

1st Prop. Clinton Realty, LLC v 1309 Clinton Ave., LLC
2017 NY Slip Op 33308(U)
July 24, 2017
Supreme Court, Bronx County
Docket Number: 22845/2013E
Judge: Ruben Franco
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 26

1ST PROPERTY CLINTON REALTY, LLC and
NABIL ZAID,

Index No. 22845/2013E

Plaintiff,

-against-

**MEMORANDUM
DECISION/ORDER**

1309 CLINTON AVENUE, LLC and
KAMRAN ABRISHAMIAN,

Defendants.

HON. RUBEN FRANCO

In this action to recover the sum of \$61,542.56 pursuant to the terms of a contract for the sale of realty, plaintiffs move for summary judgment.

Plaintiffs' First Amended Verified Complaint ("Amended Complaint"), consists of nine causes of action sounding in breach of contract, breach of warranty, misrepresentation and the individual and corporate defendant's failure to maintain a separate and independent existence *inter se*.

The facts, as alleged by plaintiffs, are as follows: 1309 Clinton Avenue LLC ("1309 Clinton") was the owner of the real property located at 1309 Clinton Avenue, County of Bronx ("the Property"). On or about May 4, 2012, plaintiffs entered into a contract of sale ("Contract") with defendants, 1309 Clinton and Kamran Abrishamian ("Abrishamian"), to purchase the Property from defendants. The Contract contained a provision, which was to survive closing of title, whereby the defendants warranted that if any tenant in possession at the time of closing of title was subsequently found to be entitled to recover rent overcharges, defendants would pay the amount of the rent overcharges to the tenant or reimburse plaintiffs for the overcharges. The

parties closed title to the Property on or about August 29, 2012, and on about December 24, 2012, the State of N.Y. Division of Housing and Community Renewal, Office of Rent Administrator, issued an order and judgment against defendants in the amount of \$61,542.56, as a result of a rent overcharge complaint filed in October 20, 2010, by a tenant in unit 3N of the Property. This order and judgment constitutes a lien against the Property. Plaintiffs made demand of defendants for reimbursement of the overcharge award, which was disregarded and refused by defendants.

Plaintiffs further allege that defendants made material representations in the Contract by stating that no action or proceedings had been instituted against them by any tenant of the Property, which representations, allegedly, were knowingly false and made with intent to deceive plaintiffs. Plaintiffs further claim that 1309 Clinton did not observe the requisite corporate formalities in that Abrishamian exercised complete dominion and control over 1309 Clinton, obliterating any distinction between himself and the corporate defendant, effectively negating any independent existence of the corporate defendant by, among other things, being the sole member of the corporation, self-dealing, and withdrawing funds from the corporate entity for personal rather than corporate purposes.

Plaintiffs previous motion for summary judgment was denied by Order of this court dated August 31, 2016, entered with the Bronx County Clerk on September 6, 2016. That motion alleged, *inter alia*, that the Contract provided for payment of legal fees in any litigation arising out of the transaction. That branch of plaintiffs' motion was denied on the ground that plaintiffs' claim for legal fees was only set forth in the wherefore clause of the Amended Complaint, and thus, was inadequately pleaded.

Plaintiffs now move for leave to amend its Complaint, pursuant to CPLR § 3025(b), to alleged a cause of action for legal fees based upon paragraph “37” of the Contract. Defendant Abrishamian cross-moves for summary judgment, dismissing plaintiffs’ Amended Complaint, pursuant to CPLR §3212(e).

The moving party in a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, presenting sufficient evidence to demonstrate the absence of any material issues of fact (see, Alvarez v. Prospect Hospital et al., 68 NY2d 320, [1986]; Winegard v. New York Univ. Med Center, 64 NY2d 851, [1985]; Zuckerman v. City of New York, 49 NY2d 557 [1980]; Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, [1957]). Failure of the movant to sustain its burden requires denial of the motion, regardless of the sufficiency of the opposition Winegard v. New York Univ. Med. Center, *supra*, at 853. Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Gaddy v. Eyler, 79 NY2d 955 (1992); Alvarez v. Prospect Hospital, et al., *supra*; Zuckerman v. City of New York, *supra*.

The Contract heading shows that 1309 Clinton Avenue LLC, was the seller, and that Nabil Ziad, “or any entity to be formed,” was the purchaser. The Contract and riders were executed in the following form:

Contract:

SELLER(S):

BY: /s/Kamran Abrishamian

BUYER(S):

/s/ Nabil Ziad

First Rider:

SELLER: 1309 CLINTON AVENUE LLC

PURCHASER

BY: /s/Kamran Abrishamian

/s/ Nabil Ziad

By: Kamran Abrishamian

Nabil Ziad

Second Rider:

SELLER:

PURCHASER

BY: /s/Kamran Abrishamian

/s/ Nabil Ziad

It is well settled that officers or agents of a company are not liable on a contract if they do not purport to bind themselves individually (see Georgia Malone & Co., Inc. v. Ralph Rieder, 86 A.D.3d 406 [1st Dept. 2011]). Furthermore, a member of a limited liability company is statutorily exempt from individual liability for acts taken on behalf of the company or for the company's obligations (see, Limited Liability Company Law § 609). The Contract, on its face, clearly shows that it is an agreement between 1309 Clinton and Nabil Ziad, "or any entity to be formed." Abrishamian signed the Contract only once, rather than twice, the latter being the general practice when an individual wishes to be personally bound (Georgia Malone & Co., Inc. v. Ralph Rieder, *supra*, at 408; see also, Salzman Sign Co. v. Beck, 10 N.Y.2d 63, 67 [1961]).

The first four causes of action of the Amended Complaint allege breach of contract. As has been stated here, the court finds that defendant Abrishamian is not personally liable on the Contract. Accordingly, the first four causes of action of the Amended Complaint are dismissed as against defendant Abrishamian.

The fifth through eighth causes of action of the Amended Complaint allege that the contractual representations were false and made with the intent of deceiving plaintiffs. However, the alleged fraudulent representations, if any, were made by 1309 Clinton, not Abrishamian,

moreover, a member of a limited liability company is statutorily exempt from individual liability for acts taken on behalf of the company or for the company's obligations (see, Limited Liability Company Law § 609). Accordingly, the fourth through eighth causes of action of the Amended Complaint are dismissed as against defendant Abrishamian.

Plaintiffs' ninth cause of action seeks to use the doctrine of piercing the corporate veil, which applies to limited liability companies (see Williams Oil Co. v. Randy Luce E-Z Mart One, 302 A.D.2d 739, 740 [3rd Dept. 2003]). A party attempting to do so bears a heavy burden to establish an alter ego relationship (see Etex Apparel, Inc. v. Tractor Int'l Corp., 83 A.D.3d 587 [1st Dept. 2011], citing TNS Holdings v. MKI Sec. Corp., 92 N.Y.2d 335, 339 [1998]).

Plaintiffs sets forth the appropriate allegations for a claim under the doctrine of piercing the corporate veil: that 1309 Clinton did not observe the requisite corporate formalities in that Abrishamian exercised complete dominion and control over 1309 Clinton, obliterating any distinction between himself and the corporate defendant, effectively negating any independent existence of the corporate defendant by, among other things, being the sole member of the corporation, self-dealing, and withdrawing funds from the corporate entity for personal rather than corporate purposes. However, the plaintiffs have failed to produce any evidence to substantiate these allegations, and thus, have failed to pierce the corporate veil. Accordingly, plaintiffs' ninth cause of action is dismissed.

In summary, the cross-motion of defendant Abrishamian for summary judgment is granted and plaintiffs' Amended Complaint against defendant Abrishamian, only, is dismissed in its entirety.

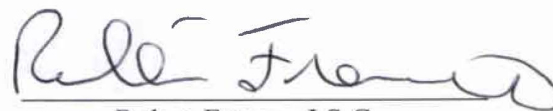
Plaintiffs' motion for leave to amend its Complaint to add a tenth cause of action for

attorneys' fees is granted. A motion for leave to amend pleadings will be freely granted, absent prejudice or surprise, unless the proposed amendment is palpably insufficient or patently devoid of merit (see MBIA v. Greystone & Co., Inc., 74 A.D.3d 499 [1st Dept. 2010]). Paragraph "37" of the first Rider to the Contract supports a claim for attorneys' fees and defendants have failed to demonstrate any prejudice or surprise.

Accordingly, plaintiffs may serve and file a Second Verified Complaint against the remaining defendant, in accordance with this Decision, within 20 days of entry of this Decision and Order. Defendant 1309 Clinton shall serve its Answer to plaintiffs' Second Amended Complaint within the time provided by the applicable provisions of the CPLR.

The foregoing constitutes the Decision and Order of the court.

Dated: July 24, 2017



Ruben Franco, J.S.C.

Rubén Franco