

**Vyskocil v Schatt**

2019 NY Slip Op 34351(U)

June 25, 2019

Supreme Court, Nassau County

Docket Number: Index No. 607428/16

Judge: Randy Sue Marber

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**  
**JUSTICE**

TRIAL/IAS PART 8

\_\_\_\_\_  
JUDITH VYSKOCIL and JOHN  
VYSKOCIL,

X

Plaintiffs,

Index No.: 607428/16  
Motion Sequence...01  
Motion Date...04/22/19

-against-

ROSEMARIE SCHATT, FAMILY  
BAGELS OF PLAINVIEW, INC. and  
KOUKOULAS ENTERPRISES, LLC,

Defendants.

X

Papers Submitted:  
Notice of Motion.....X  
Affirmation in Opposition.....X  
Reply Affirmation.....X

Upon the foregoing papers, the motion by the Defendants, ROSEMARIE SCHATT ("Schatt") and KOUKOULAS ENTERPRISES, LLC, seeking an Order, pursuant to CPLR § 3212, granting them summary judgment dismissing the Plaintiffs' Complaint, is determined as hereinafter provided.

At the outset, the Court notes that on January 17, 2019, the Plaintiffs filed a Stipulation of Discontinuance, with prejudice, as to the Defendant, KOUKOULAS ENTERPRISES, LLC, following the filing of the instant motion. As such, the branch of the Defendants' motion as to KOUKOULAS ENTERPRISES, LLC, is moot.

The Defendants filed a Third-Party Summons and Complaint naming Cintas Corporate Services, Inc., Cintas Corp., Cintas Corporation No. 2 and Cintas Corporation No. 3 (hereinafter "Cintas") as Third-Party Defendants (*See* Third-Party Summons and Complaint, Motion as Exhibit "F"). The third-party action was subsequently discontinued with prejudice by Stipulation dated June 5, 2018 (*Id.*).

In this action, the Plaintiff, JUDITH VYSKOCIL, seeks to recover damages for personal injuries allegedly sustained on November 19, 2014 at approximately 12:45 p.m., when she slipped/tripped and fell on a "curled rug without the proper rubber footings" upon entering the premises of the Defendant, FAMILY BAGELS OF PLAINVIEW, INC. (hereinafter "Family Bagels") (*See* Plaintiffs' Verified Bill of Particulars, annexed to Motion as Exhibit "A").

Koukoulas Enterprises, LLC, is the landlord of the subject Premises and Family Bagels is the tenant pursuant to a Lease Agreement and Rider entered into between the parties which was in effect at the time of the alleged incident. Cintas is the vendor that provided Family Bagels with the subject mat that allegedly caused the Plaintiff's fall on the date in question.

The Defendant, Family Bagels, has not moved herein for summary judgment. As such, the only issue presented on the instant motion is whether the Defendant, Schatt, owed the Plaintiffs a duty of care subjecting her to personal liability.

In support of their motion, the Defendants proffer the deposition testimony of Rosemarie Schatt, wherein she testified that she has never individually owned Family

Bagels (*See* Schatt Deposition Transcript at pp. 8-9, 18-19, annexed to Motion as Exhibit “J”; *see also* NYS DOS, DOC Entity Search, annexed to Plaintiffs’ opposition as Exhibit “A”). Schatt testified that Family Bagels is an “S” Corporation that is jointly owned by her and her husband, Neal Schatt.

Counsel for the Defendants argues that the Plaintiffs’ allegations as to liability concerning the cause of her slip and fall accident inside the Premises occupied and operated by the tenant, Family Bagels, do not implicate any acts or omissions on the part of the Defendant, Schatt, personally. Defense counsel further submits that there is no competent evidence that the Defendant, Schatt, as an individual, caused or contributed to the subject incident, assumed a duty to the Plaintiff, or that she personally owned the Premises where the alleged incident occurred. Counsel avers that Schatt did not lease or operate Family Bagels on an individual or personal basis. Accordingly, defense counsel urges that no personal liability may attach to the Defendant, Schatt.

The Plaintiffs’ sole argument in opposition is that the Defendant, Schatt, as the Chief Executive Officer and Principal Executive Officer of Family Bagels, exercises “complete dominion over the corporation and had the power to correct the issue which cause [*sic*] the Plaintiff’s injury” (*See* Affirmation in Opposition at ¶ 33). Thus, the Plaintiffs argue that the corporate veil should be pierced based upon Schatt’s testimony that she was present at Family Bagels on the date of the incident and her husband was not there. Counsel for the Plaintiffs contends that Schatt was “in complete control over the

premises and was responsible not only to manage the cash register, but to manage all Family Bagels personnel...” (*Id.* at ¶ 36). Counsel then concludes that the Defendant, Schatt, is an alter ego of Family Bagels and should be held personally liable for the Plaintiff’s injuries.

In reply, counsel for the Defendants argues that the Plaintiffs failed to present any evidence that would warrant piercing the corporate veil as they failed to establish that Schatt abused her privilege of doing business in the corporate form, which is required to establish an owner’s individual liability. Furthermore, defense counsel argues that there is no evidence that Schatt engaged in any independent tortious conduct as the record establishes that all of her actions were within the scope of her employment for Family Bagels.

“One of the primary and completely legitimate purposes of incorporating is to limit or eliminate the personal liability of corporate principals” (*See Bartle v. Home Owners Coop.*, 309 N.Y. 103, 106 [1995]). A plaintiff seeking to pierce the corporate veil must demonstrate that the owners of the corporation exercised “complete dominion over it in the transaction at issue” and “abused the privilege of doing business in the corporate form,” causing harm to the plaintiff (*See East Hampton Union Free School District v. Sandpebble Builders, Inc.*, 66 A.D.3d 122, 126 [2d Dept. 2009]). Factors considered in determining whether the owner has “‘abused the privilege of doing business in the corporate form’ and functioning as the corporation’s ‘alter ego’ include whether there was

a ‘failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use’” (*Id.* citing *Millennium Const., LLC v. Loupolover*, 44 A.D.3d 1016 [2d Dept. 2007]; *Gateway I Group, Inc. v. Park Ave. Physicians, P.C.*, 62 A.D.3d 141, 145-6 [2d Dept. 2009]; *AHA Sales, Inc. v. Creative Bath Prods. Inc.*, 58 A.D.3d 6, 24 [2d. Dept 2008]).

Here, the Plaintiffs wholly failed to proffer any evidence establishing the material elements necessary to justify piercing the corporate veil (*See Allstate ATM Corp. v. E.S.A. Holding Corp.*, 98 A.D.3d 541, 542 [2d Dept. 2012]; *Avila v. Distinctive Development Co., LLC*, 120 A.D.3d 449, 450-1 [2d. Dept. 2014]; *Goldman v. Chapman*, 44 A.D.3d 938, 939 [2d Dept. 2007]; *Damianos v. Realty Group LLC v. Fracchia*, 35 A.D.3d 344 [2d Dept. 2006]; *Aetna Electrical Distributing Co. v. Homestead Electric, Ltd.*, 279 A.D.2d 541[2d Dept. 2001]; *Senter v. Liebeam*, 229 A.D.2d 386 [2d Dept. 1996]; *Simmons v. AAA Buffalo Development Corp.*, 297 A.D.2d 339 [2d Dept. 2002]; *Letizia v. Executive Coach Auto Repair*, 213 A.D.2d 382 [2d. Dept. 1995]).

Preliminarily, the Court notes that the Plaintiffs’ Complaint is devoid of any allegations that the Defendant, Rosemarie Schatt, exercised “dominion and control over the corporation in its dealings” with the Plaintiffs. More significantly, there is no evidence in the record demonstrating that Schatt abused the corporate form, acted outside the scope of her corporate capacity, failed to respect the separate legal existence of the corporation, or diverted corporate assets.

Moreover, the cases relied upon by the Plaintiffs support the Defendants' arguments that the evidence does not warrant piercing the corporate veil in this matter. In *Matter of Morris*, 82 N.Y.2d 135 [1993], the Court of Appeals found that "complete domination" of a corporation "standing alone, is not enough" to support piercing the corporate veil, holding that "some showing of a wrongful or unjust act toward plaintiff is required." In that case, the Court of Appeals held that the corporate entity would not be disregarded as there was no evidence that the corporation was set up as a sham. Likewise, in *Williams v. Lovell Safety Mtg. Co.*, 71 A.D.3d 671 [2d Dept. 2010], the court held that plaintiff failed to raise an issue of fact sufficient to warrant piercing the corporate veil.

Simply put, the Plaintiffs failed to proffer any evidence that support their conclusory, unsupported contention that the Defendant, Schatt, should be held personally liable for injuries sustained as a result of the subject trip-and-fall accident at Family Bagels.

Accordingly, it is hereby

**ORDERED**, that the motion by the Defendant, ROSEMARIE SCHATT, seeking an Order, pursuant to CPLR § 3212, granting her summary judgment dismissing the Plaintiffs' Complaint, is **GRANTED**, and the Plaintiffs' Complaint is **DISMISSED** as against ROSEMARIE SCHATT.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York  
June 25, 2019

  
Hon. Randy Sue Marber, J.S.C.