Minico Ins. Agency LLC v AJP Contr. Corp.
2017 NY Slip Op 32970(U)
July 28, 2017
Supreme Court, Nassau County
Docket Number: 601304/2017
Judge: Karen V. Murphy
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Short Form Order

SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 8 NASSAU COUNTY

PRESENT:
Honorable Karen V. Murphy
Justice of the Supreme Court

x

MINICO INSURANCE AGENCY LLC and agent for the Hudson Excess Insurance Company,

Plaintiff,

-against-

AJP CONTRACTING CORP., ANTONIOS PAPPAS,

Defendants.

x

Index No. 601304/2017

Motion Submitted: 05/31/17
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause........... X
Answering Papers.. X
Reply..
Briefs: Plaintiff's/Petitioner's.......................
Defendant's/Respondent's.................

Defendant Pappas moves this Court for an Order dismissing the complaint as asserted against him. Plaintiff opposes the requested relief.

The corporate defendant, AJP Contracting Corp. (AJP), joined issue on or about April 24, 2017.

Plaintiff seeks to recover $116,275.00, the balance allegedly due on a commercial insurance premium, together with interest from June 27, 2016, costs, disbursements, and attorneys' fees.

Defendant's motion is made pursuant to CPLR § 3211 (a)(7). On an application interposed pursuant to CPLR §3211(a)(7), the complaint is to be liberally construed and the plaintiff afforded every favorable inference which may be drawn therefrom (***Leon v***

Martinez, 84 NY2d 83 [1994]). The facts as alleged are to be accepted as true, although bare legal conclusions in addition to factual assertions which are squarely contradicted by the record are not entitled to any such consideration (***Quinones v Schaap***, 91 AD3d 739 [2d Dept 2012]; ***Doria v Masucci*** , 230 AD2d 764 [2d Dept 1996]; ***Mayer v Sanders***, 264 AD2d 827 [2d Dept 1999]). In entertaining such an application, the function of the motion court is only to determine whether the facts as alleged fall within a cognizable legal theory (***Gershon v Goldberg***, 30 AD3d 372, 373 [2d Dept 2006]). Defendant Pappas does not submit any evidence and/or affidavit contradicting any of the allegations made in the complaint.

Plaintiff seeks to hold Pappas liable for the AJP's debts based on the theory that the corporate veil should be pierced. Generally, the party seeking to pierce the corporate veil must show: (1) the individual defendants exercised complete domination of the corporation in respect to the transaction at issue; and (2) the domination and control was used to commit a fraud or wrong against the plaintiff which resulted in an injury to plaintiff. (***Flushing Plaza Associates No. 2 v Albert***, 102 AD3d 737, 739 [2d Dept 2013]).

The first two causes of action alleged against the defendants sound in breach of the insurance contract and account stated. The third cause of action alleges that the corporate veils should be pierced, and also that Pappas committed a "fraudulent, dishonest or unjust act in connection with the company's insurance applications." Specifically, plaintiff alleges that the premium charged to AJP was based upon the expected gross revenues for the policy period, and that Pappas intentionally and maliciously lowered the expected gross sales revenues for the policy period to avoid paying a higher premium. Plaintiff further alleges that, pursuant to the policy's terms, an audit of the policy period was conducted, revealing that actual gross sales amounted to $881,375.00, as opposed to Pappas' estimate of $300,000.00 made during the insurance application process.

As further alleged by plaintiff, the premium should have been $176,275.00, instead of the $60,000.00 premium that plaintiff charged in reliance upon the estimated gross sales of $300,000.00 contained in the insurance application. Plaintiff also alleges that Pappas is the president of defendant AJP, to which AJP admits in its answer, that Pappas personally signed the subject commercial insurance application, and that Pappas was responsible for AJP's insurance applications. In addition, it is alleged that Pappas completely controlled AJP, that he did not treat AJP as a separate business entity and ignored the separate corporate identity, that he dominated the corporation and was solely responsible for AJP's failure to pay plaintiff, that he comingled personal and corporate money for his own use, and that he stripped the corporate assets of AJP to render the corporation "judgment proof."

It is this Court's determination that plaintiff has sufficiently plead that defendant Pappas exercised complete dominion and control over AJP in order to commit a wrong against the plaintiff insurance company (***Love v. Rebecca Development, Inc.***, 56 AD3d 733 [2d Dept 2008]; ***Ventresca Realty Corp. v. Houlihan***, 28 AD3d 537 [2d Dept 2006]); *cf.* ***East Hampton Union Free School District v. Sandpebble Builders, Inc.***, 66 AD3d 122 [2d Dept 2009][plaintiff's use of the words "bad faith" did not sufficiently spell out the element of abusing the privilege of doing business in the corporate form]).

The third cause of action also alleges a cognizable claim for fraud committed by Pappas. As to the fraud claim, plaintiff must show: (1) a material misrepresentation of a fact; (2) knowledge of its falsity; (3) an intent to induce reliance; (4) justifiable reliance by the plaintiff; and (5) damages. (***Eurycleia Partners, LP v Seward & Kissel, LLP,*** 12 NY3d 553, 559 [2009]; ***Ross v Louise Wise Servs., Inc.,*** 8 NY3d 478, 488 [2007]).

Pursuant to CPLR § 3016(b), the circumstances constituting the alleged fraud must be "stated in detail" by plaintiff. Although "unassailable proof" at the pleading stage is not required, basic facts to establish the elements of the cause of action must be alleged. (***Eurycleia Partners, LP, supra*** at 559, *citing* ***Pludeman v Northern Leasing Systems, Inc.,*** 10 NY3d 486 [2008]).

"When, however, the operative facts are 'peculiarly within the knowledge of the party' alleged to have committed the fraud, it may be impossible at the early stages of the proceeding for the plaintiff to detail all the circumstances constituting the fraud" (***Bibbo v. Arvanitakis***, 145 AD3d 657, 659 [2d Dept 2016] *quoting* ***Jered Construction Corp. v. New York City Transit Authority***, 22 NY2d 187, 194 [1968]; *see also* ***Pludeman, supra***; ***JP Morgan Chase Bank, N.A. v. Hall***, 122 AD3d 576 [2d Dept 2014]). Instead, "section 3016 (b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct" (***Pludeman, supra*** at 492). Furthermore, "[i]n actions for fraud, corporate officers and directors may be held individually liable if they participated in or had knowledge of the fraud, even if they did not stand to gain personally" (***Polonetsky v. Better Homes Depot, Inc.***, 97 NY2d 46, 55 [2001]; ***High Tides, LLC v. DeMichele***, 88 AD3d 954 [2d Dept 2011])).

As noted above, it is undisputed that Pappas was the president of AJP, and there is no evidence that anyone other than him signed the subject insurance application. Furthermore, the estimate of gross sales alleged to have been made by Pappas that was nearly $600,000.00 ($581,375.00) less than the actual gross sales discovered upon plaintiff's audit gives rise to a reasonable inference as to the alleged fraud.

Accordingly, defendant Pappas' motion to dismiss the complaint as asserted against him is denied.

If Pappas seeks to interpose a responsive pleading, his time to do so is governed by CPLR § 3211 (f).

The foregoing constitutes the Order of this Court.

Dated: July 28, 2017
Mineola, NY

J.S.C.

ENTERED
JUL 31 2017
NASSAU COUNTY
COUNTY CLERK'S OFFICE