

14-31 28th Ave. LLC v Hwang& Park Design Etal & Dev. Inc.

2015 NY Slip Op 31681(U)

July 15, 2015

Supreme Court, Queens County

Docket Number: 24431/2012

Judge: Marguerite A. Grays

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This opinion is uncorrected and not selected for official publication.

Memorandum

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS** IAS PART 4
Justice

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14-31 28th AVENUE LLC,
Plaintiff(s),

-against-

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TRIAL

HWANG & PARK DESIGN ETAL AND
DEVELOPMENT INC., LIZ ZHEN HUA,
MICHAEL HWANG, THREE STAR
CONSTRUCTION CO INC., LEON ZHOU,
MOHAMMED HUSSAIN, EJK ENGINEERING
INC., EMMANUEL J. KATERNIS, PE, XYZ
CORPS 1-5 AND JOHN DOES 1-5.

Defendant(s).

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Hon. Marguerite A. Grays

In this action, plaintiff seeks damages for: (1) breach of contract; (2) negligence; (3) unjust enrichment; (4) lien law violations; (5) piercing the corporate veil; (6) malpractice; (7) negligent hiring and supervision; (8) negligence (vicarious liability); (9) loss of use of funds and property and (10) enforcement of a guarantee.

Plaintiff alleges that in or about May, 2011, defendants, acting pursuant to contracts for the construction of a new building, commenced construction operations on the premises located at 14-31 28th Avenue, Astoria, New York 11102. It is alleged that defendants contracted with the plaintiff to perform construction services and renovations related but not limited to shoring, excavation, underpinning, footing and

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foundation, sheet metal, concrete slabs, and metal framing work. Plaintiff further contends that as a direct result of the defendants failure to satisfactorily perform pursuant to the contract, it sustained damages.

All defendants except defendant Michael Hwang are in default.

A jury trial was conducted in this matter on May 22, June 19, June 22, June 23, June 24, June 29, June 30, July 1, and July 2, 2015 as to the claim against defendant Michael Hwang contained in the third cause of action for unjust enrichment.¹ The claim as against defendant Hwang set forth in the Fifth Cause of Action, piercing the corporate veil, was reserved for this Courts determination.

After trial, the jury awarded the plaintiff the sum of \$125,000 as against defendant Michael Hwang on the third cause of action. Additionally, a default judgment in the amount of \$311,957 was awarded in favor of the plaintiff and against defendants Hwang and Park Design and Development Incorporated, Li Zhen Hua, Three Star Construction Company Incorporated, Leon Zhou, Mohammed Hussain and Emmanuel J. Katerinis on the remaining causes of action. The Court notes that the plaintiff withdrew all claims as against defendant EJK Engineering.

Now, as to the fifth cause of action, as pled in the complaint for piercing the corporate veil, the Court makes the following determination.

¹All other claims against defendant Michael Hwang were dismissed at trial.

Generally, in order to pierce the corporate veil, a party 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 plaintiff's injury" (*Matter of Morris v. New York State Department of Taxation and Finance*, 82 NY2d 135, 141-142; *Gateway I Group, Inc., v. Park Avenue Physicians, P.C.*, 62 AD3d 141). 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 Department of Taxation and Finance*, 82 NY2d at 142). Indicia of a situation warranting veil-piercing include: "(1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as

independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own” (*Peery v. United Capital Corp.*, 84 AD3d 1201 [2011]; *Gateway I Group, Inc. v. Park Avenue Physicians, P.C.*, 62 AD3d 146, quoting *Shisgal v. Brown*, 21 AD3d 845 [2005]).

Here, upon review of the testimony elicited at trial the Court finds that the plaintiff failed to sustain its burden of proof by a fair preponderance of the credible evidence on this issue. The plaintiff failed to demonstrate any of the above indicia to pierce the corporate veil. Although there was evidence presented that certain checks were written to defendant Michael Hwang individually, that evidence alone was insufficient to establish that said defendant had exercised complete dominion and control over defendant HPPD and that there was an absence of corporate formalities.

Accordingly, the Fifth Cause of Action is dismissed as against defendant Hwang.

This constitutes the decision and judgment of the Court.

Submit Judgment.

Date: **JUL 15 2015**



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 J.S.C

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