

**DDG 532 W. 20th St. LLC v Herod's Stone Design of
Jersey City Inc.**

2022 NY Slip Op 34239(U)

December 8, 2022

Supreme Court, New York County

Docket Number: Index No. 656152/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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DDG 532 WEST 20TH STREET LLC,

Plaintiff,

- v -

HEROD'S STONE DESIGN OF JERSEY CITY INC.,
HEROD'S STONE DESIGN OF JERSEY CITY
CORPORATION, RAPHAEL PORCELAIN TILES &
QUARTZ LLC, HERODS STONE OF ENGLEWOOD
CORP., and MICHAEL ZEITLIN,

Defendants.

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INDEX NO. 656152/2021

MOTION DATE 01/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82

were read on this motion to DISMISS.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ORDERED that the motion to dismiss the complaint against defendants Raphael Porcelain Tiles & Quartz LLC (“Raphael”), Herods Stone of Englewood Corp. (“Englewood”), and Michael Zeitlin (“Zeitlin”) is denied for the reasons set forth in the plaintiff’s opposition memorandum (NYSCEF Doc. No. 40), in which the court concurs.

In brief, this action concerns the breach of a construction contract between plaintiff and defendant Herod’s Stone Design of Jersey City, Inc. (“Herod’s”), pursuant to which Herod’s was to provide labor and materials for a construction project at plaintiff’s building (Contract, NYSCEF Doc. No. 41). Plaintiff alleges that Herod’s breached the contract in numerous respects, including, *inter alia*, failing to provide insurance, failing to timely deliver materials, and delivering nonconforming materials. Ultimately, plaintiff terminated the agreement.

Subsequently, Herod's filed a lien against the building for its uncompensated work, which plaintiff alleges was willfully exaggerated.

Zeitlin is alleged to be a common principal of Herod's, Raphael, and Englewood, which defendants do not meaningfully dispute. Plaintiff alleges in the complaint that the three companies share officers, owners, directors, office space, and telephone numbers. More significantly, plaintiff alleges that, as part of a scheme intended to make Herod's judgment-proof, Zeitlin directed plaintiff to wire payments due to Herod's under the contract to Raphael and Englewood instead (Complaint, NYSCEF Doc. No. 1, ¶¶ 37, 69). The record reflects that Herod's was dissolved without assets on November 1, 2021, five days after this action was commenced (Corporate Status Report, NYSCEF Doc. No. 79).

“The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene” (*ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 229 [2011]). It is an abuse of the corporate form to utilize control of the company to transfer the company's assets in order to render the company judgment proof (*Godwin Realty Assoc. v CATV Enterprises, Inc.*, 275 AD2d 269, 270 [1st Dept 2000]). The complaint herein alleges just that by asserting that Zeitlin, in his position as principal of Herod's, redirected Herod's receivables to other companies he is alleged to own, including Raphael and Englewood, with the result that, subsequent to the filing of this action, Herod's in fact dissolved without assets. At the motion to dismiss stage, these allegations are sufficient to maintain the action against Zeitlin in his personal capacity (*ABN AMRO Bank, N.V.*, 17 NY3d at 229 [“In that regard, plaintiffs' allegations that MBIA Inc. abused its control of its wholly-owned subsidiary, MBIA Insurance, by causing it to engage in harmful transactions that

now shield billions of dollars in assets from plaintiffs and expose them to significant liability meet this test”]; *9 E. 38th St. Assocs., L.P. v George Feher Assocs., Inc.*, 226 AD2d 167, 168 [1st Dept 1996] [“Defendant, as sole shareholder, is alleged to have exercised complete dominion and control over the corporation and to have fraudulently conveyed corporate assets to avoid the corporation’s obligations under the lease”]), as well as maintaining an action against Raphael and Englewood, which are alleged to be the depositories of the alleged transfers by Zeitlin out of Herod’s and into those other Zeitlin-controlled entities. Sufficient facts are alleged in the complaint to the effect that Zeitlin possessed dominion and control over Herod’s, Raphael, and Englewood to the extent of enabling him to transfer Herod’s assets to those other entities, and seeking to benefit therefrom vis-à-vis plaintiff’s claims against Herod’s (*see, Estate of Shefner v De La Beraudiere*, 127 AD3d 442, 5 NYS3d 100, 101 [1st Dept 2015] [“dominion or control”; “benefited in any way from the conveyance”]; Complaint, NYSCEF Doc. No. 1, ¶¶ 70-87; *see also, Guggenheimer v Ginzburg*, 43 NY2d 182, 185 [1977] [courts look to “whether the pleading states a cause of action, and if from the four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail”]).

And it is further

ORDERED that defendants shall file an answer to the complaint within 20 days of filing of this decision and order; and it is further

ORDERED that counsel shall appear for a preliminary conference in Room 1166, 111 Centre Street, New York, New York, on January 25, 2023, at 2:00 PM.

This constitutes the decision and order of the court.

ENTER:



<u>12/8/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE