

Eighth Ave. Sky, LLC v Bhatia
2021 NY Slip Op 32520(U)
November 29, 2021
Supreme Court, New York County
Docket Number: Index No. 651433/2017
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

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EIGHTH AVENUE SKY, LLC.,

Plaintiff,

- v -

RAMESH BHATIA, EURO BUDGET HOTELS CORP. D/B/A
THE NEW YORK INN, AC HOSPITALITY, INC D/B/A THE
NEW YORK INN and CONSOLIDATED COMMERCIAL
CONSTRUCTION, INC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65,
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, the applicable law and oral argument held before this court on October 12, 2021, the court grants in part Plaintiff Eighth Avenue Sky, LLC's ("Plaintiff") motion for summary judgment against Defendants Ramesh Bhatia ("Bhatia"), Euro Budget Hotels Corp. d/b/a The New York Inn ("Euro") and AC Hospitality, Inc d/b/a The New York Inn ("AC") and motion to strike Defendants Bhatia's, Euro's and AC's Answers to the extent that the court grants summary judgment in Plaintiff's favor against Defendants Bhatia, Euro and AC as to Plaintiff's First, Second and Third Causes of Action in Plaintiff's Complaint, denies the motion as to Plaintiff's Fourth, Fifth, Sixth and Seventh Causes of Action in Plaintiff's Complaint¹ and grants the portion of Plaintiff's motion seeking to strike Defendants Bhatia's, Euro's and AC's Answers and precludes them from testifying at a trial or inquest in this matter.

¹ Plaintiff did not seek summary judgment against Defendant Consolidated Commercial Construction, Inc, so the Eighth Cause of Action in Plaintiff's Complaint remains.

Plaintiff brought this action against Bhatia, Euro, AC and Consolidated Commercial Construction, Inc (“CCC”) (collectively “Defendants”) seeking to pierce the corporate veil and collect its judgment against Euro from the New York County Civil Court rendered on November 29, 2016, and entered on March 13, 2017, in the amount of \$941,097.24 from Defendants. The judgment was for Euro’s failure to pay rent and other charges to Plaintiff for its operation of The New York Inn on the premises owned by Plaintiff, pursuant to a lease between Plaintiff and Euro which began in 1988.

Plaintiff now moves under motion sequence 003 for summary judgment against Defendants Bhatia, Euro and AC and to strike their Answers. Defendants oppose the motion.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant’s initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant’s papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the

existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is “often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue” (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

Generally, a plaintiff seeking to pierce the corporate veil 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” (*Morris v State Dep’t of Taxation & Fin.*, 82 NY2d 135, 141 [1993] [internal citations omitted]). There must be some showing of a wrongful or unjust act toward plaintiff and that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against plaintiff such that a court in equity will intervene (*id.* at 141-142 [internal citation omitted]).

Here, the court finds that Plaintiff demonstrated its entitlement to judgment in its favor as a matter of law against Defendants Bhatia, Euro and AC as to Plaintiff’s First, Second and Third Causes of Action set forth in Plaintiff’s Complaint. Defendants failed to raise any material issues of fact in admissible form sufficient to defeat this motion. In fact, Defendants failed to provide an affidavit from an individual with knowledge, testimony, nor relevant documents to dispute Plaintiff’s evidentiary proof.

Plaintiff demonstrated in substance that it obtained a lawful judgment against Defendant Euro for failure to pay rent and other charges pursuant to their lease of the hotel premises; that Defendant Bhatia was the principal of both Euro and AC; that Bhatia exercised complete

domination of both corporations regarding their continued operation of a hotel on the premises; that Bhatia's domination was used to commit a fraud or wrong against Plaintiff regarding the failure to pay the judgment or rent while continuing to operate the hotel and collect monies from hotel guests; that Plaintiff was injured as a result of these actions; that the judgment was due and owing; that none of the defendants paid the judgment or rent to Plaintiff; that at some point Euro essentially dissolved its corporation and AC took over the operation of the hotel and continued to collect fees from hotel guests; that both Euro and AC occupied the hotel premises and used it as their business addresses; that they both did business as The New York Inn; that Euro failed to properly assign the lease to AC and to provide proper notice to Plaintiff pursuant to the lease terms; and that such actions by Defendants Bhatia, Euro and AC were unjust, fraudulent and/or committed with wrongful intent.

Additionally, based upon Bhatia's sworn affidavit, dated July 18, 2016, submitted in another action, he admitted in substance that he was the President of AC Hospitality Inc. d/b/a The New York Inn, that AC was a tenant, occupying the second through fifth floors of the premises owned by Plaintiff and that AC has been operating a hotel on these floors for over twenty-five years. Based upon this evidence, it is clear that Bhatia operated and controlled both entities, he failed to acknowledge the separation of both corporate entities and operated the hotel, including the collection of money, as one entity.

As such, Plaintiff demonstrated that the corporate veils of both Euro and AC were pierced and that Defendants Euro, Bhatia and AC are all responsible for Euro's judgment. Therefore, the court grants summary judgment in Plaintiff's favor as to its First, Second and Third Causes of Action.

However, the court finds that Plaintiff failed to demonstrate its entitlement to summary judgment in its favor as to its Fourth, Fifth, Sixth and Seventh Causes of Action, although this may be primarily because of the lack of financial information provided to Plaintiff during the discovery process and Defendants' failure to appear for depositions. Since Plaintiff failed to seek summary judgment as to its Eighth Cause of Action, this claim remains as well.

Additionally, the court grants Plaintiff's motion to strike the Answers of Defendants Bhatia, Euro and AC. The court finds that these defendants violated court orders requiring them to appear for depositions. In the court's decision and order, dated October 13, 2020, the court directed the parties to complete all depositions on or before March 12, 2021. Although Plaintiff may have attempted to schedule the depositions too close to the deadline, Plaintiff demonstrated its good faith efforts to schedule the depositions and Defendants' refusal to produce a witness by challenging the validity of one of Plaintiff's previous deposition notices while ignoring the court orders.

Additionally, in its order dated, March 9, 2021, the court stated that "any party who fails to appear for a requested deposition is precluded from testifying." The court reminded the parties of this directive in its email, dated March 9, 2021, where the court stated in substance that Defendants cannot testify at trial if they do not appear for depositions and the court indicated that it was not concerned when the deposition occurred as long as the note of issue remained the same. As such, Defendants were on notice of the consequences of failing to appear for the depositions and they chose not to do so.

Therefore the court strikes the Answers of Defendants Bhatia, Euro and AC and these defendants are precluded from testifying at the trial or inquest in this matter.

The court considered all additional arguments not specifically discussed herein and denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Plaintiff Eighth Avenue Sky, LLC's motion for partial summary judgment and motion to strike Defendants Ramesh Bhatia's, Euro Budget Hotels Corp. d/b/a The New York Inn's and AC Hospitality, Inc d/b/a The New York Inn's Answers to the extent that the court grants the portion of the motion seeking summary judgment in Plaintiff's favor as against Defendants Ramesh Bhatia, Euro Budget Hotels Corp. d/b/a The New York Inn and AC Hospitality, Inc d/b/a The New York Inn as to Plaintiff's First, Second and Third Causes of Action in Plaintiff's Complaint, only; and it is further

ORDERED that the court determines that Defendants Ramesh Bhatia, Euro Budget Hotels Corp. d/b/a The New York Inn and AC Hospitality, Inc d/b/a The New York Inn are jointly and severally responsible for paying the full amount of the judgment rendered on November 29, 2016 by the New York County Civil Court against Defendant Euro Budget Hotel Corp. (Transcript of Judgment NYSCEF Doc. No. 17) (annexed hereto) under Index No. LT-068359-15/NY, plus interest from the date of entry of the judgment on March 13, 2017; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in Plaintiff's favor as against Defendants Ramesh Bhatia, Euro Budget Hotels Corp. d/b/a The New York Inn and AC Hospitality, Inc d/b/a The New York Inn, jointly and severally, as to Plaintiff's First, Second and Third Causes of Action, only, in the amount of the judgment, which is \$941,097.24, together with interest from the date of entry of the judgment on March 13, 2017, at a rate of 9% per annum, as calculated by the Clerk; and it is further

ORDERED that the court denies the remainder of Plaintiff's motion for summary judgment and the action against Defendant Consolidated Commercial Construction, Inc and Plaintiff's Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action are severed and the balance of the action shall continue as to these claims; and it is further

ORDERED that the court grants the portion of Plaintiff's motion seeking to strike Defendants Ramesh Bhatia's, Euro Budget Hotels Corp. d/b/a The New York Inn's and AC Hospitality, Inc d/b/a The New York Inn's Answers, the court strikes these Answers and these defendants are precluded from testifying at a trial or inquest in this matter.

This constitutes the decision and order of the court.

<u>11/29/2021</u>			
DATE		ERIKA EDWARDS, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE