

Park Towers S. Co., LLC v Columbus Circle Parking, LLC
2021 NY Slip Op 30665(U)
March 4, 2021
Supreme Court, New York County
Docket Number: 653757/2020
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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PARK TOWERS SOUTH COMPANY, LLC,
Plaintiff,

- v -

COLUMBUS CIRCLE PARKING, LLC, TMO PARENT, LLC
Defendants.

-----X

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, and after oral argument held on the record this day, it is ordered that the motion by plaintiff for an order amending the action to add Icon Parking Holdings, LLC ("Icon"), as a defendant herein is denied, per the record and for the reasons summarized below.

The complaint in this action alleges that defendant Columbus Circle Parking, LLC ("Columbus Circle"), is the commercial tenant of a parking garage located at 330 West 58th Street in Manhattan, owned by plaintiff, pursuant to a written lease guaranteed by defendant TMO Parent, LLC ("TMO"). The complaint asserts causes of action against the defendant sounding in breach of contract and breach of guaranty (which is also breach of contract), as well as a judgment for attorneys' fees, due to the alleged non-payment of rent by Columbus Circle, and alleged failure by TMO to cover such payment by virtue of the guaranty. The defendants have each answered the complaint and asserted affirmative defenses.

In motion seq. no. 001, plaintiff had moved for an order authorizing pre-action discovery to ascertain whether non-party Icon would be an appropriate defendant in this action, given

plaintiff's good faith belief that Icon has a corporate relationship with both defendants. By order dated December 3, 2020 (NYSCEF Doc. No. 32), this court denied that motion on the observation that the need for pre-action disclosure regarding such relationship seemed obviated by plaintiff's affidavit evidence at the time, attesting to such relationship. That order never opined on the merit of any prospective claim against Icon in this lawsuit. All it did was observe that pre-action disclosure was not necessary to enable plaintiff to learn what it already said it knew.

Now, in motion seq. no. 002, plaintiff moves for leave to serve and file a supplemental summons and amended complaint naming Icon on the theory that it is the alter ego of defendants and, therefore, vulnerable to application of the piercing of the corporate veil doctrine so as to render it liable for any defaults by the defendants herein. Its proposed amended complaint (NYSCEF Doc. No. 49) alleges various indicia of Icon's corporate, as well as practical, relationship with defendants; but falls short of alleging any type of fraud or wrongdoing, resting, instead, on its already pleaded causes of action for breach of contract.

There is no dispute that the lease (NYSCEF Doc. No. 9) was executed by plaintiff and Columbus Circle. Icon is not a signatory. There is also no dispute that the guaranty (NYSCEF Doc. No. 12) was executed by plaintiff and TMO. Icon is not a signatory. The lease, entered into in 2002, was extended twice during its lifetime so far – once in 2007 (NYSCEF Doc. No. 10) and next in 2017 (NYSCEF Doc. No. 11). At no time is Icon's name mentioned in those extensions; nor is it a signatory. Moreover, both extensions make sole reference to TMO as guarantor. Nothing whatsoever about Icon.

The Appellate Division, First Department, declared as follows in *Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC* (146 AD3d 1 [1st Dept 2016], *affd* 31 NY3d 1002, *rearg denied* 31 NY3d 1141 [2018]):

Veil-piercing is a narrowly construed doctrine limiting “the accepted principles that a corporation exists independently of its owners . . . and that it is perfectly legal to incorporate for the express purpose of limiting the liability of the corporate owners” (*Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 140, 603 N.Y.S.2d 807, 623 N.E.2d 1157 [1993]). The party seeking to pierce the corporate veil bears the heavy burden of “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” (*id.* at 141, 603 N.Y.S.2d 807, 623 N.E.2d 1157; *Sheridan Broadcasting Corp. v. Small*, 19 A.D.3d 331, 332, 798 N.Y.S.2d 45 [1st Dept.2005]).

. . . [Plaintiff] does not allege any fraud or malfeasance to support its attempt to reach FCRC or other third-party defendants. It alleges breach of contract claims against B2, but “a simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil” (*Bonacasa Realty Co., LLC v. Salvatore*, 109 A.D.3d 946, 947, 972 N.Y.S.2d 84 [2d Dept. 2013]).

(*Skanska*, 146 AD3d at 12.)

The same is true in this case which, as in *Skanska*, is “a simple breach of contract” (*id.*), as alleged. Accordingly, this court must respect the corporate forms of the parties – and of Icon – and, in so doing, denies plaintiff’s motion to serve and file a supplemental summons and amended complaint which would drag Icon into this case without satisfactory merit, seeing as Icon has no privity of contract with plaintiff in respect of this action – not now, and not in the 19 years that the parties have been doing business with each other openly as plaintiff, Columbus Circle, and TMO, exclusively.

Accordingly, it is

ORDERED that plaintiff’s motion (seq. no. 002) is denied.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>3/4/2021</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE