

<b>Mahtani v New Jersey Interiors, Inc.</b>
2016 NY Slip Op 31035(U)
March 11, 2016
Supreme Court, New York County
Docket Number: 156277/2015
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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SUNIL MAHTANI and SUNITA MAHTANI,

Plaintiffs,

Index No.  
156277/2015

**DECISION and  
ORDER**

- against -

Mot. Seq. #001

NEW JERSEY INTERIORS, INC.,  
NEW JERSEY PAINTING & DECORATING, INC.,  
and FRANK MATTIOLI a/k/a FRANK MATTION,

Defendants.

-----X

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

By complaint filed June 23, 2015, plaintiffs, Sunil Mahtani and Sunita Mahtani (collectively, "Plaintiffs"), commenced this lawsuit seeking the return of Plaintiffs' \$34,000.00 deposit paid to Defendants under a renovation agreement entered between Plaintiffs and defendant, New Jersey Interiors, Inc. ("NJ Interiors") on February 25, 2011 (the "Renovation Agreement").

The Verified Complaint alleges that pursuant to the Renovation Agreement, NJ Interiors "was obligated to perform various renovation work to Plaintiffs' condominium unit located at 205 East 85<sup>th</sup> Street, New York, NY 10028 (the "Premises"), including, but not limited to, demolition, sheetrocking, plastering, painting, flooring, and electrical wiring." Pursuant to the Renovation Agreement, NJ Interiors "received a good faith contract deposit from Plaintiffs in the sum \$34,000.00, which represented 50% of the estimated cost of the planned work." The Verified Complaint further alleges, "NJ Interiors failed to perform virtually any of its contractual obligations and repeatedly failed to respond to Plaintiffs' inquiries concerning the status of its performance." The Verified Complaint alleges, NJ Interiors "failed to return Plaintiffs \$34,000.00 contract deposit after due demand, notwithstanding that it did not earn, and had no right to retain, any portion of such deposit" and "as a directed and proximate result of such breach of contract, Plaintiffs

have been damaged in the sum of \$34,000.00, plus consequential and incidental damages associated therewith.” As against NJ Interiors, the Verified Complaint asserts claims for breach of contract, negligence, conversion, unjust enrichment, fraud, violation of Business Corporation Law 1005 and 1006, and piercing the corporate veil. As for the fraud claim against NJ Interiors, the Verified Complaint alleges that NJ Interiors, through Mattioli, “knowingly, willfully, and falsely represented to Plaintiffs that, inter alia, it was a supremely competent, diligent, and reliable contractor,” “possessed the requisite ability, professionalism, and experience to perform the home renovation and construction services in a good and workmanlike manner,” “was duly licensed to perform its services in the State and County of New York,” made such false representations in order to induce Plaintiffs to enter the Renovation Agreement, which Plaintiffs relied upon to their detriment.

As against defendant Frank Mattioli a/k/a Frank Mattion (“Mattioli”), the claims are for violation of Business Corporation 1005 and 1006 and piercing the corporate veil. The Verified Complaint alleges that, “upon information and belief,” Mattioli “was an officer, director, and shareholder” of NJ Interiors. It alleges that, “pursuant to corporate records maintained by the New York Department of State, Defendant NJ Interiors was dissolved by proclamation on October 28, 2008,” and “upon information and belief, following the dissolution by proclamation of NJ Interiors, Defendant Mattioli continued to conduct business under, and through the entity and name ‘New Jersey Interiors, Inc.’” It alleges, “as a consequence thereof, Defendant Mattioli, as an officer, directors, and shareholder” of NJ Interiors “is personally liable for the debts incurred by the corporation following its dissolution, including, but not limited to, the \$34,000 contract deposit that Defendant NJ Interiors has wrongfully failed to return to Plaintiffs.” Additionally, the Verified Complaint alleges that Mattioli, “through his domination, misused the corporate form for his personal ends so as to commit a fraud, wrong, or injustice as against Plaintiffs.”

As against defendant NJ Painting and Decorating, the Verified Complaint alleges the following: Mattioli “alternatively and interchangeably used another of his entities- Defendant NJ Painting and Decorating- to conduct and transact business on behalf of his dissolved entity, Defendant NJ Interiors”; Mattioli “at various times, utilized Defendant NJ Painting and Decorating to carry out the contract that was entered into, by and between, Plaintiffs and Defendant NJ Interiors”; “by way of example, Defendant Mattioli furnished Plaintiffs with a certificate of liability insurance and project drawings that were in the name of Defendant Painting and Decorating in order to effectuate the transaction”; NJ Painting and Decorating “was the de facto alter ego of Defendant NJ Interiors and utilized the same management,

personnel, physical location, and assets of Defendant NJ Interiors”; and “as a consequence, Defendant NJ Painting and Decorating is liable for the debts incurred by Defendant NJ Interiors, including, but not limited to, the \$34,000.00 contract deposit that Defendant NJ Interiors has wrongfully failed to return to Plaintiffs.”

Plaintiffs served NJ Interiors on July 6, 2015 by delivering a copy of the Summons and Verified Complaint on Mattioli, the “general agent” of NJ Interiors. Plaintiff served NJ Painting & Decorating on July 6, 2015 by delivering a copy of the Summons and Verified Complaint on Mattioli, the “general agent” of NJ Painting & Decorating. Plaintiffs personally served Mattioli by delivering a copy of the Summons and Verified Complaint on July 6, 2015. Plaintiffs also served NJ Interiors and NJ Painting & Decorating pursuant to BCL 307 on July 6, 2015. Plaintiffs also served Defendants with an additional copy of the Summons and Complaint on August 19, 2015.

Plaintiffs now move for default judgment against Defendants based on Defendants’ failure to answer or otherwise appear. Plaintiff submits the attorney affirmation of Steven Riker, which submits the affidavits of service attesting to service upon Defendants and proof of additional mailing. Plaintiffs also submits the affidavit of Sunil Mahtani, one of the Plaintiffs. Mahtani avers to the factual allegations contained in the Verified Complaint. Annexed to Mahtani’s affidavit as exhibits are the following documents: Summons and Verified Complaint, Renovation Agreement; and a check in the amount of \$34,000.00 made out to “New Jersey Interiors” on March 14, 2011. The check shows that the proceeds were deposited into the bank account of “New Jersey Painting and Contracting Inc.”

Also annexed as exhibits to Mahtani’s affidavit are: emails exchanged between the parties with respect to the renovation project; and a print out from NYS Department of State (“DOS”) that shows the entity, “New Jersey Interiors Inc.” is “inactive” pursuant to a “Dissolution by Proclamation/Annulment of Authority (Oct. 28, 2009).” The print out names the Chief Executive Officer as Frank Mattion, with an address of 6 Stonebridge Court, Manalapan, New Jersey 07726. It provides the following “DOS Process (Address to which DOS will mail process if accepted on behalf of the entity” as: New Jersey Interiors Inc., 6 Stonebridge Court, Manalapan, New Jersey 07726.” Also annexed as an exhibit is a copy of certificate of liability insurance and project drawings that are in the name of NJ Painting and Decorating that were furnished in connection with the renovation project.

CPLR § 3215 provides, in relevant part: “[o]n any application for judgment by default, the applicant shall file proof ... of the facts constituting the claim, the

default and the amount due by affidavit made by the party.” (CPLR § 3215[f]). CPLR § 3215 does not contemplate that default judgments are to be “rubberstamped” once jurisdiction and a failure to appear have been shown. (*Feffer v. Malpeso*, 210 A.D.2d 60, 61 [1st Dep’t 1994]; *see also Gagen v. Kipany Prods.*, 289 A.D. 2d 844, 846 [3d Dep’t, 2001] [“[T]he granting of a default judgment does not become a ‘mandatory ministerial duty’ upon a defendant’s default.”]). Rather, some proof of liability is required to satisfy the court as to the prima facie validity of the uncontested cause of action. (*Feffer*, 210 A.D.2d at 61). The standard of proof on an application for judgment by default “is not stringent, amounting only to some firsthand confirmation of the facts”. (*Id.*).

The doctrine of piercing the corporate veil is typically 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]). “The concept is equitable in nature and assumes that the corporation itself is liable for the obligation sought to be imposed. . . . Thus, an attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners.” (*Id.*).

Piercing the corporate veil 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. (*Cobalt Partners, L.P. v GSC Capital Corp.*, 97 A.D.3d 35, 40 [1st Dep’t 2012] *quoting Morris v. State Dep’t of Taxation & Fin.*, 82 N.Y.2d 135, 141 [1993]). In order to prevail on a veil-piercing theory, “the party seeking to pierce the corporate veil must establish that the owners, through their domination, 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 140, 142 [1993]

Defendants do not oppose.

Wherefore, it is hereby,

ORDERED that Plaintiff’s motion for default judgment is granted against Defendants without opposition; and it is further

ORDERED that the Clerk enter judgment in favor of plaintiffs, and against defendants, NEW JERSEY INTERIORS, INC., NEW JERSEY PAINTING & DECORATING, INC., and FRANK MATTIOLI a/k/a FRANK MATTION, in the amount of \$34,000.00, together with interest as prayed for allowable by law (at the rate of 9% per annum from March 14, 2011) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

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

DATED: MARCH 11, 2016



**MAR 11 2016**

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EILEEN A. RAKOWER, J.S.C.