

Rich v J.A. Madison, LLC

2024 NY Slip Op 33290(U)

September 16, 2024

Supreme Court, New York County

Docket Number: Index No. 150305/2018

Judge: Emily Morales-Minerva

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. EMILY MORALES-MINERVA PART 42M

Justice

-----X

GEORGE M RICH, REGINA M RICH, D/B/A GUILD ANTIQUES II

INDEX NO. 150305/2018

Plaintiffs,

- v -

Decision & Order After Trial

J.A. MADISON, LLC, and JONATHAN ADLER ENTERPRISES, LLC,

Defendants.

-----X

APPEARANCES:

Goodfarb & Sandercock, LLP, New York, NY (Elizabeth Sandercock, Esq., and Adam Goodfarb, Esq., of counsel), for plaintiffs.

Kaplan Levenson, P.C., New York, NY (Steven M. Kaplan, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

This is a breach of contract action, arising from a commercial lease assignment and consulting agreement between plaintiffs and defendant J.A. MADISON, LLC. On July 21, 2021, this court (S. Hagler, J.S.C.) issued a decision and order, finding that defendant J.A. MADISON, LLC, breached the subject transaction and directing the Clerk to enter a money judgment in favor of plaintiffs GEORGE M. RICH, JR., and REGINA M. RICH d/b/a GUILD ANTIQUES II and against J.A. MADISON, LLC for damages in the sum of \$179,660.00, with interest.

The sole issue presented is whether defendant JONATHAN ADLER ENTERPRISES, LLC -- parent corporation to J.A. MADISON, LLC -- dominated its subsidiary in the transaction "so as to justify piercing the corporate veil to hold" parent corporation liable for the breach and resulting damages (Rich v J.A. Madison, 211 AD3d 652, 653 [1st Dept 2022]).

The undersigned conducted a two-day bench trial on this singular question of fact, commencing on April 30, 2024, and concluding on May 22, 2024. Throughout the trial, all parties appeared with their respective counsel. Since the commencement of this action, the same counsel of record has represented both parent corporation and subsidiary.

Plaintiffs called as witnesses (1) GEORGE M. RICH, JR., owner of GUILD ANTIQUES II, and (2) Carole DeCarlo, parent corporation's controller. On consent of parent corporation, the court entered as evidence plaintiffs' exhibits 1 through 25.¹

¹These exhibits in numerical order are: (1) certified copy of Secretary of State information for J.A. Madison, LLC; (2) certified copy of Secretary of State information for Jonathan Adler Enterprises, LLC; (3) certified copy of Articles of Dissolution for J.A. Madison, LLC; (4) lease agreement, dated December 13, 1985, between Eve Califano and plaintiffs George M. Rich, Jr. and Regina M. Rich d/b/a Guild Antiques II; (5) ten-year lease extension agreement between the same, dated October 23, 1995; (6) ten-year lease extension agreement between the same, dated July 6, 2005; (7) consulting agreement, dated September 1, 2010, between plaintiffs and defendant J.A. Madison, LLC; (8) agreement and consent, dated August 31, 2010, between plaintiffs and defendant J.A. Madison, LLC; (9) assignment and assumption of lease, undated, between plaintiffs and defendant J.A. Madison, LLC; (10) through (20), eleven (11) rent checks from defendant J.A. Enterprises, Inc., to plaintiffs -- eight (8) in the amount of \$8,333.33, dated from August 08, 2016 through March 30, 2017, and three (3) rent checks between the same, dated April 12, 2017, May 01, 2017, June 01, 2017, for \$4,000.00; (21) through (23) e-mail correspondence to plaintiffs from Carole Decarlo,

Plaintiffs rested, and parent corporation moved unsuccessfully for a directed verdict.

Parent corporation then called Carole DeCarlo to testify. On plaintiffs' consent, the court admitted defendants exhibits A through C: (A) the summons and verified complaint in this action; (B) the articles of organization of JONATHAN ADLER ENTERPRISES, LLC, LLC, dated June 23, 2004; and (C) the articles of organization of J.A. MADISON, LLC, dated February 28, 2005.

Parent corporation rested and the court accepted post-trial briefs in lieu of closing statements.

Now, upon the credible testimony, evidence admitted, law of the case, and applicable case law, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In 1985, plaintiffs GEORGE M. RICH, JR. and REGINA M. RICH d/b/a GUILD ANTIQUES II executed a ten-year commercial lease with non-party Eve Califano ("landlord").
2. The lease was for retail premises known as 1095 Madison Avenue, New York, New York.

identified therein as "Controller JONATHAN ADLER;" (24) ledger of payments from July 02, 2012 to June 1, 2017; and (25) assignment and assumption of lease, dated February 05, 2005, between non-party Oceanos Spanail Corp. and defendant J.A. Madison, LLC.

3. Thereafter, plaintiffs and landlord executed two lease renewals, extending plaintiffs' leasehold to December 31, 2015.
4. In 2005, defendant JONATHAN ADLER ENTERPRISES, LLC ("parent corporation"), created defendant J.A. MADISON, LLC ("subsidiary"), for the sole purpose of operating a retail store adjacent to plaintiffs' leased premises.
5. As time passed, parent corporation took interest in expanding its retail space to encompass the space that plaintiffs' business occupied.
6. Non-party David Frankel, president of parent corporation, and non-party Jonathan Alder, individually, visited the subject premises to view its potential as a retail store.
7. Neither the store manager nor any other alleged officer of subsidiary took part in this process.
8. Although initially reluctant to assign their commercial lease, plaintiffs eventually agreed.
9. However, pursuant to plaintiffs' commercial lease, plaintiffs had to obtain consent for the contemplated assignment from both non-party landlord and non-party co-op building.
10. Accordingly, the parties entered: (1) an Assignment and Assumption of Lease with Landlord's Consent and Modification of Lease, dated August 31, 2010;
(2) an Agreement and Consent, executed contemporaneously with

said assignment; and (3) a consulting agreement, dated September 01, 2010.

11. In the assignment of the lease, David Frankel is identified as subsidiary's president, executing the agreement on its behalf.
12. In the agreement and consent, David Frankel is identified, as executing the document as president of subsidiary; he is also identified therein as signing on behalf of parent corporation, serving as guarantor; Jonathan Adler also signed the agreement, as a personal guarantor.
13. In the consulting agreement, David Frankel is identified as "president" of subsidiary.
14. The consulting agreement, "executed at substantially the same time [as the assignment of the lease is] part of the same transaction" and are "read together as one" (see Rich, supra, 211 AD3d at 652).
15. It is undisputed that the intent of the consulting agreement was to provide plaintiffs with extra monthly rent as the rent set forth in plaintiffs' commercial lease was below market.
16. Therefore, pursuant to the subject transaction, subsidiary agreed to pay plaintiffs \$8,333,33 a month, commencing on September 01, 2010.
17. Parent corporation issued all rent checks for subsidiary

from parent corporation's bank account.

18. At no point did subsidiary have a bank account in its name.
19. Indeed, subsidiary deposited its revenue directly into parent corporation's bank account at the end of each retail day.
20. No subsidiary officer is identified as being charged with overseeing subsidiary's accounting operations.
21. Instead, parent corporation's controller -- who testified that she is solely an employee of parent corporation -- exercised this role, including managing and processing payments to plaintiffs and subsidiary's vendors.
22. Parent corporation's controller also received and handled subsidiary's mailings and/or notices, as sent to the subsidiary's corporate address with the Secretary of State, the same corporate address of parent corporation.
23. Regarding the processing of subsidiary's mail, parent corporation's controller testified, that she directly reviews subsidiary's corporate mail, contacting subsidiary employees as needed.
24. There is no apparent forwarding of such mailings to a subsidiary officer, if any, for a handling independently from parent corporation.
25. Indeed, other than David Frankel -- who overlaps as president of parent corporation -- no corporate officers

appear to exist at subsidiary.

26. As part of handling subsidiary's financials, parent corporation paid rent to plaintiffs regularly from parent corporation's bank account.
27. However, at or around March 2017, plaintiffs received a late payment; then, from April 2017 to June 2017, parent corporation issued only partial payments of rent to plaintiffs.
28. Plaintiffs contacted parent corporation's controller to address the problem, and said controller attempted to negotiate an accommodation directly with plaintiffs.
29. Parent corporation did not refer plaintiffs to any designated person at subsidiary for resolution of the matter, and parent corporation's controller was the only person in touch with plaintiffs on behalf of the subsidiary.
30. Eventually, during their discussions, plaintiff GEORGE M. RICH, JR., explicitly asserted his right to commence a proceeding for enforcement of the subject transaction.
31. This offended parent corporation's controller, who immediately made an executive decision to seize all payments to plaintiffs due under the lease assignment and consulting agreement.

32. Said controller explained, under oath: "The only reason why I stopped making payments is because . . . he [GEORGE M. RICH, JR.] was threatening me with a lawsuit" (May 22, 2024, Tr. at 73, lines 2-16 [emphasis added]).
33. Parent corporation's controller did not consult with any officer or employee at subsidiary, and no proof exists that the revenue of subsidiary was inadequate to make the rental payments at that time or thereafter.
34. Instead, the record establishes that, beginning at or around 2014, parent corporation began suffering global financial difficulties, and parent corporation was unable to make rent payments for most, if not all subsidiaries, from its bank account.
35. After parent corporation stopped issued rent payments to plaintiff from its account, plaintiffs commenced this action for breach of contract.
36. Plaintiffs then filed a motion (seq. no. 01) for an order of summary judgment against subsidiary; defendants opposed and filed a cross-motion for an order dismissing the complaint as against parent corporation.
37. At or around that time, parent corporation also filed to dissolve subsidiary, ending the subsidiary as a legal entity.
38. The Court (S. Hagler, J.S.C.) issued a decision and order, dated July 01, 2021, granting plaintiffs' motion, and denying

defendants' cross-motion.

39. Among other things, the court found (1) that subsidiary breached the lease assignment and consulting agreement and (2) that said breach damaged plaintiffs in the sum of \$179,660.00, with interest thereon from May 01, 2017 (see NYSCEF Doc. No. 63, Decision and Order, dated July 1, 2017).
40. On appeal, the governing Appellate Division, First Department, affirmed the lower court's decision and order entirely (see Rich, 211 AD3d at 652).
41. As to the cross-motion, the First Department reasoned "issues of fact [exist] as to whether JAE, parent corporation of J.A. Madison, dominated J.A. Madison with respect to the transaction so as to justify piercing the corporate veil to hold JAE liable for J.A. Madison's breach" (id. at 653).

CONCLUSIONS OF LAW

In the context of seeking to hold a parent corporation liable for its alter ego's actions, "a plaintiff must show that the dominant corporation exercised complete domination and control with respect to the transaction attacked, and that such domination was used to commit a fraud or wrong causing injury to the plaintiff" (see Fantazia Intl. Corp. v CPL Furs New York, Inc., 67 AD3d 511, 512 [1st Dept 2009], citing Morris v New York

State Dept. of Tax'n & Fin., 82 NY2d 135, 141 [1993]; see also Rich, 211 AD3d at 653, citing Fern, Inc. v Adjmi, 197 AD2d 444, 445 [1st Dept 1993]).

In Fern Inc., supra, 197 AD2d 444, the First Department affirmed the piercing of the corporate veil to hold a parent corporation liable for unpaid rent, where (1) the parent corporation negotiated and executed the lease on behalf of the subsidiary, (2) the parent corporation exercised complete dominion and control over the subsidiary, (3) the subsidiary had "no assets, liabilities or income, no regularly elected officers or directors, and no bank accounts," and (4) the subsidiary "never contracted any business other than entering into the subject lease" for which the unpaid rent was owed (see generally Hudson Spring Partners, L.P. v. P+M Design Consultants, Inc., 210 AD3d 553, 554 [1st Dept 2022] [applying Fern Inc., 197 AD2d at 444])).

Applying these principles to the facts here, the court finds that plaintiffs have met their burden for piercing the corporate veil to hold parent corporation liable. Among other things, parent corporation negotiated the subject transaction, and directly exercised compliance with the terms of the lease assignment and consulting agreement, paying rent directly from its bank account. Further, subsidiary had no bank account, no

discretion over its revenue, and no identified officers other than its overlapping president with parent corporation.

In addition, parent corporation exercised complete discretion in its decision to stop paying the rent as set forth in the subject transaction, which caused plaintiffs' injury (see Rich, 211 AD3d at 655 [finding subsidiary's breach resulting in damages in the amount of \$179, 660.00 plus interest from May 01, 2017]). Adding to said injury, parent corporation then exercised sole discretion to dissolve subsidiary during the pendency of this action, leaving plaintiff with no recourse on proven damages -- a wrong and injustice that invites a court in equity, as here, to intervene (see generally Morris, 82 NY2d at 141).

Accordingly, it is

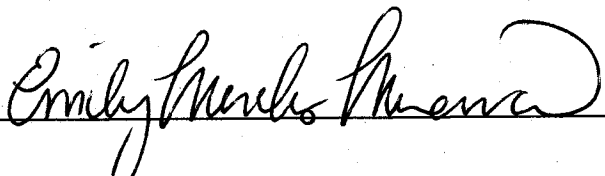
ORDERED that defendant JONATHAN ADLER ENTERPRISES, LLC, is liable for defendant J.A. MADISON, LLC's breach of the subject transaction between plaintiffs GEORGE M. RICH, JR. and REGINA M. RICH d/b/a GUILD ANTIQUES, II; and it is further

ORDERED that plaintiffs GEORGE M. RICH, JR. and REGINA M. RICH d/b/a GUILD ANTIQUES, II, shall have judgment against JONATHAN ADLER ENTERPRISES, LLC, in the amount of \$179,660.00 plus interest thereon from May 01, 2017; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Date: September 16, 2024



A handwritten signature in black ink, reading "Emily Morales-Minerva", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "E".

Hon. Emily Morales-Minerva, J.S.C.