

Martinez v Ui Kun Lee
2014 NY Slip Op 3131 H(U)
April 15, 2014
Supreme Court, Bronx County
Docket Number: 306201/2010
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

JOSUE MARTINEZ,

INDEX NUMBER: 306201/2010

Plaintiff,

-against-

Present:

HON. ALISON Y. TUITT

Justice

UI KUN LEE, SOUNG SUK LEE, JACKSON 50-LEE LIMITED PARTNERSHIP, ARUN KUMAR, POONAM KUMAR, HUMAIRA HUSSAIN, MARK CONSTRUCTION AND HOME, ARRP, LLC d/b/a TAWA TANDOOR, TAWA TANDOOR, PAUL MARINO d/b/a ENGINEERING CONSULTATION SERVICES and ENGINEERING CONSULTATION SERVICES,

Defendants.

The following papers numbered 1 to 5,

Read on this Defendants Arun Kumar, Poonam Kumar, Humaira Hussain and AARP LLC d/b/a Tawa Tandoor's Motion for Summary Judgment

On Calendar of 12/2/13

Notices of Motion-Exhibits, Affirmation 1

Affirmations in Opposition 2, 3

Reply Affirmations 4, 5

Upon the foregoing papers, defendant Arun Kumar, Poonam Kumar, Humaira Hussain's motion for summary judgment is granted for the reasons set forth herein.

The within action involves personal injuries allegedly sustained by plaintiff on January 15, 2010 at the first floor of the premises located at 37-50 74th Street, Queens, New York. Plaintiff alleges to have been at the premises as a laborer engaged in demolition work at the time of his accident. Plaintiff claims that he was

caused to fall through flooring that collapsed near a large, unguarded, unsafe and dangerous hole in the floor while using a sledgehammer and knocking down an interior wall. Plaintiff alleges that the hole was created by the demolition and removal of the staircase from the ground floor to the basement. Plaintiff claims that there was a crack in the floor adjacent to the hole that caused the floor near the hole to collapse. When the floor collapsed, plaintiff fell down from the ground floor to the basement. Plaintiff further claims that he was not provided with a safety harness and no other safety devices to prevent or break his fall. Plaintiff also alleges that the hole was unguarded and uncovered and there were no barricades or railings around it. In addition, plaintiff claims that the structurally defective floor was not braced or supported by mechanical means. In this action, plaintiff asserts Labor Law claims pursuant to Labor Law §240, §241(6), §200 and well as common law negligence claim.

Defendant ARRP, LLC d/b/a Tawa Tandoor (hereinafter "ARRP") leased the premises from defendant Jackson 50-Lee Limited Partnership (hereinafter "Jackson"), pursuant to a lease agreement dated November 17, 2009 which was in effect on the date of the accident. ARRP, the leasehold tenant, was demolishing the premises where a new restaurant was to be constructed. The lease was signed by defendant Ui Kun Lee, as General Partner of the owner Jackson. On behalf of ARRP, the tenant, the lease was signed by defendants Arun Kumar, Poonam Kumar and Humaira Hussain. Additionally, defendants Arun Kumar, Poonam Kumar and Humaira Hussain all signed a "Limited Guaranty" as guarantors of ARRP's obligations under the lease. The Guaranty within the lease provides in relevant part that the signors "hereby personally guarantees to the Owner the payment of all Annual Rent and additional rent and other charges due to Owner under the Lease or otherwise." Plaintiff and co-defendants argue that Arun Kumar, Poonam Kumar and Humaira Hussain signed the Guaranty as individuals and not from their positions as corporate officers.

The Court's function on this motion for summary judgment is issue finding rather than issue determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film

Corp., supra.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the “burden of production” (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

Defendants Arun Kumar, Poonam Kumar and Humaira Hussain argue that they should not be held under the “commission of a tort” doctrine and the guidelines governing the “corporate veil” theory because they leased the subject property in the name of their corporation and under their corporate titles. “The ‘commission of a tort’ doctrine permits personal liability to be imposed on a corporate officer for misfeasance or malfeasance, i.e., an affirmative tortious act; personal liability cannot be imposed on a corporate officer for nonfeasance, i.e., a failure to act”. Peguero v. 601 Realty Corp., 873 N.Y.S.2d 17 (1st Dept. 2009). “[A] corporate officer who participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced.” American Express Travel Related Services Co., Inc. v. North Atlantic Resources, Inc., 691 N.Y.S.2d 403 (1st Dept. 1999); Espinosa v. Rand, 806 N.Y.S.2d 186 (1st Dept. 2005). In applying this doctrine, Courts have required a particularized pleading of allegations that the corporate officers committed wrongful acts outside the scope of their employment or, if not, were motivated by personal gain as opposed to gain for the corporation. See, Joan Hansen & Company, Inc. v. Everlast World’s Boxing Headquarters Corp., 744 N.Y.S.2d 384 (1st Dept. 2002).

Plaintiff filed a Worker’s Compensation claim and a hearing was held before Judge Tracy Peel who made a finding that plaintiff was an employee of non-party Gurvinder Singh. At his deposition, plaintiff denied ever having heard of defendants Arun Kumar, Poonam Kumar and Hussain. At his deposition, defendant Arun Kumar testified that he never met plaintiff until after he was allegedly injured. Defendants Arun Kumar, Poonam Kumar and Humaira Hussain argue that they are not liable for damages to plaintiff resulting from an

employer-employee relationship. Defendants argue that there has been a finding by the Worker's Compensation Board that plaintiff was an employee of Gurvinder Singh, plaintiff is precluded from alleging that these defendants were plaintiff's employers. Defendants Arun Kumar, Poonam Kumar and Humaira Hussain further argue that plaintiff has not alleged that they committed an independent tortious act outside the scope of their respective roles within ARRPP or, alternatively, were motivated by personal gain as opposed to gain for ARRPP. Moreover, plaintiff fails to allege any malfeasance on the part of any of these defendants.


Defendants also contend that they are not liable under the theory that the corporate veil should be pierced or that their liability should be substituted for ARRPP's. Under New York Law, the corporate veil can be pierced where there has been a failure to adhere to corporate formalities, inadequate capitalization, use of corporate funds for personal purpose, overlap in ownership and directorship, or common use of office space and equipment. Forum Insurance Co. v. Texakoma Transportation Co., 645 N.Y.S.2d 786 (1st Dept. 1996). Consideration in piercing the corporate veil include an absence of formalities which are a part and parcel of normal corporate existence, i.e., issuance of stock, electing directors, and keeping of corporate records. See, Fern, Inc. v. Adjmi, 602 N.Y.S.2d 615 (1st Dept. 1993); Donnasch v. Fifalco, 585 N.Y.S.2d (1st Dept. 1992). To disregard the corporate form so as to hold its owners individually liable 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." Morris v. State Department of Taxation & Finance, 82 N.Y.2d 135 (1993).

Defendants Arun Kumar, Poonam Kumar and Humaira Hussain motion for summary judgment must be granted. Defendants are correct that they should not be held under the "commission of a tort" doctrine and the guidelines governing the "corporate veil" theory because they leased the subject property in the name of their corporation and under their corporate titles. Plaintiff has not alleged that they committed an independent tortious act outside the scope of their roles within ARRPP or that they were motivated by personal gain. Plaintiff has not alleged any malfeasance on the part of any of these defendants. Moreover, plaintiff has not alleged in the complaint that these individual defendants "exercised complete dominion" over defendant ARRPP or that they used such domination to commit a fraud or wrong against the plaintiff. Plaintiff allegations do not claim an intentional tort. As such, there is no ground for piercing the corporate veil or to otherwise establish personal liability against these individual defendants.

Accordingly, the motion by defendants Arun Kumar, Poonam Kumar and Humaira Hussain for summary judgment is granted and the complaint is dismissed as against them.

This constitutes the decision and order of this Court.

Dated: April 15, 2014



Hon. Alison Y. Tuitt