

Allmen v Stone & Co. Designs, Inc.
2016 NY Slip Op 31745(U)
September 20, 2016
Supreme Court, New York County
Docket Number: 651217/2016
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
*Justice*PART 13

TARA ALLMEN,

Plaintiff,

-against-

STONE & CO. DESIGNS, INC., STONE & CO.
CLASSICS, INC., CLASSIC SOFA, LTD.,
CLASSIC SOFA OF NY LTD., JEFFREY STONE
and BLAKE ANDING,

Defendants.

INDEX NO. 651217/2016
MOTION DATE 07-13-16
MOTION SEQ. NO. 001
MOTION CAL. NO. _____The following papers, numbered 1 to 7 were read on this motion to/for: enter judgment pursuant to CPLR§5227 and to pierce corporate veil:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ..

PAPERS NUMBERED

1 - 4

Answering Affidavits — Exhibits _____ cross motion

5

Replying Affidavits _____

6 - 7Cross-Motion: Yes ☒ No

Upon a reading of the foregoing cited papers, it is the decision and order of this court that the plaintiff's motion, is denied.

Plaintiff alleges that in July of 2013, she entered into an agreement with Stone & Co. Designs, Inc., for a custom made sofa, and paid \$18,024.26 with a guaranteed delivery on or before August 31, 2013. Stone & Co. Designs, Inc. attempted to deliver the completed sofa on September 19, 2013, but it did not fit into the service elevator. From October 15, 2013 through November 1, 2013, defendants delivered sections of the sofa to plaintiff's apartment and then assembled it. Plaintiff claims that after she examined it she immediately notified defendants of breach of the agreement and demanded a full return of the money paid.

Plaintiff commenced an action and obtained a money judgment for \$18,024.26 plus interest from August 31, 2013, on default, against Stone & Co. Designs, Inc., in Civil Court, New York County, filed under index number 25640/2014. The judgment was docketed on April 23, 2015. Plaintiff conducted a search with the New York State Secretary of State and a February 2, 2016 printout indicates that Stone & Co. Designs, Inc. is an active entity (Mot. Exh. D). Chase Bank, N.A., provided a June 3, 2015, "attorney's response letter" stating, "No Accounts Located" for Stone & Co. Designs, Inc. (Mot. Exh. B).

Plaintiff commenced this plenary action alleging: (1) that Jeffrey Stone and Blake Anding (collectively hereinafter referred to as "individual defendants"), conspired to defraud creditors, for a restoration of assets improperly transferred and a declaratory judgment declaring the transfer of assets from Stone & Co. Designs, Inc. to the individual defendants invalid; (2) the individual defendants fraudulently conveyed and are liable for any distributions made in violation of Business Corporation Law §§ 510, 717 and 719; (3) to pierce the corporate veil of Stone & Co. Designs, Inc., to find the individual defendants liable for plaintiff's judgment, (4) pierce the corporate veil and deem, Stone & Co. Classics Inc., Classic Sofa Ltd. and Classic Sofa of NY Ltd. (hereinafter referred to collectively as "corporate defendants"), alter egos of, and liable

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

for the judgment obtained against, Stone & Co. Designs, Inc., and as a result of the fraud, liable for reasonable attorney fees pursuant to Debtor and Creditor Law §276-a and (5) for punitive damages.

Plaintiff's motion alleges fraudulent conveyance and seeks an Order to: have the judgment entered against defendant Stone & Co. Designs, Inc., be deemed the debt and judgment of corporate defendants for purposes of satisfying the judgment; pursuant to CPLR §5227 for a payment of the judgment and to find that corporate defendants breached their fiduciary duty to Stone & Co. Designs, Inc. by taking property without consideration or assignment; pierce the corporate veil of Stone & Co. Designs, Inc., to find the individual defendants as the sole shareholders, officers, and directors of the corporate defendants personally liable to plaintiff and granting plaintiff a judgment against the individual defendants; and to deem corporate defendants alter egos and liable for the debt of Stone & Co. Designs, Inc..

CPLR § 5227 states,

“Upon a *special proceeding* commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity...” (emphasis added) (McKinney’s Cons. Laws of N.Y. Annotated, Article 52, CPLR § 5227)

Plaintiff seeks simultaneously to obtain a judgment against the corporate defendants and turnover relief pursuant to CPLR § 5227, but did not commence a special proceeding, or seek to have this court in its discretion, convert the relief sought pursuant to CPLR §103[c] (see *Manshul Const. Corp. v. Board of Educ. Of City of New York*, 154 A.D. 2d 38, 551, N.Y.S. 2d 497 [1st Dept., 1990]). Plaintiff has not established entitlement to CPLR § 5227 turnover relief (see *Breffort v. Kipness*, 80 A.D. 2d 528, 436 N.Y.S. 2d 11 [1st Dept., 1981]).

The corporate veil may be pierced when there is complete domination and control by one corporation over another corporation, and the domination is used to commit a fraud or wrong resulting in an injury to a plaintiff (*Fantazia Intern. Corp. v. CPL Furs New York, Inc.*, 67 A.D. 3d 511, 889 N.Y.S. 2d 511 [1st Dept., 2009]). Corporations that are intertwined so that they are merely an alter ego of each other are effectively a “single entity” for purposes of piercing the corporate veil (*Martinez v. Plaza Prospect Apt., Inc.*, 25 A.D. 3d 437, 808 N.Y.S. 2d 199 [1st Dept., 2006]).

Factors to be considered in determining whether corporations can be called each other’s “alter ego” include, “..disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the alleged dominated corporation; whether the corporations are treated as independent profit centers; and the payment or guarantee of the corporation’s debts by the dominating entity...no one factor is dispositive” (*Tap Holdings, LLC v. Orix Finance Corp.*, 109 A.D. 3d 167, 970 N.Y.S. 2d 178 [1st Dept., 2013]).

Plaintiff relies on printouts from the New York Secretary of State (Mot. Exh. D, Reply Exh. E), a holiday card mailed from “Stone and Co. Designs” and “Classic Sofa” on January 20, 2015 (Reply Exh. B), together with printouts from “Yelp” last updated on April 21, 2015 (Reply Exh. A) and the “Franklin Report” (Reply Exh. F), to establish a basis to pierce the corporate veil for the corporate defendants and obtain liability for the debt of Stone & Co. Designs, Inc..

Plaintiff alleges the corporate defendants shared officers, office space and assets and are alter egos of Stone and Co. Designs, Inc. warranting the piercing of the corporate veil. The corporate defendants were incorporated prior to plaintiff's transactions with Stone & Co. Designs, Inc. (Mot. Exh. D, Reply Exh. E). She has not established that they were formed to commit fraud or evade her judgment. Plaintiff has provided no proof that assets have been shared between the corporate defendants, or that they do not have independent profit centers. Only Classic Sofa of New York Ltd. is indicated as sharing both of the individual defendants as corporate officers by the New York Secretary of State (Reply Exh. D). Plaintiff also fails to provide verification or authentication for the information provided from the internet websites used as proof of her claims. She does not establish which of the two different Classic Sofa of New York Entities is referred to on the photocopy of a card provided which also appears to bear the stamp of another entity not named in these papers "Francisco Molon" (Reply Exh. B). Plaintiff relies on speculation and conjecture, she has not provided proof that is sufficient to pierce the veil of the corporate defendants as alter egos.

Piercing the corporate veil as to the individual defendants requires a showing that (1) the owner exercised complete dominion over the corporation with respect to the transaction attacked and (2) such dominion was used to commit a fraud or wrong against plaintiff resulting in plaintiff's injury (First Capital Asset Management, Inc. v. N.A. Partners, L.P., 300 A.D. 2d 112, 755 N.Y.S. 2d 63 [1st Dept. 2002]). "Factors to be considered in determining whether an owner has abused the privilege of doing business in a corporate form include whether there was a failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use." (D'Mel & Associates v. Athco, Inc., 105 A.D. 3d 451, 963 N.Y.S. 2d 65 [1st Dept., 2013]). Plaintiff is required to provide particularized facts detailing fraud or misconduct to warrant piercing the corporate veil (Andejo Corp. v. South St. Seaport Ltd. Partnership, 40 A.D. 3d 407, 836 N.Y.S. 2d 571 [1st Dept., 2007]).

Plaintiff has not established that Stone and Co. Designs, Inc. was created, dominated and used by Jeffrey Stone, to commit a fraud or wrong against her. Stone and Co. Designs, Inc. is still listed by the New York Secretary of State as an active corporation (Mot. Exh. D). Plaintiff provides no proof that Jeffrey Stone commingled assets or used corporate funds from Stone and Co. Designs, Inc. for personal use. Plaintiff relies on speculation and conjecture, she has not provided proof that would substantiate her claims. The mere fact that Jeffrey Stone is named as an officer of all the corporations is not enough to establish the corporate veil should be pierced as to him.

Blake Anding opposes the relief sought arguing that he was only a sales employee and had no ownership stake in Stone and Co. Designs, Inc.. It is Mr. Anding's contention that the printouts from "Yelp" last updated on April 21, 2015 (Reply Exh. A) and the "Franklin Report" (Reply Exh. F), are incorrect, he is not a partner of Stone and Co. Designs, Inc.. Mr. Anding claims that he also withdrew from the transaction involving the plaintiff. The dissolution by Mr. Anding of his own corporation, Classic Sofa of New York Ltd., two months after service of process in this action does not by itself establish fraudulent intent (Reply Exh. D). Plaintiff did not provide proof sufficient to refute Mr. Anding's arguments. She mostly relies on unsubstantiated documentation, speculation and conjecture to support her contentions that Blake Anding is an officer of Stone and Co. Designs, Inc., commingled assets, and used corporate funds for personal use, or for fraudulent purposes to avoid paying her judgment.

Accordingly, it is ORDERED that plaintiff's motion to have the judgment docketed on April 23, 2015 against defendant Stone & Co. Designs, Inc., be deemed the debt and judgment of Stone & Co. Classics Inc., Classic Sofa Ltd. and Classic Sofa of NY

Ltd. for purposes of satisfying the judgment; pursuant to CPLR §5227 to find that Stone & Co. Classics Inc., Classic Sofa Ltd. and Classic Sofa of NY Ltd. breached their fiduciary duty to the corporation by taking property without consideration or assignment; pierce the corporate veil of defendant Stone & Co. Designs, Inc., to find defendants Jeffrey Stone and Blake Anding, as the sole shareholders, officers, and directors of Stone & Co. Classics Inc., Classic Sofa Ltd. and Classic Sofa of NY Ltd. and personally liable, granting plaintiff a judgment against them, together with interest costs, expenses and attorney fees; and to deem Stone & Co. Classics Inc., Classic Sofa Ltd. and Classic Sofa of NY Ltd., alter egos and liable for the debt of Stone & Co. Designs, Inc., together with interest, costs, expenses, and attorney fees, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ,
J.S.C.

Dated: September 20, 2016

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION
 Check if appropriate: ☐ DO NOT POST ☐ REFERENCE