creditor Law. It explains that all of Alianza Inc.'s assets were transferred to the LLC. Alianza, Inc. was a shell corporation, defunct and out of business, yet still controlled the LLC. The LLC was comprised of 90% membership of Alianza Inc. Alianza Inc. was in the process of building itself a new headquarters, and all permits initially issued to Alianza Inc. for the construction were then assigned to the LLC. All finances and city contracts were transferred from Alianza Inc. to Alianza LLC.

Further, there was an asset transfer approved by the court. Amsterdam claims that the transfer of assets and inventory was done with the sole intention to avoid the debt owed to it by Alianza, Inc. Amsterdam alleges that in light of the foregoing, Alianza Inc. and the LLC should not be regarded as two separate corporations.

Amsterdam further claims that contrary to defendants' contention, it was not required to plead a violation of the Debtor Creditor Law under the heightened pleading standard. Finally, it contends that it is entitled to attorneys fees pursuant to paragraph 19 of the subject lease agreement.

### **Discussion**

CPLR § 3211(a)(7) provides that a defendant may move for judgment dismissing the complaint on the ground that "the pleading fails to state a cause of action." On a motion to dismiss pursuant to CPLR §3211(a)(7), the pleading is to be afforded a liberal construction. The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Frank v. DaimlerChrysler Corp.*, 292 A.D.2d 118, 121 (1st Dept. 2002).

Defendants seek dismissal of the second cause of action for piercing the corporate veil and the third cause of action for violations of the Debtor Creditor Law as asserted against Alianza Inc., and dismissal of the complaint in its entirety as asserted against

Alianza LLC. Defendants do not seek dismissal of the breach of contract and attorneys fees claims as asserted against Alianza Inc.

To the extent that Amsterdam's claims arise out of alleged violations of Debtor Creditor Law §§273, 274, and 275, the heightened pleading requirement set forth in CPLR §3016(b) is not applicable because these sections do not require proof of an actual intent to defraud. *Menaker v. Alstaedter*, 134 A.D.2d 412 (2<sup>nd</sup> Dept. 1987). §276 does require that Amsterdam allege that the defendants acted with intent to defraud, thereby rendering CPLR §3016(b) applicable. Although CPLR §3016(b) requires claims of fraud to be pled with particularity, it should not be construed so strictly so as to prevent an otherwise valid cause of action where it would be impossible for the plaintiff to state in detail all of the circumstances of the fraud because the knowledge of those details is in the exclusive possession of the defendants. *Auguston v. Spry*, 282 A.D.2d 489 (2<sup>nd</sup> Dept. 2001). The court notes that CPLR §3211(d) allows for latitude in pleading requirements for facts unavailable to the non-movant. *Infra-Metals Co v Metro Structural Steel, Inc.*, 38 Misc. 3d 1225(A) (Sup. Ct. Kings Co. 2013). The court finds that the allegations of the complaint sufficiently set forth causes of action under the Debtor and Creditor Law.

Courts will pierce the corporate veil when it is clear that shareholders are using the corporation merely as a conduit to conduct their personal business in order to shield themselves from personal liability, or where necessary to prevent fraud or to achieve equity. *Perez v. One Clark Street Housing Corp.*, 108 A.D.2d 844 (2<sup>nd</sup> Dept. 1985). In

order to pierce the corporate veil, it must be established that "(1) the owners [of a corporation] 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." *Morpheus Capital Advisors LLC v. UBS AG*, 105 A.D.3d 145, 153 (1<sup>st</sup> Dept. 2013). Carrying on a business without substantial capital and leaving the corporation without substantial assets to meet its debts can justify piercing the corporate veil. *Gateway I Group v. Park Ave. Physicians, P.C.*, 62 A.D.3d 141 (2<sup>nd</sup> Dept. 2009); *Weinstein v. Willow Lake Corp.*, 262 A.D.2d 634 (2<sup>nd</sup> Dept. 1999); *Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv.*, 210 A.D.2d 24 (1<sup>st</sup> Dept. 1994).

However, there is no separate cause of action to pierce the corporate veil. *9 E. 38th St. Assocs. L. P. v. George Feher Assocs.*, 226 A.D.2d 167, 168 (1<sup>st</sup> Dept. 1996). Rather, it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners. *See Morris v. State Dep't of Taxation & Fin.*, 82 N.Y.2d 135 (1993). A complaint which seeks to pierce the corporate veil should be upheld unless it can be said that it "is totally devoid of solid nonconclusory allegations." *USA United Holdings, Inc. v. Tse-Peo*, 23 Misc. 3d 1114(A), \*32 (Sup. Ct. Kings Co. 2009).

Therefore, the court dismisses the second cause of action for piercing the corporate veil, as it can not be a separate cause of action. However, the court finds that viewed in

the light most favorable to Amsterdam, it cannot be said that the complaint is totally devoid of solid, nonconclusory allegations against Alianza, LLC based upon piercing the corporate veil. *See generally International Credit Brokerage Co. v. Agapov*, 249 A.D.2d 77 (1<sup>st</sup> Dept. 2013). As such, the claims for breach of contract, attorneys fees, and violations of the Debtor Creditor Law will remain as asserted against Alianza Inc. as well as Alianza LLC.

In accordance with the foregoing, it is hereby

ORDERED that defendants Alianza LLC and Alianza Dominicana Inc.'s motion to dismiss plaintiff 2406-12 Amsterdam Associates LLC's second cause of action for piercing the corporate veil, and the third cause of action for violations of the Debtor Creditor Law as asserted against Alianza Dominicana Inc., and dismissal of the complaint in its entirety as asserted against Alianza LLC is granted only to the extent that the second cause of action for piercing the corporate veil is dismissed as asserted against both defendants, and the remaining claims are severed and shall continue.

This constitutes the decision and order of this Court.

Dated:       New York, New York  
              January 15, 2014

ENTER:



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J.S.C.  
**SALIANN SCARPULLA**