

Michael Mcdede LLC v Hall Flooring Co., Inc.

2015 NY Slip Op 31888(U)

October 14, 2015

Supreme Court, New York County

Docket Number: 161442/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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MICHAEL MCDEDE LLC D/B/A/ WEST FAIRMOUNT
HARDWOODS

Plaintiff,

- v -

HALL FLOORING COMPANY, INC., and BERNT
NYGAARD,

Defendants.
-----X

HON. EILEEN A. RAKOWER, J.S.C.

Index No.
161442/2014

**DECISION
and ORDER**

Mot. Seq. #001

This is an action for breach of contract and unpaid invoices arising out of a purchase agreement between plaintiff, Michael Mcdede LLC d/b/a/ West Fairmount Hardwoods (“Plaintiff”), as seller, and defendants, Hall Flooring Company, Inc. (“Hall Flooring”) and Bernt Nygaard (“Nygaard”) (collectively, “Defendants”), as purchaser, for certain hardwood flooring materials.

Plaintiff commenced this action on November 18, 2014, by Summons and Complaint. Defendants interposed an Answer to Plaintiff’s complaint on March 5, 2015, denying allegations and asserting various affirmative defenses.

Plaintiff now moves for an Order, pursuant to CPLR § 3212, granting summary judgment in favor of Plaintiff and against Defendants in the amount of \$48,472.50, plus pre-judgment statutory interest of 9% from January 16, 2014, and in the amount of \$280.01, plus prejudgment statutory interest of 9% from July 13, 2014, together with costs and disbursements. In support, Plaintiff submits: the attorney affirmation of Jeffrey W. Varcadipane, Esq. (“Varcadipane”), dated June 8, 2015; the affidavit of Michael McDede (“McDede”), dated June 8, 2015; a copy of an invoice, dated December 16, 2013, in the total amount of \$48,472.50 (the “December Invoice”); a copy of the shipping document signed by Defendants’ representative on December 17, 2013; a copy of an invoice, dated June 13, 2014, in

the total amount of \$201.80 (the “June Invoice”); and, an invoice from Plaintiff’s materials supplier.¹

Defendants oppose.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]).

“The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant’s failure to perform, and resulting damage.” (*Flomenbaum v New York Univ.*, 2009 NY Slip Op 8975, *9 [1st Dep’t 2009]). On a motion for summary judgment in a contract dispute, it is the Court’s responsibility, if possible, to determine the intent of the parties from the four corners of the document. (*Diversified Group Inc. v. Sahn*, 259 A.D.2d 47 [1st Dep’t 1999]). In addition, it is the general rule that a corporate officer is not liable for contracts entered into on the corporation’s behalf unless there is “clear and explicit evidence” of the individual officer’s intention to be personally bound. (*Mencher v. Weiss*, 306 N.Y. 1, 4, 114 N.E.2d 177 [1953]). Although the doctrine of piercing the corporate veil may be employed to “circumvent” the corporate form in order to hold an individual owner liable for a corporate obligation, (*Morris v. State Dep’t of Taxation & Fin.*, 82 N.Y.2d 135, 140-41 [1993]), evidence of domination alone is insufficient, without more, to warrant piercing the corporate veil. (*TNS Holdings v MKI Sec. Corp.*, 92 N.Y.2d 335, 339 [1998] [finding that, “additional showing that [domination] led to inequity, fraud, or malfeasance” required to meet “heavy burden” for piercing corporate veil]).

In the affidavit of McDede, McDede avers that Plaintiff is a wholesale supplier for natural, high-quality, hardwood flooring and other similar materials, and

¹ Although Plaintiff fails to submit copies of the pleadings as required under CPLR § 3212(b), the procedural defect of missing pleadings may be overlooked where, as here, the pleadings are electronically filed and available to the Court. (*Washington Realty Owners, LLC v. 260 Wash. St., LLC*, 105 A.D.3d 675, 675 [1st Dep’t 2013]).

that Defendants operate a business as general contractors. (McDede Aff. ¶¶ 3-4). McDede further avers:

Defendants have been purchasing materials from my company(s) for over twenty years, and during that time we have established a course of doing business whereby Defendants would submit orders for materials, I would provide a price quote for those materials and upon verbal agreement the order would be placed and I would ensure those materials were promptly supplied to Defendants for the agreed-upon price.

(*Id.* ¶ 5). McDede avers that, “[u]pon receipt and acceptance, Defendants would promptly submit payment for their invoice” and that, “[o]ver the course of business together, Defendant [sic] and I have completed more than one hundred transactions.” (*Id.* ¶¶ 6-7).

McDede avers: “[o]n or about December 16, 2013, Defendant Nygaard placed an order directly through me for 17,250 square feet of various types of select grade (top of the line) hard wood floors for immediate delivery to their facility located at 127 South 4th Street, New Hyde Park, New York 11040.” (*Id.* ¶ 8). McDede avers that, “Defendant, Nygaard, personally spoke to me in placing the order and asked if he could submit payment a few weeks after taking delivery. In making the request, he personally guaranteed that payment would be made.” (*Id.* ¶ 9). McDede avers, “[g]iven our longstanding business relationship and dealings and his personal guarantee that payment would be made within 30 days as well as the fact that my payment to the mill was not required for thirty days, I agreed to accommodate Defendants’ request.” (*Id.* ¶ 10).

McDede avers that he “delivered materials as ordered by the Defendants with an invoice totaling \$48,472.50. Attached as Exhibit ‘A’ is a true copy of the invoice dated December 16, 2013.” (*Id.* ¶ 12). McDede avers that, “[o]n December 17, 2013 delivery was made to Defendants . . . Defendants accepted delivery and signed for receipt.” (*Id.* ¶ 13). McDede avers that “[t]he invoice for the goods and materials delivered on December 16, 2013 became due January 16, 2014.” (*Id.* ¶ 17). Plaintiff avers that he did not receive any objection regarding such materials, and that the full amount of the December Invoice remains due and owing to Plaintiff. (*Id.* ¶¶ 14, 18).

With respect to the June Invoice, McDede avers, “[o]n or about June 13, 2014, I delivered a sample to Defendant for additional materials that Defendant had

ordered, along with an invoice totaling \$201.80. Attached as Exhibit 'C' is a true copy of the June invoice.” (*Id.* ¶ 19). McDede avers that Defendants accepted the materials delivered on June 13, 2014 without objection, that the invoice for such goods and materials became due and owing as of July 13, 2014, and that, to date, Defendants have failed to make payment for the same. (*Id.* ¶¶ 20-23).

Here, Plaintiff makes a prima facie showing of entitlement to judgment as a matter of law on Plaintiff’s claims for unpaid Invoices as against Hall Flooring.

In opposition, Defendants argue that Plaintiff’s motion for summary judgment is procedurally defective because Plaintiff’s moving papers are not supported by copies of the pleadings herein. Defendants further argue—and Plaintiff does not dispute—that issues of fact exist as to whether individual Defendant Nygaard personally guaranteed Hall Flooring’s obligations. However, Defendants fail to raise any issues of fact with respect to Hall Flooring’s obligation to pay amounts due and owing to Plaintiff under the December Invoice and the June Invoice.

Accordingly, Plaintiff is entitled to summary judgment on Plaintiff’s claims against Hall Flooring.

Wherefore, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment is granted only as against entity defendant Hall Flooring; and it is further

ORDERED that the clerk is directed to enter judgment in favor of Plaintiff, Michael McDede LLC d/b/a West Fairmount Hardwoods, and against defendant, Hall Flooring Company, Inc., in the sum of \$48,472.50, plus interest at the statutory rate (from 1/16/2014), and in the amount of \$280.01, plus interest at the statutory rate (from 7/13/2014), as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; and it is further

ORDERED that Plaintiff's claims against individual defendant Bernt Nygaard are severed and shall proceed.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: October 14, 2015

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EILEEN A. RAKOWER, J.S.C.