

KSZ Bldg. Materials v Stognin

2023 NY Slip Op 34996(U)

August 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 502376/2019

Judge: Richard J. Montelione

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At IAS Part 99 of the Supreme Court of
the State of New York, Kings County, on
the ____ day of _____ 2023

AUG 17 2023

PRESENT: HON. RICHARD J. MONTELIONE, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

-----X
KSZ BUILDING MATERIALS, DBA KSZ
CONSTRUCTION, INC.,

DECISION / ORDER

Index No.: 502376/2019
Mot. Seq.: 3 & 4

Plaintiff,
-against-

SERGEY STOGNIN, individually and as officer of
LKRN ENTERPRISES, INC., NEW BATHROOM
STYLES, INC.,

Defendant.

-----X

The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	Numbered
Motion Sequence #3	
Defendants Stognin and New Bathroom Styles, Inc.'s Motion to Dismiss pursuant to CPLR §3211(a)(7), dated August 20, 2021; Attorney Affirmation of Philip Gurevich, Esq., affirmed on August 20, 2021.....	59-61
Motion Sequence #4	
Plaintiff's Motion to Amend the Complaint, dated October 28, 2021; Affidavit of Suleyman Khaimov, President of KSZ Building Materials, sworn to on October 27, 2021; Attorney Affirmation of Nina Khaimova, Esq.; Memorandum of Law; Exhibits.....	65-84
Defendants' Attorney Affirmation of Philip Gurevich, Esq., in Opposition to Motion Sequence #4 and in Support of Motion Sequence #3; affirmed on February 1, 2022; Exhibits.....	89-91
Plaintiff's Attorney Affirmation of Nina Khaimova, Esq. in Reply, affirmed on February 8, 2022...	92

Plaintiff commenced this action by filing a summons and complaint on February 1, 2019 alleging breach of contract, unjust enrichment, and seeking compensatory damages in the sum of \$84,000 plus 40% interest. On February 2, 2013, plaintiff and defendant LKRN Enterprises Inc. entered into a contract whereby defendant LKRN Enterprises Inc. borrowed money from plaintiff to be used for the purchase of goods (NYSCEF #71). The contract states that when LKRN Enterprises Inc. sold the goods, LRKN Enterprises Inc. would make payments to plaintiff toward the borrowed amount, plus 40% interest for every unit of goods sold until the amount owed to plaintiff was paid off. *Id.* The contract also states that the "final amount under this agreement is determined taking into consideration [plaintiff's] actual expenses related to the purchase of goods and goods delivery." *Id.*

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The contract was signed by defendant Sergey Stognin on behalf of defendant LKRN Enterprises Inc. However, defendant Stognin is not a party to the contract or a guarantor under the contract. Defendant Stognin opened New Bathroom Styles, Inc. in or about August 2013. Defendant New Bathroom Styles, Inc. is also not a party to the subject contract. Defendant LKRN Enterprises Inc. was dissolved on June 16, 2014 (NYSCEF #34), before the commencement of this lawsuit.

Defendants Stognin and New Bathroom Styles, Inc. move pursuant to CPLR § 3211(a)(7) to CPLR to dismiss the complaint as against defendant Stognin individually, claiming that the complaint fails to state a viable cause of action against said defendant in his individual capacity; and as against defendant New Bathroom Styles, Inc. since the complaint fails to state a viable cause of action against said corporate defendant as an autonomous corporate entity (Motion Sequence #3). Plaintiff opposes defendants' motion and moves to amend their complaint to add causes of action to pierce the corporate veil against defendant Stognin and defendant New Bathroom Styles, Inc. (Motion Sequence #4).

"[A]n attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its [parent]." *Americore Drilling & Cutting, Inc. v. EMB Contracting Corp.*, 198 A.D.3d 941, 943-44, 156 N.Y.S.3d 355 (2021). "However, in order for a plaintiff to state a viable claim against a parent or alter ego of the corporation, the plaintiff must allege facts that, if proved, indicate that the parent or alter ego exercised complete domination of the corporation in respect to the transaction attacked and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury." *Id.*

"At any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced." CPLR § 305 (c).

Defendants argue that if plaintiff is granted leave to amend the complaint, defendants will be prejudiced due to the lack of notice of the allegations related to piercing the corporate veil. Defendant relies on *Americore Drilling & Cutting, Inc. v. EMB Contracting Corp.*, 198 A.D.3d 941, 945, 156 N.Y.S.3d 355 (2d Dep't 2021) to oppose granting plaintiff leave to amend the complaint. In *Americore*, after trial, the Supreme Court granted the branch of plaintiff's application which was to conform the complaint to the proof so as to assert causes of action against corporate defendant Chilled under the theory of piercing corporate defendant EMB's corporate veil or the theory that Chilled was an alter ego of EMB.

In that matter, corporate defendant "Chilled established that the lack of notice hindered its ability to present evidence that might have shown, inter alia, that corporate formalities were respected or that EMB and Chilled dealt with each other at arm's length." *Id.* at 945. The Second Department found that "under the circumstances of this case, the Supreme Court improvidently exercised its discretion

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by, in effect, granting that branch of the plaintiff's application which was to conform the pleadings to the proof so as to assert causes of action against Chilled under theories of veil-piercing or alter ego liability." *Id.* Additionally, the Second Department found that plaintiff did not establish that Chilled was an alter ego of EMB. *Id.*

Here, defendants argue that, due to lack of notice of plaintiff's proposed allegations related to the theory of piercing the corporate veil, defendants are unable to defend the action because they are unable to obtain financial documents related to LKRN Enterprises Inc., New Bathroom Styles, Inc. or defendant Stognin from the relevant period, 2011-2016. Defendants argue this makes it unfeasible to support and/or defend the allegations in plaintiff's proposed amended complaint. Defendants submitted letters from CitiBank, HSBC Bank, and TD Bank (NYSCEF #91). Each letter states that the banks do not have any financial records for LKRN Enterprises Inc., New Bathroom Styles, Inc. or defendant Stognin from the relevant period as they do not maintain financial documents after seven years (NYSCEF #91).

The original complaint did not put defendants on notice that plaintiff was requesting the court pierce the corporate veil. The original complaint states:

The Defendants herein, SERGEY STOGNIN, sued individually and as officer of LKRN ENTERPRISES, INC., resides in Kings County, State of New York

...

Plaintiff, KSZ, doing business as KSZ CONSTRUCTION, INC., and Defendant, SERGEY STOGNIN, individually and as officer of LKRN ENTERPRISES, INC., entered into a written contract with verbal agreements contiguous with the contract wherein Defendant, LKRN ENTERPRISES, INC., borrowed a sum of money in the amount of ninety thousand dollars (\$90,000.00) for the purchase of bathroom vanities ("goods").

...

SERGEY STOGNIN and/or LKRN ENTERPRISES, INC., has been operating through another active business entity, known as NEW BATHROOM STYLES INC., named Defendant herein.

The court notes that defendants filed a 90-day notice on August 20, 2021 pursuant to CPLR 3216, demanding plaintiff complete all outstanding discovery and serve the Note of Issue and Certificate of Readiness. There are no facts stated through deposition testimony (no depositions appear to have taken place) or documentary evidence that reflects that defendant LKRN Enterprises Inc. was the alter

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ego of defendant Stognin. Moreover, defendants are prejudiced inasmuch as relevant bank records are no longer accessible. This court will not speculate as to whether these records are nonetheless in the possession of the defendant and notes there was apparently no inquiry regarding the existence of such records.

The original complaint is insufficient to give defendants notice that plaintiff is asserting causes of action under theories of veil-piercing. Defendants have established that the lack of notice hinders their ability to present evidence that would show, *inter alia*, that corporate formalities were respected or that defendants dealt with each other at arm's length. *Americore Drilling & Cutting, Inc. v. EMB Contracting Corp.*, 198 A.D.3d 941, 945, 156 N.Y.S.3d 355 (2d Dep't 2021). Accordingly, there is no viable cause of action against defendant Stognin in his individual capacity as he was not a guarantor or liable under the subject contract, or against defendant New Bathroom Styles Inc. as they are an autonomous corporate entity and not a party to the contract.

Based on the foregoing, it is

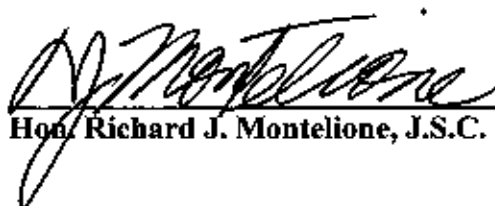
ORDERED that defendants' motion to dismiss the causes of action against defendants Stognin and New Bathroom Styles Inc. (Motion Sequence #3) is **GRANTED**, and the complaint is dismissed as to these defendants only; and it is further


ORDERED that plaintiff's motion to amend the complaint (Motion Sequence #2) is **DENIED**.

All other requests for relief are denied.

This constitutes the decision and order of the Court.

ENTER


Hon. Richard J. Montelione, J.S.C.


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