R.T.R. Fin. Servs., Inc. v Liebeskind
2020 NY Slip Op 32601(U)
August 11, 2020
Supreme Court, New York County
Docket Number: 158745/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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R.T.R. FINANCIAL SERVICES, INC.

Plaintiff,

- v -

MARC LIEBESKIND,

Defendant.

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INDEX NO. 158745/2019

MOTION DATE 01/22/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 22

were read on this motion to/for DISMISSAL.

Defendant's motion to dismiss is granted.

Background

Plaintiff provides billing and collection services and it claims it entered into an agreement with non-party Park Avenue Radiologists, P.C. ("Park") where Park was to pay a certain percentage to plaintiff based on sums collected by Park. Plaintiff contends that Park did not perform and failed to pay plaintiff what it is due. Defendant was the sole shareholder of Park, but plaintiff's agreement with Park did not contain any personal guaranty by defendant.

Plaintiff insists that defendant sold Park's fixed assets and rights to a third-party. It points out that it obtained default judgment against Park for nearly $100,000 in April 2019 (in a prior litigation) but has not been able to satisfy that judgment. It now contends that defendant, as sole shareholder of Park, should be liable for the money owed by Park based upon plaintiff's allegation that defendant (on behalf of Park) entered into the agreement with plaintiff knowing that Park would not be able to pay given other judgments entered against Park in 2013 and 2015.

Plaintiff contends that both Park and another entity ("Imaging") are alter egos of defendant. Plaintiff also brings an unjust enrichment action against defendant.

Defendant moves to dismiss and argues that plaintiff's first cause of action, piercing the corporate veil, is not recognized as a stand alone claim in New York. He adds that even if there were a cognizable cause of action pled, plaintiff did not sufficiently allege that it could pierce the corporate veil and hold defendant liable for the debts of his former company. Defendant also argues that the second cause of action for unjust enrichment should be dismissed because it is duplicative of plaintiff's breach of contract claim alleged against Park in the prior litigation.

In opposition, plaintiff agrees that piercing the corporate veil is not a separate cause of action and contends that defendant, on behalf of Park, knowingly entered into an agreement that Park could not satisfy. Plaintiff maintains it is entitled to discovery so it can explore what was done with the assets defendant received from selling Park and about whether the corporate veil should be pierced. Plaintiff also argues that there is a claim for unjust enrichment and points out that defendant did not admit there was a contract between Park and plaintiff.

In reply, defendant points out that the judgment against him arose from a debt he guaranteed on behalf of Park and Imaging and was therefore personally obligated to repay based on that guarantee. He questions how an individual who guarantees a debt on behalf of a corporate entity can become an alter ego of that corporate entity and personally liable for all other contracts involving that corporate entity.

Discussion

"On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally

and all reasonable inferences must be drawn in favor of the plaintiff" (*Alden Global Value Recovery Master Fund L.P. v Key Bank Natl. Assoc.*, 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

"Generally . . . 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" (*Morris v New York State Dept. of Taxation and Finance*, 82 NY2d 135, 141, 603 NYS2d 807 [1993]).

The Court grants the motion. Both parties acknowledge that piercing the corporate veil is not a stand-alone cause of action; therefore, plaintiff must plead a separate claim against the corporate entity and seek liability against defendant based on a veil piercing theory. Here, that theory is wholly insufficient. The complaint fails to show how defendant used Park as his alter ego or how he exercised complete dominion and control over this entity. Instead, the allegations show that plaintiff entered into a contract with Park, Park defaulted on that contract and then plaintiff was unable to recover because Park was sold. That does not form a basis to hold defendant personally accountable. Plaintiff did not obtain a guaranty from defendant; it did business with a corporation and that corporation did not pay. The fact that plaintiff has been unable to satisfy its judgment against Park in a prior litigation is not a ground to pierce a corporate veil.

The Court also observes that defendant's confession of judgment arising out of a separate transaction with a different entity is of no moment. That document expressly states that defendant personally guaranteed certain loans extended to Park and Imaging (NYSCEF Doc. No. 16). Simply acknowledging an obligation created in a separate contract is not a basis to pierce a

corporate veil. Plaintiff did not demand that defendant personally guaranty the contract at issue here.

The Court recognizes that plaintiff is unhappy that it entered into a contract with an entity that was later sold and it is unable to satisfy its judgment. That is a risk of doing business with a corporate entity. That does not, however, justify ignoring the corporate form and holding an individual defendant liable based on the allegations asserted here. There are no contentions that defendant abused the corporate structure for his own personal gain or that he used Park as his piggy bank.

For this same reason, the unjust enrichment claim must also fail. There is no dispute that there was a contract and it was one between plaintiff and Park. Even if that claim was not duplicative, it could not be sustained against defendant because Park benefitted from the agreement, not defendant. To state a cause of action for unjust enrichment against defendant would require the Court to ignore that Park existed; the Court cannot do that based on the facts alleged by plaintiff.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant is granted, and the Clerk is directed to enter judgment in favor of defendant when practicable, including costs and disbursement upon presentation of proper papers therefor.

8/11/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE