

Mitchell v Steering House Constr. LLC
2023 NY Slip Op 30399(U)
February 6, 2023
Supreme Court, New York County
Docket Number: Index No. 652920/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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LOUIS MITCHELL,

Plaintiff,

- v -

STEERING HOUSE CONSTRUCTION LLC D/B/A
STEERING HOUSE DESIGN AND DEVELOPMENT,
STEERING HOUSE LLC D/B/A STEERING HOUSE
DESIGN AND DEVELOPMENT, JON SCHIPPERS

Defendant.

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INDEX NO. 652920/2022

MOTION DATE 02/01/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISS.

Defendants’ motion for partial dismissal of certain claims and parties is granted in part and denied in part.

Background

Plaintiff contends that he hired defendants to do gut renovation work at a property located in Brooklyn. He claims that defendants failed to perform the construction services in accordance with the parties’ contract and failed to refund plaintiff for certain amounts plaintiff had “prepaid.” He insists that defendants represented themselves as willing and qualified to do various work when, in reality, he paid defendants \$1.3 million for substandard work. Plaintiff contends that he had to incur additional expenses of approximately \$400,000 to finish the job.

Plaintiff brings six causes of action against defendants for breach of contract, breach of the covenant of good faith and fair dealing, negligence (listed as in the alternative), deceptive trade practices, unlawful transfers under the Debtor and Creditor Law and veil piercing.

Defendants move to dismiss all claims *except* those for contract and negligence against defendant Steering House LLC. They argue that Steering House Construction LLC was not a party to the contract entered into with plaintiff (only Steering House LLC was) and that the new causes of action alleged in the amended complaint (the ones for deceptive trade practice and unlawful transfer of funds) are inadequately pled.

In opposition, plaintiff contends that he has stated valid causes of action against all defendants. He contends that the individual defendant solely controls both corporate entities and he should not be forced to proceed against an empty corporation.

The Court observes that defendant correctly pointed out that given the short return date set by defendants in its notice of motion (15 days), defendants were not entitled to submit a reply and so the Court will not consider it (*see* CPLR 2214[b]).

Discussion

“It is settled that a motion for dismissal pursuant to CPLR 3211(a)(7) must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. The pleading is to be liberally construed. The court must accept the facts alleged in the pleading as true and accord the opponent of the motion, here defendants, the benefit of every possible favorable inference to determine only whether the facts as alleged fit within any cognizable legal theory. The criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Siegmund Strauss, Inc. v E. 149th*

Realty Corp., 104 AD3d 401, 403, 960 NYS2d 404 [1st Dept 2013] [internal quotations and citations omitted]).

Causes of Action against Steering House Construction LLC

The Court finds that plaintiff raised legitimate issues in opposition to support his claim that he can proceed against Steering House Construction LLC and is not limited to pursuing claims against the other corporate defendant, Steering House LLC. As plaintiff points out, the contract is with “Steering House” (NYSCEF Doc. No. 15) and there is no mention of a specific LLC in the contract. And defendants did not attach any documents in its moving papers to explain its contention that the agreement was solely with one of the corporate defendants. Obviously, a contract with “Steering House” raises questions, at least on a motion to dismiss, about with whom plaintiff contracted. At this stage of the litigation the Court declines to dismiss the claims against this defendant on the ground that it was not a party to the subject contract.

Deceptive Trade Practices

Plaintiff conceded in his opposition that his claims under General Business Law § 349 are time-barred (NYSCEF Doc. No. 29, n 2). Accordingly, the fourth cause of action is severed and dismissed as against all defendants.

Debtor Creditor Law Claim (the Fifth Cause of Action)

Defendants claim that these allegations are not pled with the required particularity. They assert that the amended complaint does not assert what was transferred or by whom. Defendants also insist that these provisions have a four-year statute of limitations and claim that the parties’ relationship ended in March 2018.

Plaintiff claims he has asserted these allegations with the requisite particularity. He insists he is entitled to rely on badges of fraud at this stage of the case. Plaintiff alleges that

defendants have a pattern of entering into contracts in which they identify themselves only as “Steering House” and operate as an unlicensed contractor to avoid bonding and identity-of-principal requirements associated with being licensed.

The Court finds that plaintiff asserted a cognizable cause of action for an unlawful transfer. The amended complaint contends that defendants transferred the assets of one Steering House entity to the other with the knowledge that one of these corporate defendants might be liable to plaintiff (NYSCEF Doc. No. 13 at 8). As plaintiff points out, he was entitled to rely on badges of fraud to adequately plead this cause of action (*Wall St. Assoc. v Brodsky*, 257 AD2d 526, 528, 684 NYS2d 244 [1st Dept 1999]). And those badges of fraud, as alleged, contend that money was transferred between entities solely owned by the individual defendant and that Steering House LLC was rendered insolvent.

At this stage of the case, that states a sufficient cause of action. Moreover, the Court is unable to find that this cause of action is time barred. As plaintiff points out, although the new Uniform Voidable Transactions Act has a four-year limitations period (Debtor and Creditor Law § 278), the act only applies to transfers that occurred before the effective date (April 4, 2020) and so the six-year limitations period applies here. Therefore, the allegations (which concern acts from March 2018) are not time barred. And, if discovery reveals that certain transfers occurred after the effective date, April 4, 2020, those allegations would be timely as well because this action was commenced in 2022.

Corporate Veil Piercing

The Court severs and dismisses the sixth cause of action based upon a veil piercing/alter ego theory. “[A] separate cause of action to pierce the corporate veil does not exist independent

from the claims asserted against the corporation” (*9 E. 38th St. Assoc., L.P. v George Feher Assoc., Inc.*, 226 AD2d 167, 168, 640 NYS2d 520 [1st Dept 1996]).

However, plaintiff may pursue a corporate veil piercing theory of recovery with respect to other causes of action. He sufficiently alleged that defendants did not respect the corporate form, transferred corporate funds to render at least one corporate entity as insolvent and used vague references to the corporate entities in contracts to make it difficult to pursue the instant relief. Plaintiff also asserted sufficiently particularized claims that the individual defendant exerted complete dominion and control over the corporate entities.

Breach of the Covenant of Good Faith and Fair Dealing

Defendants seek dismissal of this cause of action against defendant Steering House Construction and the individual defendant. The Court denies the motion. For the reasons cited above, plaintiff can pursue alter ego theories against these defendants in order to demand the relief he seeks. To be clear, the Court makes no finding about whether plaintiff will ultimately be successful. Rather, at this early date of the litigation, he only has to allege cognizable theories of recovery and the amended complaint does just that.

Negligent Design


Defendants move to dismiss plaintiff’s allegations based upon negligent design as time-barred and specifically point to paragraphs 4 and 5 of the amended complaint. However, the Court declines to grant this branch of the motion because plaintiff has not alleged a cause of action for negligent design, a fact that defendants admit. On these papers, the Court is unable to discern any cause of action that relies solely on a negligent design claim. Instead, the amended complaint appears to focus on the fact that the work that defendants actually performed did not conform to the contract.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted only to the extent that the fourth (deceptive trade practices) and sixth causes of action (independent cause of action for piercing the corporate veil) are severed and dismissed and denied with respect to the remaining requested relief; and it is further

ORDERED that defendants are directed to answer pursuant to the CPLR.

Conference: Already scheduled for March 28, 2023 at 11 a.m. (NYSCEF Doc. No. 18 [directing the parties to upload a discovery update by March 21, 2023]).

<u>2/6/2023</u> DATE					 ARLENE P. BLUTH, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE