

**HLI Rail & Rigging, LLC v Franklin Exhibit Mgt.
Group LLC**

2022 NY Slip Op 30395(U)

January 31, 2022

Supreme Court, Kings County

Docket Number: Index No. 528292/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 8

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HLI RAIL & RIGGING, LLC,

Plaintiffs,

Decision and order

- against -

Index No. 528292/19

FRANKLIN EXHIBIT MANAGEMENT
GROUP LLC, AF1 EXHIBIT HOLDINGS LLC,
485EV ASSETS LLC and AARON L.
SCHARF,

Defendants,

January 31, 2022

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3025 seeking to amend the complaint to assert additional facts sufficient to pierce the corporate veil to assert individual claims against defendant Aaron Scharf. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

Background

As recorded in a prior order, on October 31, 2018 the defendant Franklin Exhibit Management Group LLC [hereinafter 'Franklin'] entered into a contract with the plaintiff wherein the plaintiff agreed to transport a decommissioned aircraft from Rhode Island to Maryland for a price of \$850,000. The aircraft was made into a replica of Air Force One and was intended to operate as an exhibit as part of the Children's Democracy Project. The plaintiff commenced this lawsuit alleging the

defendants have not paid any of the contract price associated with the transport of the airplane. The court granted the defendant Scharf's motion seeking to dismiss the claims against him on the grounds he cannot be personally liable for any corporate liability. The court held the complaint failed to allege any facts sufficient to succeed upon this claim. The plaintiff has now moved seeking to amend the complaint and essentially supplement the facts alleged so that a claim for piercing the corporate veil could be adequately alleged.

Conclusions of Law

It is well settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38

AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

Preliminarily, the court need not consider whether the amended motion is improper since it merely seeks an end run around a pleading already dismissed (see, generally, Livadiotakis v. Tzitzikalakis, 302 AD2d 369, 753 NYS2d 898 [2d Dept., 2003]). The court will consider the proposed amended complaint in any event. As noted, to succeed on a request to pierce the corporate veil the plaintiff must demonstrate that "(1) the owners exercised complete dominion of the corporation in respect to the transaction attacked; and (2) that such dominion was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (Conason v. Megan Holding LLC, 25 NY3d 1, 6 NYS3d 206 [2015]). Thus, the plaintiff must allege facts demonstrating such dominion over the corporation and that such dominion led to inequity, fraud or malfeasance (TMCC, Inc., v. Jennifer Convertibles Inc., 176 AD3d 1135, 111 NYS3d 102 [2d Dept., 2019]). "Factors to be considered in determining whether the owner has 'abused the privilege of doing business in the corporate form' include whether there was a 'failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use'" (Vivir of L I, Inc., v. Ehrenkranz, 145 AD3d 844, 43 NYS3d 435 [2d Dept., 2016]).

The proposed amended complaint does not allege any of the

above noted criteria. The proposed amended complaint asserts in conclusory fashion that "Scharf exercised complete dominion over FEMG in respect to the August contract" (see, Proposed Amended Complaint, ¶68). The proposed amended complaint further alleges that "Scharf's used [sic] his domination of FEMG to induce HLI to enter into the August Contract and then breached the contract by not paying HLI for its services. At the time FEMG entered into the August Contract, Scharf was aware that FEMG was inadequately capitalized to fulfill its contractual obligations" (id at. ¶¶69,70).

However, a simple breach of contract is not fraud or some other wrong sufficient to pierce the corporate veil (Bonacasa Realty Co., v. Salvatore, 109 AD3d 946, 972 NYS2d 84 [2d Dept., 2013]). Further, the proposed amended complaint fails to allege that the use of the corporate form was done with the intent to commit fraud or a wrong upon the plaintiff (Abelman v. Shoratlantic Development Co., Inc., 153 AD2d 821, 545 NYS2d 333 [2d Dept., 1989]).

Further, the proposed amended complaint did not raise any facts warranting the parties engage in discovery to see if further evidence of piercing the corporate veil can be found (East Hampton Union Free School District v. Sandpebble Builders Inc., 66 AD3d 122, 884 NYS2d 94 [2d Dept., 2009]).

Therefore, since the proposed amended complaint is devoid of

merit the motion seeking to amend the complaint is consequently denied (Russo v. Lapeer Contracting Co., Inc., 84 AD3d 1344, 923 NYS2d 906 [2d Dept., 2011]).

So ordered.

ENTER:



DATED: January 31, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC