

**Wolfe v Canaanite LLC**

2023 NY Slip Op 32094(U)

June 16, 2023

Supreme Court, New York County

Docket Number: Index No. 652099/2023

Judge: Shahabuddeen Abid Ally

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. SHAHABUDDEN ABID ALLY **PART** **16TR**

*Justice*

-----X

SYDNEY WOLFE, ALBERT MARTINEZ and ULRIKE D.  
MARTINEZ MARITAL TRUST B,

Petitioners,

**INDEX NO.** 652099/2023

**MOTION DATE** 5/1/23

**MOTION SEQ. NO.** 001

- v -

CANAANITE LLC, INDIVIDUALLY AND AS A  
REPRESENTATIVE OF BENEFICIARIES OF THE FUNDS  
HELD IN TRUST BY PETITIOENR UNDER ARTICLE 3A OF  
THE NEW YORK LIEN LAW,

Respondent.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for STAY.

Petitioners bring this special proceeding pursuant to CPLR § 7503(b) seeking an order: (1) permanently staying all proceedings in the arbitration commenced by respondent before the American Arbitration Association (AAA Case No. 02-23-0001-8084) (“Arbitration Proceeding”); and (2) issuing a preliminary injunction and temporary restraining order staying the Arbitration Proceeding pending resolution of this action, arguing that there is no valid agreement to arbitrate between the parties.<sup>1</sup> Respondent opposes and cross-move for an order compelling the respondents to arbitrate respondent’s claims, contending that petitioners’ conduct falls within the recognized theories under which a non-signatory may nonetheless be bound by

<sup>1</sup> The papers have been inconsistent in including Interior Management LLC (“IM”) among the petitioners in this application. The Court notes that the original petition in this action does not include IM as a petitioner. the parties do not dispute that IM is bound to arbitration and has consented to such, and petitioner indicates in its reply memorandum that IM is not among the petitioners (NYSCEF document no. 41 at 2, fn 2). It is clear that the intent of the parties was to exclude IM from this action and the Court will proceed accordingly.

an arbitration agreement. In reply, petitioners argue that respondent's submissions are insufficient to carry its burden. Upon hearing the parties and consideration of the above cited papers, the Court's decision is as follows:

### *Background*

On October 6, 2022, respondent engaged Interior Management LLC ("IM") by written contract to perform interior renovations to an apartment. The contract provided that the agreed-upon method of binding dispute resolution would be arbitration (petitioner's exhibit B at § 13.2). At the time of execution, the individual petitioners were managing members of IM and petitioner Wolfe served as IM's president. Pursuant to the contract, respondent paid IM a deposit of \$3,102,464.92 ("Deposit").

Prior to the completing the contracted work, IM notified respondent that it would be closing down operations but failed to return the Deposit. After receiving no response to its demand for the return of the funds, respondent filed a Demand for Arbitration against IM and all petitioners, seeking money damages, an accounting, and related relief for claims which included breach of contract, breach of fiduciary duty, conversion, and unjust enrichment from IM and petitioners (petitioner's exhibit A). Respondent simultaneously filed a Application for Emergency Relief under AAA rule 39 seeking books and records or an accounting of the Deposit (petitioner's exhibits D), which was granted by the Emergency Arbitrator (respondent). Pursuant to the order, respondent received certain materials related to IM's financials during the period shortly before and after respondent paid its Deposit.

Shortly thereafter on May 1, 2023, petitioners commenced the instant special proceeding to stay the Arbitration Proceedings. On May 3, 2023, this Court ordered a temporary stay of the Arbitration Proceedings pending hearing of the application. All parties appeared before the Court

for oral argument on May 25, 2023 via Microsoft Teams, upon which the Court took the matter under submission and extended the temporary staying pending disposition of the action.

### *Discussion*

A party may move to stay an arbitration proceeding “on the ground that a valid agreement was not made or has not been complied with” (CPLR § 7503[b]). Conversely, “a party aggrieved by the failure of another to arbitrate” may move to compel arbitration (CPLR § 7503[a]). A party generally cannot be compelled to arbitrate absent evidence which affirmatively establishes an express agreement to arbitrate that is clear, explicit, and unequivocal (*Waldron v Goddess*, 61 NY2d 183 [1984]). New York courts have, however, recognized limited theories under which an arbitration agreement can be enforced against a non-signatory, including equitable estoppel and alter ego/piercing the corporate veil (*see Merrill Lynch Inv Mgrs v Optibase, Ltd*, 337 F3d 125, 129 [2d Cir 2003]; *TNS Holdings v MKI Securities Corp*, 92 NY2d 335, 339 [1998]; *Matter of Belzberg v Verus Investments Holdings Inc*, 21 NY3d 626, 633 [2013]). The question of whether a non-signatory should be bound by an arbitration agreement is a threshold issue that should be resolved by the court in the first instance (*Matter of KPMG LLP v Kirschner*, 182 AD3d 484 [1st Dept 2020], citing *Matter of 215-219 W 28<sup>th</sup> St Mazal Owner LLC v Citiscapc Bldrs Group Inc*, 177 AD3d 482 [1st Dept 2019]; *see* CPLR § 7501).

Here, there is no dispute that the petitioners are not signatories to the contract that binds IM to arbitration.<sup>2</sup> Respondent contends that petitioners should nonetheless be bound by the contract on two grounds. First, respondent alleges that petitioners misappropriated the Deposit funds to make payments relating to other construction projects and personal expenses, which

---

<sup>2</sup> The parties agree that petitioner Wolfe signed the agreement only in his official capacity of president of IM and not in his individual capacity. As such, the signature alone cannot be found to confer individual liability (*Minois v Bank Julius Baer & Co, Ltd*, 301 AD2d 104 [1st Dept 2002]).

establishes that IM operated as an alter ego of the petitioners and warrants binding petitioners to the agreement. Second, respondent argues that petitioners are equitably estopped from avoiding arbitration because they received a direct benefit from the contract; namely, use of the Deposit funds to pay their personal expenses.

Petitioners deny the substance of respondent's allegations and further argue that the documents submitted by respondent are insufficient to carry the "heavy burden" of showing a non-signatory's intent to be bound by an arbitration agreement.

*Alter Ego/Piercing the Corporate Veil*

Generally, New York courts disfavor disregard of the corporate form. As such, a party 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 New York State Dept of Taxation and Finance*, 82 NY2d 135, 141 [1993]). Domination of the corporation by its owner alone is not sufficient (*TNS Holdings, Inc*, 92 NY2d at 339). It must be established that "[the controlling entity] abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such a court in equity will intervene" (*Morris*, 82 NY2d at 142). The determination of whether veil-piercing is appropriate is fact-specific and differs with the circumstances of each case (*Thomson-CSF, S.A. v American Arbitration Assn*, 64 F3d 773, 777 [2d Cir 1995]).

Respondent alleges that petitioners "completely dominated, managed, and controlled all aspects" of IM's operations, including the agreement with respondent (respondent's Combined Memorandum of Law at 13). To wit, respondent alleges that petitioners authorized payments from the Deposit to themselves or for other projects in contravention of IM's duty to maintain

the funds in trust for the planned renovation project. Respondent asserts further that petitioners' alleged "regular practice" of utilizing IM to pay for their recurring personal expenses demonstrates petitioners' domination of IM and IM's status as petitioners' alter ego.

While the record before the Court suggests a possible misuse of corporate funds, it does not unequivocally support a finding that the petitioners so dominated IM that the corporation served primarily as an alter ego to advance petitioners' personal interests. The numerous charges relating to construction or renovation processes (notwithstanding their relation to respondent's project) lends credence to petitioners' contention that IM was engaged in legitimate business operations separate and apart from the management of the petitioners' personal interests. Further, there is nothing showing that there was anything improper in the initial formation of IM or its general operations prior to its closure (*see Morris*, 82 NY2d at 143).

The Court therefore finds that on the record before it, respondent has not met its burden to establish that IM was the alter ego of petitioners for the purpose of committing some wrongful act or avoiding its obligation (*see TNS Holdings, Inc.*, 92 NY2d at 340 [1998]), or that petitioners' conduct otherwise warrants piercing the corporate veil to bind petitioners to arbitration.

#### *Direct Benefits Estoppel*

New York courts have also found that non-signatories may be bound by an arbitration agreement under the direct benefits estoppel theory derived from federal case law (*see Matter of Belzberg v Verus Holdings Inc.*, 21 NY3d at 631). Under this theory, a non-signatory to an arbitration agreement may be bound by the agreement where it "knowingly exploits' the benefits of an agreement containing an arbitration clause" (*Matter of KPMG LLP*, 182 AD3d at 484). "The benefits must be direct – which is to say, flowing directly from the agreement" (*MAG*

*Portfolio Consultant, GmbH v Merlin Biomed Group LLC*, 268 F3d 58, 61 [2d Cir 2001]).

Where benefits are merely “indirect,” the non-signatory cannot be compelled to arbitrate (*Matter of Belzberg*, 21 NY3d at 631). A benefit is indirect “where the non-signatory exploits the contractual relation of the parties, but not the agreement itself” (*id.*). When ascertaining whether a received benefit is direct or indirect, “[t]he guiding principle is whether the benefit gained by the nonsignatory is one that can be traced directly to the agreement containing the arbitration clause” (*id.* at 633; *see Gater Assets Ltd v AO Moldovagaz*, 2 F4th 42, 68 [2d Cir 2021]) [“To be bound under a theory of direct benefits estoppel, ‘[t]he nonsignatory beneficiary must actually invoke the contract to obtain its benefit, or the contract must expressly provide the beneficiary with a benefit’”], internal citations omitted).

Respondent argues that petitioners’ alleged misappropriation of Deposit funds constitutes a direct benefit obtained from the contract, and that therefore they are estopped from avoiding arbitration. However, the benefits alleged to have been received by petitioners (to wit, the diversion of Deposit funds for petitioners’ personal use) may, if proven, constitute a breach of petitioners’ duties to respondent or under the Lien Law, but they do not constitute a benefit flowing directly from the parties’ agreement (*cf Matter of Belzberg*, 21 NY3d at 634-635). There is nothing suggesting that petitioners assumed performance of the contract, that the contract expressly provided petitioners with the alleged benefit, or that the alleged benefits resulted from express invocation of the contract terms. As such, the Court finds that respondent has not established that petitioners should be equitably estopped from staying arbitration.

### ***Conclusion***

Based on the foregoing, the Court finds that on the record before it, respondent has not shown that petitioners' conduct falls within the limited theories under which a non-signatory may be bound to the terms of an arbitration agreement. Accordingly, it is hereby:

**ORDERED** that petitioners' motion to permanently stay arbitration is granted; and it is further

**ORDERED** that in light of the foregoing, petitioners' application for the preliminary injunction is denied as moot; and it is further

**ORDERED** that the temporary restraint previously imposed by this Court upon the Arbitration Proceeding is dissolved; and it is further

**ORDERED** that respondents' cross-petition to compel arbitration is denied in its entirety; and it is further

**ORDERED** that petitioners shall serve upon respondent and upon the Clerk of the Court a copy of this decision and order with notice of entry within thirty days thereof; and it is further

**ORDERED** that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

**ORDERED** that any and all other requested relief has been considered and is denied.

This constitutes the decision and order of the Court.

6/16/23

DATE

SHAHAB UDDIN ABID ALLY, A.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