

**Hunter Roberts Constr. Group LLC v Vector  
Structural Preserv. Corp.**

2021 NY Slip Op 30417(U)

February 9, 2021

Supreme Court, New York County

Docket Number: 653847/2019

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 42

-----X  
HUNTER ROBERTS CONSTRUCTION  
GROUP LLC,

Plaintiff,

- against -

VECTOR STRUCTURAL PRESERVATION CORP. and  
BILL HANDAKAS a/k/a WILLIAM HANDAKAS,  
VASSILIOS HANDAKAS and/or KONSTANTINOS  
HANDAKAS,

Defendants.

-----X  
VECTOR STRUCTURAL PRESERVATION  
CORP., individually and on its own behalf and  
representatively on behalf of all others similarly  
situated,

Counterclaim Plaintiff,

- against -

HUNTER ROBERTS CONSTRUCTION GROUP LLC and  
LIBERTY MUTUAL INSURANCE COMPANY,

Counterclaim Defendants.

-----X  
**NANCY M. BANNON, J.:**

**INTRODUCTION**

This action arises out of work at a construction project located at Garvies Point, 63 Herb Hill Road, Glen Cove, New York (the Project). In motion sequence no. 003, defendants Vector Structural Preservation Corp. (Vector) and Bill Handakas a/k/a William Handakas, Vassilios Handakas and/or Konstantinos Handakas (Handakas) (together, the Vector Defendants), move, pursuant to CPLR 3211 (a) (7) and 3016 (b), to dismiss the fifth and seventh causes of action pled

against Vector and to dismiss all seven causes of action pled against Handakas by plaintiff Hunter Roberts Construction Group LLC (Hunter Roberts). In motion sequence no. 004, the Vector Defendants move, pursuant to CPLR 602, for an order consolidating this action with an action captioned *Sunbelt Rentals, Inc. v Vector Structural Preservation Corp., et ano.*, Sup Ct, Nassau County, Index No. 607804/2020 (the Sunbelt Action). Plaintiff Beacon Sales Acquisition d/b/a Allied Building Products (Beacon) cross-moves for an order to amend the caption to reflect the consolidation of this action brought by Hunter Roberts and the action brought by Beacon captioned *Beacon Sales Acquisition Inc. d/b/a Allied Building Products v Vector Structural Preservation Corp., et al.*, Sup Ct, Nassau County, Index No. 600196/2020 (the Beacon Action), which was ordered previously.

### BACKGROUND AND PROCEDURAL HISTORY

The following facts are drawn primarily from Hunter Roberts' amended complaint<sup>1</sup> (NY St Cts Elec Filing [NYSCEF] Doc No. 98), and are assumed to be true for purposes of this motion (*see Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 92 [1993]). Nonparty RXR Realty, LLC (RXR), as owner, retained Hunter Roberts as its general contractor for the Project (NYSCEF Doc No. 98, ¶ 14). Vector is a general contractor (*id.*, ¶¶ 4-5). Handakas is Vector's president and/or chief executive officer and/or majority shareholder (*id.*, ¶ 9).

Hunter Roberts maintained a subcontractor default insurance program and mandated that all subcontractors enroll in the program (NYSCEF Doc No. 98, ¶¶ 16-17). It awarded subcontracts on this Project after a bidding process (*id.*, ¶ 19). As part of its due diligence, Hunter Roberts employed "TradeTapp," a subcontractor qualification and risk mitigation platform, to perform risk

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<sup>1</sup> The Vector Defendants mistakenly failed to include the complaint as an exhibit despite referencing it on the motion (NYSCEF Doc No. 106, John Carlson [Carlson] affirmation, exhibit A). The court will overlook this deficiency since the pleading is available electronically (*see Studio A Showroom, LLC v Yoon*, 99 AD3d 632, 632 [1st Dept 2012]).

assessments of potential subcontractors (*id.*, ¶¶ 18-20). Hunter Roberts used the risk assessments to help it select a subcontractor and to determine whether a subcontractor could be enrolled in the default insurance program, which was a contract requirement (*id.*). TradeTapp presented Vector with a questionnaire and a request for financial information, and Vector, through Handakas, furnished responses (*id.*, ¶¶ 21-22). Hunter Roberts determined that Vector was the “lowest responsible bidder” (NYSCEF Doc No. 98, ¶ 19).

In 2017, Hunter Roberts, as general contractor, and Vector, as subcontractor, executed four separate subcontracts (collectively, the Subcontracts) for two buildings on the Project: (1) a masonry subcontract dated September 15, 2017 for “Building H” (NYSCEF Doc No. 99, complaint, exhibit 1); (2) a masonry subcontract dated September 15, 2017 for “Building I” (NYSCEF Doc No. 100, complaint, exhibit 2); (3) a roofing subcontract dated November 2, 2017 for Building I (NYSCEF Doc No. 101, complaint, exhibit 3); and, (4) a siding subcontract dated November 2, 2017 for Building I (NYSCEF Doc No. 102, complaint, exhibit 4). Vector rented equipment for the Project from Sunbelt (NYSCEF Doc No. 120, Handakas aff, ¶ 5).

Hunter Roberts alleges that the Subcontracts contained similar terms and conditions. For example, Article 2.4 requires Vector to submit payment applications with supporting documentation, such as releases and lien waivers (NYSCEF Doc No. 98, ¶ 38). Article 2.5 permitted Hunter Roberts to withhold funds from Vector based on liens or claims of nonpayment against Vector for which Hunter Roberts or RXR may be liable (*id.*, ¶ 39). Article 2.6 allowed Hunter Roberts to “institute risk management plans related to payments made to [Vector]” (*id.*, ¶ 40). Article 13.1 allowed Hunter Roberts to declare Vector in default for failing or refusing to perform its work or by failing to comply with the Subcontracts (*id.*, ¶ 41). A failure or refusal to pay vendors, delays, and insolvency constituted additional defaults (*id.*, ¶¶ 42-43). In the event of

a default, Hunter Roberts could terminate the Subcontracts and undertake to complete Vector's work. Importantly, Article 13.4 provides that Hunter Roberts could charge Vector for its "costs, losses, damages and expenses, including ... attorneys' fees ... incurred ... as a result of any default by [Vector]" (*id.*, ¶ 44). Hunter Roberts could withhold and deduct its costs from the Subcontract price and charge Vector with the costs associated with completing the work and with settling, discharging or compromising claims pertaining to or arising out of the work (*id.*).

On March 8, 2019, Hunter Roberts served Vector with three notices of default (collectively, the Default Notices). The Default Notices contained similar complaints regarding Vector's delay in completing its work and its delinquency in paying its vendors and employees (NYSCEF Doc No. 98, ¶¶ 50, 52 and 57-58). Hunter Roberts maintains that Vector failed to cure the defaults (*id.*, ¶ 57). On June 28, 2019, Hunter Roberts terminated the Subcontracts for cause, and on July 22, 2019, Hunter Roberts "clarified" that the Subcontracts were terminated (*id.*, ¶ 60).

Hunter Roberts alleges that it later learned Vector had defaulted on several Subcontract provisions, including but not limited to the payment and mechanics' lien provisions (NYSCEF Doc No. 98, ¶ 62). Hunter Roberts claims that it has incurred substantial costs due to Vector's default, such as overpayments on the Subcontracts, costs associated with litigating claims Vector's vendors have brought against Hunter Roberts, and costs associated with retaining a replacement subcontractor (*id.*, ¶ 64). Hunter Roberts asserts that the Subcontracts allowed it to apply the balance of the funds allegedly due to Vector and the remaining funds in the Subcontracts to complete Vector's work, pay for the costs associated with Vector's default, and settle, satisfy and discharge claims or liens arising out of Vector's work (*id.*, ¶¶ 82, 93, 104 and 115).

Hunter Roberts claims it also learned that several of Vector's answers to TradeTapp's questionnaire were false (NYSCEF Doc No. 98, ¶ 133). In response to a question asking whether

any of its owners, principals, officers or majority shareholders had been investigated, indicted or convicted of a felony or other criminal conduct, Vector responded “no” (*id.*, ¶¶ 23-24), but Hunter Roberts alleges this answer is false.

In 1987, Handakas formed a general contracting company, nonparty Astro Waterproofing and Restoration (Astro), and served as its president, chief executive officer and sole shareholder (*id.*, ¶¶ 136-137). In 1988, Handakas was indicted and convicted after a jury trial for conspiracy to commit mail fraud; conspiracy to launder money; illegally structuring financial transactions to evade reporting requirements; failing to file a currency report; making a materially false representation; and, conspiracy to defraud the United States related to Astro’s work for the New York City School Construction Authority (the SCA) (*id.*, ¶¶ 138 and 140). The Court of Appeals for the Second Circuit reversed his conviction for mail fraud, money laundering, and one of illegal structuring counts (*see United States v Handakas*, 286 F 3d 92, 113 [2d Cir 2002], *cert denied* 537 US 894 [2002], *rehearing denied* 537 US 1149 [2003]). Handakas was sentenced to 50 months in prison and three years of supervised release; ordered to pay a fine of \$100,000 and \$396,501 in restitution; and, ordered to forfeit \$1,416,077.17 (NYSCEF Doc No. 98, ¶ 146).

Additionally, Vector had indicated that it was involved in only two legal proceedings for “lien law diversion” (*id.*, ¶¶ 26 and 148). However, Hunter Roberts alleges that Vector failed to disclose that it had been engaged since 2017 in five lawsuits brought by its suppliers, vendors and sub-subcontractors (*id.*, ¶ 149). Hunter Roberts also claims that in 2019, former employees of Vector and nonparty North Star Strategies, Inc., one of Vector’s unapproved sub-subcontractors on the Project, brought a class action lawsuit against Vector, Handakas and a payroll company for alleged violations of the Fair Labor Standards Act, the New York Labor Law and the New York Minimum Wage Act (*id.*, ¶¶ 67-68).

Hunter Roberts initially brought an action against Vector, only (the Hunter Roberts Action) (NYSCEF Doc No. 1). After Vector interposed an answer with counterclaims (NYSCEF Doc No. 8), Hunter Roberts and Vector executed a stipulation permitting Vector to amend its answer to assert counterclaims against Hunter Roberts' surety, Liberty Mutual Insurance Company (NYSCEF Doc No. 30; NYSCEF Doc No. 33, ¶ 82). Shortly thereafter, Vector moved separately to consolidate the Hunter Roberts Action with the Beacon Action (NYSCEF Doc No. 55), and to dismiss Hunter Roberts' complaint (NYSCEF Doc No. 62). Hunter Roberts cross-moved for leave to serve an amended complaint (NYSCEF Doc No. 83). This court granted Vector's motion for consolidation and removed the Beacon Action from Nassau County (NYSCEF Doc No. 90). This court also permitted Vector to withdraw its motion and granted Hunter Roberts' cross motion (NYSCEF Doc No. 91). The parties had signed a stipulation allowing Hunter Roberts to amend its complaint and add Handakas as a party defendant and allowing Vector to withdraw its motion to dismiss with prejudice as to the second, third, fourth, fifth, seventh, eighth, ninth and tenth causes of action and without prejudice to the first and sixth causes of action pled in Hunter Roberts' original complaint (NYSCEF Doc No. 89).

Hunter Roberts' amended complaint pleads seven causes of action against the Vector Defendants: (1) breach of the masonry subcontract for Building H; (2) breach of the masonry subcontract for Building I; (3) breach of the roofing subcontract for Building I; (4) breach of the siding subcontract for Building I; (5) a violation of Lien Law 3-A; (6) contractual indemnification; and, (7) fraud in the inducement. The Vector Defendants now move for dismissal of the complaint against Handakas and for dismissal of the fifth and seventh causes of action against Vector. Vector also moves to consolidate this action with the Sunbelt Action. Beacon cross-moves to amend the

caption to reflect that the Hunter Roberts Action and the Beacon Action (together, the Hunter Roberts/Beacon Action), have already been consolidated.

## DISCUSSION

### I. The Vector Defendants' Motion to Dismiss

On a motion to dismiss brought under CPLR 3211, the court must “accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). “[I]f from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law,” the motion will be denied (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Whether a plaintiff can ultimately prevail on a claim is not part of the court’s calculus on a motion to dismiss (*see Stanger v Shoprite of Monroe, NY*, 180 AD3d 408, 409 [1st Dept 2020]).

#### A. The First, Second, Third, Fourth and Sixth Causes of Action against Handakas

The first through fourth causes of action plead claims for breach of contract, and the sixth cause of action pleads a claim contractual indemnification. Although Hunter Roberts has not claimed that Handakas executed the Subcontracts in his personal capacity, it seeks to pierce Vector’s corporate veil to hold him liable. Hunter Roberts alleges that Vector’s contractor’s license is registered to Handakas; Handakas is Vector’s president and/or chief executive officer and/or majority shareholder; Handakas exercised complete domination over Vector on the transactions at issue or is its alter-ego; Handakas used his domination over Vector to engage in fraudulent conduct; and, Handakas’s conduct has resulted in Vector’s undercapitalization (NYSCEF Doc No. 98, ¶¶ 6 and 9-12). Hunter Roberts further alleges that before filing the original

complaint, it “was provided with copies of checks made out from Handakas to certain Vector employees” (*id.*, ¶ 70). It claims that such checks, which could not be cashed due to insufficient funds, lacked proper deductions and were not payroll checks (*id.*, ¶¶ 71-72).

The Vector Defendants argue these five causes of action against Handakas should be dismissed on the ground that the complaint fails to plead specific facts sufficient to support piercing the corporate veil to reach Handakas, personally. Hunter Roberts responds that the motion is premature, and that the allegations meet the elements necessary to justify piercing Vector’s corporate veil. It further contends that Handakas dominated Vector and that he used Vector’s corporate form to perpetrate a wrong by inducing Hunter Roberts to enter the Subcontracts.

It is well settled that “a corporation exists independently of its owners, as a separate legal entity, [and] that the owners are normally not liable for the debts of the corporation” (*Matter of Morris v State Dept. of Taxation & Fin.*, 82 NY2d 135, 140 [1993]). Courts, however, will pierce the corporate veil and disregard the corporate form “whenever necessary ‘to prevent fraud or to achieve equity’” (*id.* [internal quotation marks and citation]). That said, “an attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners” (*id.* at 141). To pierce the corporate veil, the plaintiff must show 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” (*Cortland St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018] [internal quotation marks and citation omitted]). Factors to consider include:

“the 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 allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity”

(*Fantazia Intl. Corp. v CPL Furs N.Y., Inc.*, 67 AD3d 511, 512 [1st Dept 2009], citing *Freeman v Complex Computing Co.*, 119 F3d 1044, 1053 [2d Cir 1997]). The plaintiff “must set forth facts that truly address the underlying transactions and occurrences and the material elements of the claim” (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 131 [2d Dept 2009], *affd* 16 NY3d 775 [2011]). As such, evidence of domination alone is insufficient “without an additional showing that it led to inequity, fraud, malfeasance” (*TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998]). Likewise, whether a corporation lacks sufficient assets to satisfy a judgment, without more, will not suffice (*see Art Capital Bermuda Ltd. v Bank of N.T. Butterfield & Son Ltd.*, 169 AD3d 426, 427 [1st Dept 2019]). Ordinarily, this fact-laden inquiry is “unsuited for resolution on a pre-answer, pre-discovery motion to dismiss” (*Cortlandt St. Recovery Corp.*, 31 NY3d at 47).

Applying these precepts, the complaint herein is devoid of specific, particularized facts to warrant piercing Vector's corporate veil (*see Andejo Corp. v South St. Seaport Ltd. Partnership*, 40 AD3d 407, 408 [1st Dept 2007]). The allegations concerning Handakas's domination of Vector are vague and wholly conclusory (*see PK Rest., LLC v Lifshutz*, 138 AD3d 434, 436 [1st Dept 2016]). The assertion that Handakas is Vector's majority shareholder is insufficient to infer that he treated Vector as a dummy corporation to carry out its business in his personal capacity for purely personal gain (*see Walkovszky v Carlton*, 18 NY2d 414, 418 [1966]). The complaint lacks any particularized factual allegations of self-dealing, a commingling of funds, a lack of observation of corporate formalities or undercapitalization (*see Saivest Empreendimentos Imobiliarios E.*

*Participacoes, Ltda v Elman Invs., Inc.*, 117 AD3d 447, 450 [1st Dept 2014]; *Morpheus Capital Advisors LLC v UBS AG*, 105 AD3d 145, 153 [1st Dept 2013], *rev on other grounds*, 23 NY3d 528 [2014]). The complaint cites one instance where checks “made out from Handakas” could not be cashed because of insufficient funds (NYSCEF Doc No. 98, ¶ 72). However, it is not alleged that Vector was undercapitalized for the purpose of avoiding its obligations to perpetrate a wrong against Hunter Roberts (*see Edward Tyler Nahem Fine Art, L.L.C. v Barral*, 136 AD3d 477, 478 [1st Dept 2016]). The complaint also does not allege that Handakas “created [Vector] for an improper purpose or engaged in illegitimate business” (*Art Capital Bermuda Ltd.*, 169 AD3d at 427 [internal quotation marks and citation omitted]). Absent these pertinent factual allegations, “a simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil” (*Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC*, 146 AD3d 1, 12, [1st Dept 2016], *affd* 31 NY3d 1002 [2018], *rearg denied* 31 NY3d 1141 [2018], quoting *Bonacasa Realty Co., LLC v Salvatore*, 109 AD3d 946, 947 [2d Dept 2013]). The same logic applies to the sixth cause of action for contractual indemnification.

In response, Hunter Roberts has not pled any additional facts to support its attempt to hold Handakas personally liable. While Hunter Roberts complains that the motion is premature in the absence of discovery, the Vector Defendants’ motion should not be denied “merely on the plaintiff’s hope that something will turn up” (*East Hampton Union Free School Dist.*, 66 AD3d at 129). Accordingly, the first, second, third, fourth and sixth causes of action against Handakas are dismissed as against him.

#### **B. The Fifth Cause of Action against the Vector Defendants**

The fifth cause of action alleges that all or part of the funds paid or due to Vector constitute trust funds to be paid to Vector’s sub-subcontractors, suppliers and laborers consistent with Article

3-A of the Lien Law (NYSCEF Doc No. 98, ¶¶ 119 and 124). Hunter Roberts alleges that prior to terminating Vector, it learned Vector had not been paying its sub-subcontractors, suppliers and laborers and had diverted the funds held in trust for improper purposes (*id.*, ¶¶ 122 and 125). It seeks a judgment declaring that Vector is trustee of the lien funds; requiring the Vector Defendants to account for the disposition of the funds; directing the Vector Defendants to disgorge any funds that had been diverted; identifying the trust fund beneficiaries; and, awarding damages.

The Vector Defendants argue that Hunter Roberts is neither a beneficiary nor a trustee under the Lien Law, and therefore, Hunter Roberts lacks standing to maintain the fifth cause of action. Hunter Roberts responds that it has adequately pled a claim under the Lien Law as a subrogee of Vector's vendors.

“Article 3-A of the Lien Law creates trust funds out of certain construction payments or funds to assure payment of subcontractors, suppliers, architects, engineers, laborers, as well as specified taxes and expenses of construction” (*Aspro Mech. Contr. v Fleet Bank*, 1 NY3d 324, 328 [2004], *rearg denied* 2 NY3d 760 [2004] [internal quotation marks and citation omitted]). “[T]he primary purpose of article 3-A and its predecessors [is] to ensure that those who have directly expended labor and materials to improve real property [or a public improvement] at the direction of the owner or a general contractor receive payment for the work actually performed” (*id.* at 328 [internal quotation marks and citations omitted]). The trust comes into existence when “any asset thereof comes into existence” and continues until all claims under the trust have been paid or discharged (Lien Law § 70 [3]).

Under Lien Law § 71 (4), trust beneficiaries are any “[p]ersons having claims for payment of amounts for which the trustee is authorized to use trust assets.” Assets held by a contractor or subcontractor as trustee are to be applied to the categories of expenditures enumerated in the statute

(see Lien Law § 71 [2] [a]). A diversion of trust assets occurs when assets from the trust are paid out for some purpose other than those set forth in the Lien Law and before all claims under the trust have been paid or discharged (see Lien Law § 72 [1]). Importantly, “the holder of any trust claim, including any person subrogated to the right of a beneficiary of the trust holding a trust claim” may bring an action to enforce the trust (Lien Law § 77 [1]). An enforcement action may be brought against a “nonbeneficiary who receives trust assets with knowledge of their trust status” (*Canron Corp. v City of New York*, 89 NY2d 147, 154 [1996]). The action may also be brought against the officers of a corporate trustee in their personal capacities where the officers “converted trust funds for their own use, or knowingly participated in a diversion” (*South Carolina Steel Corp. v Miller*, 170 AD2d 592, 595 [2d Dept 1991]).

Hunter Roberts correctly points out that Lien Law § 77 (1) expressly permits a subrogee to maintain an action to enforce the trust. Thus, Hunter Roberts’ standing to assert this claim depends upon its status as a subrogee. “Under the doctrine of equitable subrogation, ‘[w]here property of one person is used in discharging an obligation owed by another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee’” (*US Bank N.A. v Juliano*, 184 AD3d 597, 599 [2d Dept 2020] [internal citation omitted]; *Korea Commercial Bank of N.Y. v Ianos*, 236 AD2d 249, 250 [1st Dept 1997] [stating that equitable subrogation “compel[s] the ultimate payment of a debt by one who in justice, equity, and good conscience ought to pay it”]). The doctrine applies “to cases where a party is compelled to pay the debt of a third person to protect his own rights, or to save his own property” (*Broadway Houston Mack Dev., LLC v Kohl*, 71 AD3d 937, 937 [2d Dept 2010] [internal quotation marks and citation omitted]). Where a subrogee has actually paid on a claim brought by a trust beneficiary, the subrogee has standing under Lien Law § 77 (see

*Caristo Constr. Corp. v Diners Fin. Corp.*, 21 NY2d 507, 515 [1968] [finding that the plaintiff had standing to maintain an action under Lien Law § 77 because it had paid the subcontractor's creditors]; *Wallkill Med. Dev., LLC v Sweet Constructors, LLC*, 83 AD3d 695 [2d Dept 2011] [finding that the plaintiff owner, who as a condition of its financing contract had deposited funds to be used to pay the defendant general contractor's architectural firm, had standing to pursue a Lien Law § 77 claim in its own name]; *J. Petrocelli Constr., Inc. v Realm Elec. Contrs., Inc.*, 15 AD3d 444, 447 [2d Dept 2005] [concluding that the plaintiff general contractor could maintain the Lien Law article 3-A action in its own name against the defendant subcontractor because the plaintiff had paid the defendant's vendors and subcontractors]). Further, it must be shown that such "payments were not voluntary either by pointing to a contractual obligation or to the need to protect its own legal or economic interests" (*Broadway Houston Mack Dev., LLC*, 71 AD3d at 937 [internal citation omitted]). Where the plaintiff has not paid a trust beneficiary, it has no standing under the Lien Law (*see Ziya Rest. Inc. v Mulberry Dev. LLC*, 2018 NY Slip Op 30192[U], \*4 [Sup Ct, NY County 2018]).

Close examination of the complaint reveals that Hunter Roberts has not identified any of Vector's employees, subcontractors or suppliers on this Project who have not been paid or the amounts due to them. Nevertheless, affording the complaint every favorable inference, Hunter Roberts has adequately pled that it is a subrogee. The complaint alleges that after terminating the Subcontracts, Hunter Roberts "was forced to pay the vendors outstanding amounts owed by Vector to secure delivery of time-sensitive materials needed for the Project site" (NYSCEF Doc No. 98, ¶ 61). The complaint further alleges that Vector has refused to pay at least one mechanic's lien (*id.*, ¶ 131). Accordingly, the motion insofar as it seeks dismissal of the fifth cause of action against Vector is denied.

As to Handakas, the complaint fails to adequately plead a claim under the Lien Law against him. Not only are the veil-piercing allegations conclusory, as discussed above, but the complaint lacks a specific allegation that Handakas diverted the trust funds for his own personal use (*see L.D. Wenger Constr. Co., Inc. v UnBuildIt, Inc.*, 73 AD3d 864, 864 [2d Dept 2010] [concluding that the corporate defendant's owner had participated in the breach of trust]). Accordingly, that part of the motion seeking to dismiss the fifth cause of action against Handakas is granted, and the fifth cause of action is dismissed as against him.

### **C. The Seventh Cause of Action against the Vector Defendants**

The seventh cause of action for fraud in the inducement is predicated upon material misrepresentations Handakas made on the TradeTapp questionnaire regarding his prior criminal conviction and the number of legal proceedings against Vector, which were made for the purpose of inducing Hunter Roberts to enter the Subcontracts (NYSCEF Doc No. 98, ¶¶ 139-150).

The Vector Defendants contend that Hunter Roberts failed to plead that the misrepresentations caused its losses, which they attribute to the alleged breaches of the Subcontracts. They question whether Hunter Roberts reasonably relied on the purported misstatements since “[a] simple Google search will immediately turn up information concerning Vassilios Handakas’ criminal proceeding. Likewise, Vector’s involvement in lawsuits is something that can be ascertained very easily” (NYSCEF Doc No. 112, Vector Defendants’ mem of law at 23 n 2). In addition, they argue that Hunter Roberts’ claim of reliance on the TradeTapp questionnaire warrants “hard scrutiny” because Hunter Roberts also claims that it relied on the results of TradeTapp’s risk assessments to determine which entity should be awarded the Subcontracts (*id.* at 25 n 3). They also contend that the claim is duplicative of the contract claims.

In response, Hunter Roberts argues that it has adequately pled “a direct line” between the fraud and its losses (NYSCEF Doc No. 114, Hunter Roberts’ mem of law at 6). It maintains that its damages are the natural consequences of its reliance on the misrepresentations. It further posits that the fraud in the inducement claim is not duplicative of the contract claims because the misrepresentations pertained to present, pre-contractual statements. Hunter Roberts next asserts that its fraud damages are distinct from its contract damages. Lastly, Hunter Roberts argues that the fraudulent inducement claim against Handakas stands independently of its attempt to impose personal liability under a veil-piercing theory.

“To sustain a claim for fraudulent inducement, there must be a knowing misrepresentation of material fact, which is intended to deceive another party and to induce them to act upon it, causing injury” (*Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 [1st Dept 2002]). The plaintiff must show that it justifiably relied on the misrepresentation (*see ACA Fin. Guar. Corp. v Goldman, Sachs & Co.*, 25 NY3d 1043, 1044 [2015]), and that it “was induced to act [or] refrain from acting to his detriment by virtue of the alleged misrepresentation or omission” (*Shea v Hambros PLC*, 244 AD2d 39, 46-47 [1st Dept 1998] [internal quotation marks and citation omitted]). As to causation, the “plaintiff must show both that defendant’s misrepresentation induced plaintiff to engage in the transaction in question (transaction causation) and that the misrepresentations directly caused the loss about which plaintiff complains (loss causation)” (*Vandashield Ltd v Isaacson*, 146 AD3d 552, 553 [1st Dept 2017] [internal quotation marks and citation omitted]).

Here, the complaint adequately pleads a cause of action for fraudulent inducement. Hunter Roberts has alleged that Vector’s responses on the TradeTapp questionnaire were incorrect; the misrepresentations were material; the misrepresentations prevented Hunter Roberts from

evaluating and inquiring into Vector's qualifications and reliability as a contractor; and, Hunter Roberts relied on the misrepresentations to its detriment when it rejected other qualified subcontractors and entered the Subcontracts. Notably, the Vector Defendants have not raised whether their responses on the TradeTapp questionnaire were false or incorrect.

The Vector Defendants' argument that Hunter Roberts could have easily learned of Handakas's criminal conviction and Vector's other lawsuits is unpersuasive. "[W]hen the party to whom a misrepresentation is made has hints of its falsity, a heightened degree of diligence is required of it. It cannot reasonably rely on such representations without making additional inquiry to determine their accuracy" (*ACA Fin. Guar. Corp.*, 25 NY3d at 1044-1045 [internal citation omitted]). The Vector Defendants have not advanced any arguments showing there were any hints of falsity which would have compelled Hunter Roberts to verify the information provided on the questionnaire (*see Rodas v Manitaras*, 159 AD2d 341, 343 [1st Dept 1990] [dismissing a fraudulent inducement claim where the plaintiff had been "put on notice of the existence of material facts" but failed to protect itself and proceeded with the transaction]). Whether Hunter Roberts relied primarily upon the TradeTapp risk assessment results as opposed to the questionnaire also does not establish that it has not stated a claim for fraudulent inducement. "The representations need not have been the exclusive cause of plaintiff's action in entering the agreement; it is sufficient that they were a substantial factor in inducing the plaintiff to act the way it did" (*Curiale v Peat, Marwick, Mitchell & Co.*, 214 AD2d 16, 27 [1st Dept 1995] [emphasis omitted]). As applied here, it suffices that Hunter Roberts relied, at least in part, on the questionnaire. In any event, the issue of reasonable reliance is generally not amenable to resolution on a motion to dismiss (*see ACA Fin. Guar. Corp.*, 25 NY3d at 1045).

Furthermore, Hunter Roberts has adequately pled a causal nexus between the alleged misrepresentations and its damages (*see Silver Oak Capital L.L.C. v UBS AG*, 82 AD3d 666, 667 [1st Dept 2011]). As discussed above, loss causation is an element of a fraudulent inducement claim. “Loss causation is the causal link between the alleged misconduct and the economic harm ultimately suffered by the plaintiff” (*Basis PAC-Rim Opportunity Fund (Master) v TCW Asset Mgt. Co.*, 149 AD3d 146, 149 [1st Dept 2017], *lv denied* 30 NY3d 903 [2017] [internal quotation marks and citation omitted]). The “plaintiff must prove that the *subject* of the fraudulent statement or omission was the cause of the actual loss suffered” (*id.* [internal quotation marks and citation omitted]). In addition, “[a] fraudulent misrepresentation is a legal cause of a pecuniary loss resulting from action or inaction in reliance upon it if, but only if, the loss might reasonably be expected to result from the reliance” (*Sterling Natl. Bank v Ernst & Young, LLP*, 9 Misc 3d 1129[A], 2005 NY Slip Op 51850[U], \*6 [Sup Ct, NY County 2005] [internal quotation marks and citations omitted]).

Here, the allegations in the criminal action and this action with regard to nonpayment are similar. In the criminal action, Handakas was alleged to have deprived the SCA of “honest services” by falsely certifying that Astro paid its employees a prevailing rate of wage when in reality, they received far less (*see United States*, 286 F 3d at 96). The SCA paid Astro based on those false submissions (*id.*). In this action, Hunter Roberts alleges that Vector submitted monthly payment requisitions together with releases, lien waivers, sub-tier releases and lien waivers, and affidavits from Vector’s sub-subcontractors, in accordance with Articles 2.3 and 2.4 of the Subcontracts (NYSCEF Doc No. 98, ¶¶ 37-38). Hunter Roberts claims to have “paid Vector funds related to the performance of work on the Project” (*id.*, ¶ 120), but two of the performance issues cited in the Default Notices concerned Vector’s failure to pay its workers and vendors (*id.*, ¶¶ 49

[vi], 52 [vi], and 54 [ii]). In view of the payment issues discussed in the criminal action, it is reasonably foreseeable that a misrepresentation about Handakas's criminal past could cause Hunter Roberts to sustain damages. As such, the complaint sufficiently pleads loss causation by alleging that, without the relevant facts, Hunter Roberts was "unable to make an informed decision" before awarding the Subcontracts and suffered damages as a result (*Omni Contr. Co. Inc. v City of New York*, 84 AD3d 763, 764 [2d Dept 2011], *lv denied* 17 NY3d 716 [2011]).

The Vector Defendants' argument that Hunter Roberts' fraud damages are duplicative of its contract damages is unconvincing (*see Ambac Assur. Corp. v Countrywide Home Loans Inc.*, 179 AD3d 518, 519 [1st Dept 2020] [concluding that the defendant failed to establish that the fraud damages were duplicative of the contract damages]). Generally, a fraud claim is duplicative of a contract claim "[w]here all of the damages are remedied through the contract claim" (*MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC*, 165 AD3d 108, 114 [1st Dept 2018]). That said, the claims are not identical when the misrepresentation causes a loss independent of the loss from the breach of contract (*see Hong Qin Jiang v Li Wan Wu*, 179 AD3d 1035, 1039 [2d Dept 2020]). In that instance, "[t]he measure of damages recoverable for being fraudulently induced to enter into a contract which otherwise would not have been made is 'indemnity for [the] loss suffered through that inducement'" (*Deerfield Communications Corp. v Chesebrough-Ponds, Inc.*, 68 NY2d 954, 956 [1986] [citation omitted]); *Kumiva Group, LLC v Garda USA Inc.*, 146 AD3d 504, 506 [1st Dept 2017] [stating that "a plaintiff alleging fraudulent inducement is limited to 'out of pocket' damages, which consist solely of the actual pecuniary loss directly caused by the fraudulent inducement"]). Although Hunter Roberts has pled identical damages clauses on the contract and fraudulent inducement causes of action, it has also alleged that it sustained losses associated with trying to resolve the issues with Vector's performance (NYSCEF Doc No. 98, ¶ 162). At this

procedural stage of the action, Hunter Roberts has sufficiently pled damages for fraudulent inducement that are distinct from its contract damages.

Furthermore, “a corporate officer who participates in the commission of a tort can be held personally liable even if the participation is for the corporation’s benefit” (*Belle Light, LLC v Artisan Constr. Partners LLC*, 178 AD3d 605, 606 [1st Dept 2019] [internal quotation marks and citation omitted]). Here, although the veil piercing allegations are insufficient, Hunter Roberts has adequately pled that Handakas participated in the alleged fraud. As such, he may be held personally liable on the fraudulent inducement claim (*id.*). Consequently, that part of the motion seeking to dismiss the seventh cause of action is denied.

## II. The Vector Defendants’ Motion to Consolidate

The Vector Defendants moves to consolidate the Hunter Roberts/Beacon Action with the Sunbelt Action on the ground that the disputes all raise common questions of law and fact. Submitted in support of the motion is an affidavit from Handakas. Handakas states that Hunter’s failure to timely pay Vector for its work on the Project led to cash flow difficulties (NYSCEF Doc No. 120, ¶ 7). On March 15, 2019, Handakas and representatives from RXR and Hunter met to discuss the payments allegedly due to Vector (*id.*, ¶ 8). One of the issues discussed at that time concerned the expense of renting equipment from Sunbelt (*id.*). Handakis avers that RXR, Hunter and Vector agreed that Vector would return Sunbelt’s equipment and that Hunter would arrange to rent same from Sunbelt or another supplier (*id.*). William DeCamp from Hunter confirmed the arrangement, as evidenced in an email dated March 15, 2019 in which he wrote, “**HRCG Rents Lifts** so Vector can return their rentals per RXR” (NYSCEF Doc No. 121, Handakas aff, exhibit A at 1). However, Sunbelt never retrieved its equipment, despite Handakas’s request (NYSCEF Doc No. 120, ¶ 11). Handakas claims that Mike Maggiore (Maggiore), a Sunbelt employee,

advised him that Hunter had reached an agreement with Sunbelt to take over the equipment rental agreement and pay Sunbelt directly (*id.*). He states that Hunter's superintendent, Steve Esposito, purportedly confirmed this arrangement, as well (*id.*, ¶ 13). In June 2019, Handakas informed Maggiore that Hunter had terminated the Subcontracts in June 2019 (*id.*). He submits that Maggiore never told him that Sunbelt expected Vector to pay for the equipment rental, and that Vector never received any monthly invoices for the rental equipment (*id.*). Handakas adds that Hunter retained another subcontractor to complete Vector's work, and that contractor used Sunbelt's equipment (*id.*).

Sunbelt opposes the motion on the ground that there are no common questions of law or fact between the Hunter Roberts Action and the Sunbelt Action, which Sunbelt describes is a "simple collection matter" (NYSCEF Doc No. 144, Kerry S. Flynn affirmation, ¶ 5). Marianne Abrignani (Abrignani), Sunbelt's regional credit manager, refutes Handakas's assertion that he had requested Sunbelt retrieve its equipment from the Project site; Sunbelt retrieved its equipment based on Vector's nonpayment (NYSCEF Doc No. 145, Abrignani aff, ¶ 6). She also refutes Handakas's claim that Sunbelt had entered into any sort of arrangement with Hunter, and that Sunbelt never sent any invoices to Hunter (*id.*, ¶ 5). The equipment rental agreements at issue show that Handakas personally guaranteed the payments, and all invoices were sent to Vector (*id.*, ¶ 7; NYSCEF Doc No. 146, Abrignani aff, exhibit 1 at 2).

CPLR 602 (a) permits the court, in its discretion, to consolidate actions that involve common questions of law and fact so as to "reduce the cost of litigation, make more economical use of the trial court's time, and speed the disposition of cases" (*see Matter of New York City Asbestos Litig.*, 121 AD3d 230, 242 [1st Dept 2014], *affd* 27 NY3d 765 [2016] [internal quotation marks and citation omitted]). A party opposing the motion must show that "consolidation will

prejudice a substantial right” (*Geneva Temps. Inc., New World Communities, Inc.*, 24 AD3d 332, 334 [1st Dept 2005]). While mere delay is not a sufficient reason to deny the motion (*see Raboy v McCrory Corp.*, 210 AD2d 145, 147 [1st Dept 1994]), consolidation may be denied where the “actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter” (*Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118, 119 [1st Dept 2003]).

As applied here, the Vector Defendants have demonstrated that the Hunter Roberts/Beacon Action and the Sunbelt Action share some common facts. Hunter Roberts cited Vector’s failure to pay its vendors as one of the bases for declaring Vector in default and for terminating the Subcontracts (NYSCEF Doc No. 122, Handakas aff, exhibit B), and Vector, in response, asserted a counterclaim for indemnification for claims brought by Vector’s creditors (NYSCEF Doc No. 123, Handakas aff, exhibit C). However, despite these shared commonalities, the two actions arise out of different contracts and involve more than one Vector project (*see H.H. Robertson Co. v New York Convention Ctr. Dev. Corp.*, 160 AD2d 524, 525 [1st Dept 1990]). Sunbelt’s invoices show that it had supplied equipment to Vector for the Project in Glen Cove and other projects located at 40 Roselle Street in Mineola and 1010 Northern Boulevard in Great Neck (NYSCEF Doc No. 146 at 57-59, 72-73 and 75). Given these differences, “there are insufficient common questions of law and fact” to warrant granting consolidation (*Betancourt v City of New York*, 172 AD3d 624, 624 [1st Dept 2019]). Moreover, a consolidated trial involving these different projects could cause jury confusion (*see Simoni v Costigan*, 100 AD3d 531, 531 [1st Dept 2012]).

Accordingly, the motion to consolidate the Hunter Roberts/Beacon Action with the Sunbelt Action is denied.

### III. Beacon's Cross Motion to Amend the Caption

Beacon's cross motion to amend the caption to accurately reflect the consolidation of the Beacon Action with the Hunter Roberts Action is granted, without opposition. This court previously granted Vector's motion to consolidate the action brought by Hunter with the action brought by Beacon (NYSCEF Doc No. 91), but the new caption for the consolidated action omitted the Beacon Action in its entirety.

### CONCLUSION

Accordingly, upon the papers submitted and for the reasons set forth herein, it is

ORDERED the motion of defendants Vector Structural Preservation Corp. and Bill Handakas a/k/a William Handakas, Vassilios Handakas, and/or Konstantinos Handakas to dismiss the complaint of plaintiff Hunter Roberts Construction Group LLC (motion sequence no. 003) is granted to the extent of dismissing the first, second, third, fourth, fifth and sixth causes of action against Bill Handakas a/k/a William Handakas, Vassilios Handakas, and/or Konstantinos Handakas, and the first, second, third, fourth, fifth and sixth causes of action against Bill Handakas a/k/a William Handakas, Vassilios Handakas, and/or Konstantinos Handakas are dismissed, and the balance of the motion is otherwise denied; and it is further

ORDERED that the motion of defendants Vector Structural Preservation Corp. and Bill Handakas a/k/a William Handakas, Vassilios Handakas, and/or Konstantinos Handakas to consolidate this action captioned *Hunter Roberts Construction Group LLC v Vector Structural Preservation Corp., et ano.*, Sup Ct, NY County index No. 653847/2019, with the action captioned *Sunbelt Rentals, Inc. v Vector Structural Preservation Corp., et ano.*, Sup Ct, Nassau County, index No. 607804/2020 (motion sequence no. 004) is denied; and it is further

ORDERED that the cross motion of plaintiff Beacon Sales Acquisition d/b/a Allied Building Products to amend the caption to correctly reflect the consolidation of the action captioned *Hunter Roberts Construction Group LLC v Vector Structural Preservation Corp., et ano.*, Sup Ct, NY County index No. 653847/2019, with the action captioned *Beacon Sales Acquisition Inc. d/b/a Allied Building Products v Vector Structural Preservation Corp., et al.*, Sup Ct, Nassau County, index No. 600196/2020, as previously directed (NYSCEF Doc No. 90), is granted, without opposition; and it is further

ORDERED that the action shall bear the following caption:

-----X  
HUNTER ROBERTS CONSTRUCTION GROUP LLC, Index No. 653847/2019  
Plaintiffs,  
- against -

VECTOR STRUCTURAL PRESERVATION CORP. and  
BILL HANDAKAS a/k/a WILLIAM HANDAKAS,  
VASSILIOS HANDAKAS and/or KONSTANTINOS  
HANDAKAS,  
Defendants.

-----X  
VECTOR STRUCTURAL PRESERVATION  
CORP., individually and on its own behalf and  
representatively on behalf of all others similarly situated,  
Counterclaim Plaintiffs,

- against -

HUNTER ROBERTS CONSTRUCTION GROUP LLC  
and LIBERTY MUTUAL INSURANCE COMPANY,  
Counterclaim Defendants.

-----X  
BEACON SALES ACQUISITION INC. d/b/a ALLIED  
BUILDING PRODUCTS,  
Plaintiff,

- against -

VECTOR STRUCTURAL PRESERVATION CORP.,  
VASSILIOS HANDAKAS a/k/a BILL HANDAKAS,  
HUNTER ROBERTS CONSTRUCTION GROUP LLC and  
LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.

-----X


; and, it is further

ORDERED that counsel for plaintiff Beacon Sales Acquisition d/b/a Allied Building Products shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the new caption.

This constitutes the Decision and Order of the court.

**Dated: February 9, 2021**

ENTER:

  
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NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**