

Diehl & Diehl Corp. v Shorty's Clinton LLC

2025 NY Slip Op 33625(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 157058/2023

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

Diehl and Diehl Corp.

Plaintiff,

- v -

Shorty's Clinton LLC et al

Defendant.

-----X

INDEX NO. 157058/2023

MOTION DATE 05/05/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, the motion is granted in part.

Background

Plaintiff Diehl and Diehl Corp. owns a building on Clinton Street that contains a commercial space that was leased to corporate tenant defendant Shorty's Clinton LLC ("Tenant"). Tenant is owned by defendant J. Rice Edmonds ("Owner"). Shorty's Restaurants LLC ("Guarantor") signed the commercial lease as a guarantor. Lease negotiations took place over the course of several months leading up to May of 2022, and involved various financial disclosures shared between the parties. In March of 2023, the Tenant ceased to pay rent and Owner informed Plaintiff that both Tenant and Guarantor were insolvent. According to Plaintiff, the Owner received transfers from the Corporate Defendants during the time of insolvency and Plaintiff argues that the transfers of assets took place in an attempt to avoid the liabilities of the insolvent Corporate Defendants.

Plaintiff filed this underlying proceeding in July of 2023, with four causes of action asserted for breach of the lease, breach of the guaranty, ejectment, and fraudulent conveyance.

Defendants answered, and in December of 2023 they brought a motion to dismiss the complaint. During their response to that motion, Plaintiff uploaded a purported amended complaint to the docket in NYSCEF. In deciding that motion, this Court issued an Order dated May 06, 2024, that noted that the amended complaint had not been made as of right nor had permission from the Court been obtained, and therefore the amended complaint was not considered at that time. The May Order also dismissed the fraudulent conveyance claim for failure to state a cause of action.

Discussion

Plaintiff brings the present motion, seeking: 1) summary judgment on the first two causes of action in the original complaint; 2) leave to amend the complaint; and 3) leave to renew argument on the May Order to the extent it dismissed the claim for fraudulent conveyance. Defendants oppose. For the reasons that follow, the motion for summary judgment is granted as to liability, the motion to renew is denied, and the motion for leave to amend is granted in part as to the fourth cause of action and additional facts alleged.

Summary Judgment Is Granted as To Liability

Plaintiff in this motion is seeking summary judgment on the first two causes of action in the original verified complaint. These claims are for breach of the lease and breach of the guaranty, and Plaintiff is seeking to recover the liquidated arrears in the amount \$215,209.35. Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a

trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016].

The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Plaintiff has provided exhibits including an affidavit from one of their managing executives, attesting to his review of Plaintiff’s business records, an itemized rent statement, and pictures of the premises in question. Defendants oppose on the grounds that there are issues of material fact going to the amount of damages owed and whether the Good Guy Guarantee was breached. Turning first to the issue of whether liability against the Guarantor was established, Defendants argue that there are issues of fact going to the condition that the premises was left in, arguing that there could have been substantial compliance with the terms of the Guarantee. But by the terms of the agreements between the parties, if the Tenant was in default at the time of surrender the good guy provision of the Guarantee does not shield the Guarantor from liability. As all the material issues of fact that Defendants have raised go to the amount and calculation of damages, it does not appear disputed that Tenant was in default on the rent at the time of the surrender. While Defendants have not raised a material issue of fact that goes to liability for either Tenant or Guarantor, they have for the extent of damages. Therefore, summary judgment on the first two causes of action is granted as to liability, with damages to be determined separately.

Renewal Is Denied

Plaintiff seeks to renew argument of the May Order’s dismissal of the claim for fraudulent conveyance. That claim had been dismissed for failure to plead factual allegations, particularly going to the identity of the specific transactions that Plaintiff claims are fraudulent. Here, Plaintiff claims to have recently uncovered a UCC lien filed by Defendants in 2022 that

indicates a potentially fraudulent transfer. Defendants oppose on the grounds that all of Plaintiff's new facts were publicly available and could have been uncovered through due diligence.

A party may bring a motion to renew pursuant if it is "based upon new facts not offered on the prior motion that would change the prior determination" or if it can demonstrate that "there has been a change in the law that would change the prior determination." CPLR § 2221(e)(2). When bringing a motion to renew based upon new facts, the movant must show "reasonable justification for the failure to present such facts on the prior motion." CPLR § 2221(e)(3). Renewal is meant to be "granted sparingly" and the moving party must show that they did not fail to exercise due diligence. *Perretta v. New York City Tr. Auth.*, 230 A.D.3d 428, 432 (1st Dept. 2024). A motion to renew "must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew." *Venuti v. Novelli*, 179 A.D.2d 477, 478 (1st Dept. 1992).

Here, it is not disputed that the facts Plaintiff relies on in seeking leave to renew were publicly available. Plaintiff affirms that they uncovered the facts through conducting searches of public records *after* the previous motion to dismiss was decided. When information is readily available, a party cannot use that information as the basis for a motion to renew when there is no explanation offered as to why they did not obtain that information earlier. *Amtrust-NP SFR Venture, LLC v. Vazquez*, 140 A.D.3d 541, 542 [1st Dept. 2016]. Plaintiff could have uncovered the facts that they bring forth now earlier, with reasonable due diligence, and they have failed to offer an explanation as to why these searches were not conducted earlier. Therefore, the new facts offered cannot serve as the basis for a motion to renew, and that portion of this motion will be denied.

Delay Not Sufficient to Deny Leave to Amend

Plaintiff seeks leave to amend the complaint in order to add new claims for fraud and veil-piercing liability. Plaintiff bases these new claims upon information they claim to have recently learned, namely, settlements with other landlords that Plaintiff argues goes to Defendant's financial state at the time of the agreements at issue here, and a transfer of a security interest in assets to the Owner and his family members through a UCC lien filing in 2022. Defendants oppose on the grounds that Plaintiff has not established a reasonable excuse for the delay and that amendment would be futile. Although leave to amend is generally freely given, if there has been "an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay." *Oil Heat Inst. V. RMTS Assocs., LLC*, 4 A.D.3d 290, 293 [1st Dept. 2004]. This is especially true when there is an extend delay between the time that the plaintiff became aware of the basis for the claim and the motion is made. *See, e.g., Pecora v. Pecora*, 204 A.D.3d 611, 612 [1st Dept. 2022].

The sworn affidavit of Plaintiff's managing executive states that the information related to the allegedly fraudulent transfer was recently "revealed to Plaintiff through a search of lien recovers for Defendant Guarantor" conducted after the prior motion to dismiss in this action. An argument could be made that Plaintiff should have searched and become aware of the publicly available information that forms the basis for the new claims they seek to assert. But even when a party "should have been aware of the facts and theories" that form the basis of the new claim asserted, the First Department has found that "delay alone is not a sufficient ground for denying leave to amend." *Johnson v. Montefiore Med. Ctr.*, 203 A.D.3d 462, 463 [1st Dept. 2022]. Furthermore, seeking leave to amend before the note of issue has been filed (as is the case here) supports granting the requested leave. *See, e.g., Kim v. White & Case LLP*, 216 A.D.3d 408, 408

[1st Dept. 2023]. The Court will therefore proceed to the futility argument made by Defendants and examine the merits of the proposed new claims.

The Fraudulent Inducement Claim Is Not Pled with Merit

There are three main additions in the proposed amended complaint: 1) a fraud claim related to the leasing transaction between the parties; 2) a claim for fraudulent conveyance related to the UCC lien and asset transfer; and 3) liability now asserted against the Owner based on a piercing the corporate veil theory. Defendant argues that all three additions fail as futile. Turning first to the fraud claim related to the leasing transaction, Plaintiff asserts that they were fraudulently induced into entering into the 2022 leasing transaction based on false representations and omissions regarding the financial state of Tenant and Guarantor. The proposed amended complaint alleges that during the financial disclosure period leading up to the lease signing, Plaintiff was informed that there was not much current financial information for Tenant and Guarantor available. They claim to have relied on general statements about the rosy financial state of the two companies, only to discover later (through a search of public court filings) that the business had been in default of rental obligations at other locations for years.

Plaintiff's fraud claim suffers from several deficiencies. First, fraud has a heightened pleading standard. While the proposed amended complaint refers several times to misrepresentations and omissions, it is light on specifics as to exactly what misrepresentations and omissions were made to Plaintiff during the financial disclosures. Plaintiff alleges that Defendants attempted to "foster an understanding in Landlord that the companies were particularly creditworthy, financially stable", and so on. But statements that consist of "mere puffery, opinions of value or future expectations" cannot sustain a cause for fraud. *Sidamonidze v. Kay*, 304 A.D.2d 415, 416 [1st Dept. 2003]. This is especially true when the party asserting

fraudulent inducement fails to “provide any evidence of any efforts undertaken to ascertain the veracity of these statements.” *Kato Intl. LLC v. Gerard Fox Law, P.C.*, 195 A.D.3d 516, 517 [1st Dept. 2021]. Furthermore, sophisticated parties (such as Plaintiff) have a duty to verify a party’s representations “through an examination of the business’s books and records” and take “reasonable steps to protect itself against deception.” *Basis Yield Alpha Fund Master v. Stanley*, 136 A.D.3d 136, 141 – 42 [1st Dept. 2015]. Here, Plaintiff has (by their own allegations) failed to identify any financial representation that was false outside of mere puffery about the general value of the companies, accepted without investigation of the Defendants’ representations as to why current financial information was not being provided, and failed to conduct the relevant searches of public information until Tenant defaulted on the rent. The proposed amended complaint fails to state a valid claim for fraudulent inducement because it is not pled with the requisite specificity and has not pled justifiable reliance. Therefore, amendment as to this claim would be futile.

The Fraudulent Transfer Claim Is Validly Pled

Plaintiff’s proposed amended complaint states a new claim for fraudulent transfer based on the recently discovered UCC filing. They assert that in December of 2022, the Owner granted himself and family members a security interest in the assets of the Guarantor, which was perfected through a UCC filing statement. Plaintiff argues that the Defendant Companies were insolvent at this time, and that this transfer of assets violates the Uniform Voidable Transactions Act and the New York Debtor Creditor Laws. Defendants move to dismiss this claim on the basis that it fails to plead sufficient facts. But the proposed amended complaint identifies a specific action, UCC filing, and individuals involved in the allegedly fraudulent transfer. Defendants also argue that the UCC filing in question was a legitimate business action, but that

involves questions of fact and credibility that would be inappropriate to delve into at this stage. Defendants have not shown that the proposed amended complaint is wholly without merit as regards to the fraudulent conveyance claim. While, as discussed above as regards the renewal portion of this motion, Plaintiff reasonably could have discovered this information before now, that does not defeat a motion for leave to amend. Furthermore, because the claim is timely, for reasons of judicial efficiency the Court will grant leave to amend the complaint as to the new claim for fraudulent conveyance.

The Proposed Amended Complaint Fails to Properly Plead Veil-Piercing Liability

In the proposed amended complaint, Plaintiff seeks to impose liability for their claims on the Owner through a theory of piercing the corporate veil. They argue that the Owner must have exploited his dominion and control over the Defendant Companies such that they committed the above alleged fraud. Domination and control are not enough, however, and a party asserting this legal theory bears the “heavy burden” of demonstrating that the business entity in question was “dominated as to the transaction attacked and that such domination was the instrument of fraud.” *Max Markus Katz, P.C. v. Sterling Natl. Bank*, 206 A.D.3d 533, 534 [1st Dept. 2022]. Furthermore, the fraud must be alleged with particularity. *Id.* Given that, for the reasons stated above, the claim for fraudulent inducement fails to state a viable claim, there can be no veil-piercing liability for Owner as to that claim. The issue then becomes whether the proposed amended complaint sufficiently alleges facts that support veil-piercing liability as to the fraudulent conveyance claim.

The proposed amended complaint alleges that Owner used his control over the Defendant Companies to transfer assets to himself and other interested insiders, citing to the 2022 UCC filing. Plaintiff here has alleged that Owner had control and dominion over the Defendant

Companies, and that the Defendant Companies engaged in a fraudulent conveyance that injured Plaintiff. What Plaintiff has not alleged is that Owner abused the corporate form in these transactions. Defendants argue that a valid claim must allege other facts going to a disregard of the corporate form in order to pierce the corporate veil. In *Manshion*, the court there found there was a valid imposition of liability when there was evidence that the defendant “dominated and controlled his corporations, disregarded corporate formalities, used corporate funds to pay his personal bills” among other wrongs. *Manshion Joho Ctr. Co., Ltd. v. Manshion Joho Ctr., Inc.*, 24 A.D.3d 189, 190 [1st Dept. 2005]. In *Simplicity*, the court found that a proper claim for liability through piercing the veil was established when there was evidence of “the absence of the formalities and paraphernalia of corporate existence of Tru-Color; its inadequate capitalization; an overlap in ownership” and other abuses of the corporate form. *Simplicity Pattern Co. v. Miami Tru-Color Off-Set Serv.*, 210 A.D.2d 24, 25 [1st Dept. 1994].

While there is case law in support of the argument that a plaintiff must show a disregard of the corporate form in order to succeed in imposing liability under piercing the corporate veil, it is not clear that such allegations are needed at this stage in order to state a valid claim. The Court of Appeals has held that “piercing the corporate veil requires a showing 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 the plaintiff’s injury.” *Morris v. State Dep’t of Taxation & Fin.*, 82 N.Y.2d 135, 141 [1993]. They further noted that “complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business.” *Id.* Here, Plaintiff has alleged that Owner used his control over the Defendant Companies to fraudulently transfer assets to himself and his

family members in a manner that injured Plaintiff at Defendant’s personal enrichment. It cannot be said at this stage that such a claim is wholly without merit. Therefore, leave to amend the complaint to assert claims against Owner under a veil-piercing theory will be granted solely to the extent of the fraudulent conveyance claim. Accordingly, it is hereby

ADJUDGED that summary judgment as to liability on the first two causes of action is granted to plaintiff Diehl & Diehl Corp. and against defendants Shorty’s Clinton LLC and Shorty’s Restaurants LLC; and it is further

ORDERED that an assessment on damages be held at the conclusion of this matter; and it is further

ADJUDGED that the motion for leave to renew argument is denied; and it is further

ORDERED that the motion to amend the complaint is granted in part as to the additional facts alleged and the fourth cause of action for fraudulent conveyance and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants are directed to serve an answer to the amended complaint within 20 days after service of a copy of this order with notice of entry.

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9/26/2025
DATE

LYLE E. FRANK, 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