

Benkovsky v Lorenzo
2014 NY Slip Op 33307(U)
December 16, 2014
Supreme Court, New York County
Docket Number: 161243/13
Judge: Donna M. Mills
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

NYSCEF DOC. NO. 78

RECEIVED NYSCEF: 12/18/2014

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

PRESENT : DONNA M. MILLS
Justice

PART 58

STEVEN BENKOVSKY,

INDEX NO. 161243/13

Plaintiff(s)

MOTION DATE _____

-v-

MOTION SEQ. NO. 001,002

GREGG LORENZO, individually, et al.,

Defendant(s).

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion to compel.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1,5,6

Answering Affidavits- Exhibits _____ 2,3,7

Replying Affidavits _____ 4,8,9

CROSS-MOTION: _____ YES ☒ NO

Motion sequence 001 and 002 are consolidated for disposition and are
decided as follows:

In motion sequence number 001, defendants Gregg Lorenzo, individually
("Lorenzo"), GJH Holdings LLC ("GJL"), and Charles Vista, LLC ("Charles Vista")
(collectively, "Defendants") move for an Order, pursuant to CPLR § 3124 compelling
plaintiff Steven Benkovsky ("Plaintiff or Benkovsky") to produce documents responsive
to Defendants' First Request for Discovery and Inspection, dated March 31, 2014,

specifically Request Nos. 14, 30, 32, 33 and 35.

In sequence number 002, Plaintiff seeks an Order compelling Defendants to comply with Plaintiff's First Request for Documents pursuant to CPLR § 3124.

Plaintiff's complaint primarily alleges that Defendants failed to re-pay a loan of \$600,000 by Benkovsky to GJL. The complaint also alleges unjust enrichment, negligent misrepresentation and fraud, all relating to the same loan. The alleged loan was memorialized in the form of a promissory note signed by Benkovsky and GJL on or about January 28, 2009. An amended and restated promissory note was entered into between Benkovsky and GJL and executed by GJL for the period beginning May 1, 2011. Benkovsky has alleged that Lorenzo personally guaranteed the loan to GJL, which Lorenzo has expressly denied. It is undisputed that neither Lorenzo nor Charles Vista was a party to either the original note or the amended and restated note.

Plaintiff contends that the funds provided to GJL, which it claims is a shell holding company whose sole owner and shareholder is Lorenzo, was made for the alleged purpose of providing Charles Vista with funding for its operations. Plaintiff asserts that it requested Lorenzo to sign a personal guarantee to repay the loan, and although Lorenzo refused to execute a written personal guarantee at that time, Lorenzo gave oral assurances that the payments would be made. To date, GJL has made only a few payments on the note, which led to this action being instituted.

Following multiple meet and confer correspondence exchanged among counsel, the parties have failed to agree on the following documents requested by defendants:

Documents and communications concerning other promissory notes entered into by Benkovsky (Request No. 14); and
Documents concerning Benkovsky's financial circumstances (Request Nos. 30, 32, 33 and 35).

Plaintiff is requesting, inter alia, copies of monthly bank statements held by Lorenzo and GJL, for the three months before and after Plaintiff transferred the loan proceeds to GJL. Plaintiff also maintains that he is entitled to review the financial documents of Defendants to determine what the operating income and expenses are of Defendant Charles Vista, which would help explain why Plaintiff was not paid out of revenues being generated by the company he paid to fund.

CPLR 3101 (a) provides for, inter alia, "full disclosure of all matter material and necessary in the prosecution or defense of an action." Although the phrase "material and necessary" must be "interpreted liberally" in favor of disclosure so long as the information sought meets the test of "usefulness and reason" (*Allen v Crowell-Collier Publ. Co*, 21 NY2d 403, 406 [1968]; a party does not have the right to uncontrolled an unfettered disclosure (see *Merkos L'inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408, 410 [2009]). Further, the Supreme Court has broad discretion over the supervision of disclosure, and its determination will not be disturbed absent an improvident exercise of discretion (see *Spodek v Neiss*, 70 AD3d 810 [2010]).

This action concerns the making and enforcement of a promissory note by and between Benkovsky in favor of defendant GJL. Defendants request for the production of other promissory notes entered into by plaintiff has no bearing on this matter. Documents concerning plaintiff's financial circumstances are also not sufficiently relevant to this action. As such, defendants' motion to compel shall be denied.

As to the plaintiff's motion to compel, it is clear that " [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' " (*Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141, 145 [2009]). The party seeking to pierce the corporate veil must establish that the controlling corporation or individuals "abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene" (*Matter of Morris v New York State Dept. Of Taxation & Fin.*, 82 NY2d 135, 142 [1993]). Those seeking to pierce the corporate veil . . . bear a heavy burden of showing that the corporation was dominated as to the transaction attacked and that such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences . . . [e]vidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance" (internal citations omitted) (*TNS Holdings, Inc., v MKI Securities Corp.*, 92 NY2d 335 [1998]).

Within the four corners of this complaint, it appears that cognizable claims for piercing the corporate veil as to defendant Lorenzo, have been stated. As described in Plaintiff's complaint and further supported by the documentary evidence, Lorenzo has engaged in past misconduct with various regulatory authorities, including the Securities and Exchange Commission, which found that Lorenzo made fraudulent misrepresentations to its customers in order to induce them to make certain investments. Under the circumstances of this case, the Plaintiff is entitled to obtain necessary discovery to ascertain whether there are grounds to pierce the corporate veil (see *Dromgoole v. T-Foots*, 309 A.D.2d 1186, 1187 [2003]), particularly since the defendants' document production is deficient. The plaintiff has pointed to specific documentary discovery which was requested and not provided by which he sought to establish his right to pierce the corporate veil.

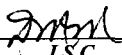
Accordingly it is

ORDERED that the Plaintiff's motion is granted and the defendants are directed to comply with Plaintiff's Request for Documents and Information within twenty days of receiving a copy of this order within notice of entry; and it is further

ORDERED that the Defendants' motion is denied in its entirety.

Dated:

12/16/14


J.S.C.
DONNA M. MILLS, J.S.C.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION