

Old Republic Natl. Title Ins. Co. v 1152 53 Mgt., LLC

2025 NY Slip Op 33267(U)

August 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 527164/2019

Judge: Carolyn E. Wade

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KINGS COUNTY CLERK
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At an IAS Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located Civic Center, Brooklyn, New York, on the 20th day of August, 2025.

PRESENT:

Hon. Carolyn E. Wade, J.S.C.

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY,	: Index No. 527164/2019
	:
Plaintiffs,	: Mot. Seqs. 4 and 5
	:
-against-	: DECISION AND ORDER
	:
1152 53 MANAGEMENT, LLC and ETTY SALAMON	:
	:
Defendants.	:
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The following papers e-filed papers read herein: NYSCEF Doc. Nos.: 101-120, 132-133, and 140.

Defendant Ety Salamon ("Salamon") moves to dismiss Plaintiff Old Republic National Title Insurance Company's ("Old Republic" or "Plaintiff") Amended Complaint (NYSCEF Doc. No 99) (Mot. Seq. 4).

Defendant 1152 53 Management, LLC ("1152") moves to dismiss (1) all claims for piercing the corporate veil in the Amended Complaint as against 1152, and (2) any prayers for relief against 1152 remaining in the Third, Fifth, and Sixth Causes of Action in the Amended Complaint (Mot. Seq. 5).

Upon reviewing the foregoing cited papers, and after oral argument, the motions are decided as follows:

FACTUAL RECITATION

In August 2018, the Plaintiff's predecessor in interest commenced an action against the Defendant Salamon, among others, *inter alia*, to set aside an allegedly fraudulent conveyance pursuant to the Debtor and Creditor Law. In November 2019, while that action was pending, Salamon

transferred her interest in certain real property located in Brooklyn (hereinafter “the property”) to the Defendant 1152.

In December 2019, the Plaintiff commenced this action against the Defendants, alleging that Salamon’s transfer of the property to Defendant 1152 was a fraudulent conveyance pursuant to Debtor and Creditor Law §§273 to 276. The Defendants separately moved pursuant to CPLR 3211(a)(1) and (7) to dismiss the Complaint insofar as asserted against each of them.

By order dated February 3, 2022, the Supreme Court granted the Defendants’ separate motions and Plaintiff’s original Complaint (NYSCEF Doc. 2) was dismissed by this Court (NYSCEF Doc. 78). The Appellate Division, Second Department, partially reversed the February 3, 2022, Order, holding that the order is modified, on the law, (1) by deleting the provision thereof granting those branches of the motion of the Defendant 1152, which were pursuant to CPLR 3211(a) to dismiss the first, second, and fourth causes of action insofar as asserted against it, and substituting therefor a provision denying those branches of the motion, and (2) by deleting the provision thereof granting the motion of the Defendant Etty Salamon pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against her, and substituting therefor a provision denying that motion.

Thereafter, on June 21, 2024, Plaintiff filed an Amended Complaint (NYSCEF Doc. 99). This Amended Complaint included a series of new factual allegations in Paragraph Nos. 28 through 33, whereby Plaintiff alleges that 1152 is an alter ego of Defendant Salamon. Further, the Amended Complaint requested relief in the “WHEREFORE” clause, relative to the First, Second, and Fourth Causes of Action, seeking the remedy of reverse veil piercing against Defendant 1152 to hold Defendant 1152 liable for Defendant Salamon’s debts.

LAW OF THE CASE, RES JUDICATA, AND COLLATERAL ESTOPPEL

Law of the case doctrine states that “when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned.” (*Ramanathan v. Aharon*, 109 AD3d 529, 530 [2d Dept 2013]).

To invoke the preclusion doctrine of collateral estoppel the following elements must be established: (1) the identical issue was decided in the prior action and is decisive in the present action; and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest that very issue. (*Allied Chem. v Niagara Mohawk Power Corp.*, 72 NY2d 271, 276 [1988], cert denied 488 US 1005 [1989], *Hirschfeld v. Hogan*, 18 Misc.3d 531 [2007]).

Res judicata bars claims that could have or should have been litigated in prior proceedings, and repleading the same fact under a new theory is precluded by res judicata. (*Silberstein, Awad & Miklos, P.C. v. Spencer, Maston & McCarthy, LLP*, 43 AD3d 902 [2d Dept 2007]).

In the instant matter, the Appellate Division, Second Department, previously dismissed Plaintiff's claims under Debtor & Creditor Law § 274 for failing to allege that Salamon was engaged in, or was about to engage, in a business or transaction that left her with insufficient capital and § 276 for failing to plead fraud with sufficient particularity pursuant to CPLR § 3016(b). Plaintiff's Amended Complaint did not alter or change the causes of action alleged in the original Complaint and merely added a request for alternate equitable relief in the form of reverse veil piercing. (*See Gotlin v. City of New York*, 35 Misc 3d 1236[A] [Sup Ct, Kings County 2010]). As such, the law of the case doctrine applies and the May 2024 Appellate Division Decision constitutes the law of the case.

In addition, the Second Department found that Plaintiff failed to plead fraud with particularity. As such, Plaintiff is precluded from repackaging the same allegations as a new equitable remedy that requires fraud as an essential element. Plaintiff's amended allegations of alter ego liability are functionally identical to the dismissed fraudulent conveyance claims and must therefore be barred. The Court finds that Plaintiff's veil-piercing claims rely on the same underlying allegations of fraud that have already been adjudicated and dismissed by this Court and affirmed by the Appellate Division.

As such, the Third, Fifth, and Sixth Causes of Action in the Plaintiff's Amended Complaint are dismissed.

FAILURE TO STATE A CLAIM FOR REVERSE VEIL PIERCING

“In order to pierce the corporate veil, a plaintiff must show that the defendant exercised complete domination over the corporation with respect to the transaction at issue, and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in injury.” (*Goldman v. Chapman*, 44 AD3d 938, 939 [2d Dept 2007]).

To sustain a claim for reverse veil piercing, Plaintiff must show that “(1) the owners exercised complete dominion of the corporation in respect to the transaction attacked; and (2) that such dominion was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*Conason v. Megan Holding LLC*, 25 NY3d 1 [2015]). As the Court of Appeals observed, at the pleading stage “a plaintiff must do more than merely allege that [defendant] engaged in improper acts or acted in ‘bad faith’ while representing the corporation” (*East Hampton Union Free School District v. Sandpebble Builders Inc.*, 16 NY3d 775 [2011]).

Here, veil piercing requires dominion that was used to commit a fraud. Given that Plaintiff’s fraud allegations were dismissed, it cannot now attempt to reintroduce fraud as an essential element of a different theory, such as reverse veil piercing. Furthermore, the Amended Complaint states, in conclusory fashion, that “Salamon exercised her dominion over 1152 53 Management LLC in effectuating the transfer of ownership of the Premises to fraudulently avoid [Old Republic’s] impending judgment” (NYSCEF Doc. No. 99, ¶31), and “despite transferring ownership of the Premises to [1152], [Salaman] never relinquished control of the Premises and she continues to reside therein.” However, Plaintiff does not sufficiently plead facts supporting the basis for this “dominion” or “control” or “only nominal transfer” beyond Salamon’s alleged residence at the Property.

Accordingly, it is

ORDERED that Defendant Salamon’s motion to dismiss Plaintiff Old Republic’s Amended Complaint (Mot. Seq. 4) is **GRANTED TO THE EXTENT** of dismissing the Third, Fifth, and Sixth Causes of Action and the reverse veil piercing claim; it is further

ORDERED that Defendant 1152's motion dismiss all claims for piercing the corporate veil and the Third, Fifth, and Sixth Causes of action in the Amended Complaint (Mot. Seq. 5) is **GRANTED**, it is further

ORDERED that Paragraph Nos. 28 through 33 of the Amended Complaint are stricken.

This constitutes the Decision and Order of the Court.

ENTER:



J.S.C.

Hon. Carolyn E. Wade
Supreme Court Justice

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