Lindenhurst Fabricators, Inc. v Corporate Commons Three, LLC
2025 NY Slip Op 35630(U)
January 13, 2025
Supreme Court, Richmond County
Docket Number: Index No. 150266/2022
Judge: Lizette Colon
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.

At IAS Part 21M of the Supreme Court of the State of New York, held in and for the County of Richmond, at the Courthouse, located in Staten Island, City and State of New York on the 13th day of January 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
--X

Index No: 150266/2022

Lindenhurst Fabricators, Inc. and Premier Steel Inc,

Plaintiff(s),

-against-

DECISION & ORDER

Corporate Commons Three, LLC, Moore Group Corporation a/k/a MOOREGROUP CORPORATION, JOHN MOORE, John Doe One Through John Doe Ten they being tenants, occupants or parties having a mortgage, judgment lien, warrant or other encumbrance affecting the premises, all of which are subordinate to plaintiff's

(Mot seq # 15)

Defendant(s)
--X

Plaintiff, PREMIER STEEL INC., by Notice of Motion dated August 12, 2024 (MS#15), moves for summary judgment against defendant, MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION, on its FIRST and SECOND Causes of Action, in the sum of $703,009.61, plus interest from March 24, 2020, with costs and disbursements; and as against defendant, JOHN MOORE, on its THIRD and FOURTH Causes of Action, in the sum of $703,009.61, plus interest from March 24, 2020, with costs and disbursements; and to dismiss the 15 Affirmative Defenses and three counterclaims raised in defendants' answer to the amended complaint. Defendants, MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION and JOHN MOORE, have filed no papers in opposition to the motion.

The Court had previously scheduled an in-person settlement conference/oral argument for

October 17, 2024. On the afternoon of October 16, 2024, Timothy Kilgannon, Esq., attorney for defendants, MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION and JOHN MOORE, indicated that he had allegedly developed a health issue and requested an adjournment to move to be relieved as counsel. The Court accordingly adjourned the in-person appearance to January 8, 2025, at 10:00 am, and allowed Mr. Kilgannon until November 22, 2024, to move to be relieved as counsel. No motion to be relieved as counsel was made by November 22, 2024. On the afternoon of January 7, 2025, Mr. Kilgannon again represented to opposing counsel that he planned to move to be relieved as counsel, and that a per diem attorney would be appearing at the January 8, 2025 court appearance.

On January 8, 2025, counsel for Lindenhurst Fabricators, Inc. and Premier Steel Inc, along with their respective clients, and counsel for Corporate Commons Three, LLC, all appeared in person. Neither Mr. Kilgannon, the alleged per diem attorney, or his client appeared. The Court proceeded to hear oral argument on the pending motions. Following said oral argument, and after due consideration, the Court finds that Plaintiff, PREMIER STEEL INC., has established the merits of its claims and that its motion should be granted in all respects.

As to its First Cause of action, a *prima facia* case for breach of contract against defendant, MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION, exists based on PREMIER's unpaid invoice of March 24, 2020 for $703,009.61, and the affidavit of its principle, George McNulty, dated August 12, 2024, detailing each of the charges. Likewise, on PREMIER's Second Cause for an account stated, a *prima facia* case is established based upon the March 24, 2020 invoice that was accepted by defendant without contesting any of the amounts or charges contained therein.

As to PREMIER's third cause of action to pierce the corporate veil of the

MOOREGROUP CORPORATION and hold its principle, JOHN MOORE, personally liable for the debt, it was established that Mr. MOORE exercised total control or domination of the corporation, used said control for fraud and in furtherance of his personal interest, and that such conduct is the proximate cause of plaintiff's injury. In particular, Mr. MOORE distributed corporate funds paid to the MOOREGROUP CORPORATION to other corporations and entities in which he or family members has an interest. These include the MOORE'S OF BALDWIN, LLC. and ONE JEFFERSON PLACE CORP/DBA SONNY'S CANAL HOUSE, a bar and restaurant business. Moreover, at Mr. MOORE's deposition it was established that rather than paying his subcontractors on this construction project, Mr. MOORE used monies paid by the owner to instead pay personal expenses such as his life insurance policy, his personal credit card expenses and his son's college tuition. In addition, substantial amounts of monies were transferred to Mr. MOORE personally, as well as to another account he referred to as a 'holding account' but for which he did not provide bank records as required by this Court's previous orders.

As to PREMIER's fourth cause of action to hold JOHN MOORE personally liable pursuant to Article 3-A of the Lien Law, the law imposes personal liability upon a corporate principle for the diversion or misappropriation of trust fund monies. Section 75 of the Lien Law mandates certain record keeping requirements, and provides that the failure to keep the required books or records shall be presumptive evidence that the trustee has applied or consented to the application of trust fund monies for purposes other those of the trust. JOHN MOORE admitted at his deposition that he did not keep the required books or records. Moreover, the evidence shows that the MOOREGROUP CORPORATION and JOHN MOORE did indeed divert trust funds monies by applying payments received from the owner for purposes other than those of the trust and before payment to the statutory trust fund beneficiaries, Lindenhurst Fabricators, Inc. and Premier Steel Inc.

Accordingly, it is hereby **ORDERED** as follows:

(1) PREMIER STEEL INC. is awarded summary judgment on its FIRST and SECOND Causes of Action and may enter judgment with the Richmond County Clerk against MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION, in the sum of $703,009.61, plus interest from March 24, 2020, with costs and disbursements.

(2) PREMIER STEEL INC. is awarded summary judgment on its THIRD and FOURTH Causes of Action and may enter judgment with the Richmond County Clerk against JOHN MOORE, in the sum of $703,009.61, plus interest from March 24, 2020, with costs and disbursements.

(3) The affirmative defenses and Counterclaims raised by defendants, MOOREGROUP CORPORATION a/k/a MOORE GROUP CORPORATION and JOHN MOORE, in their answer to the amended complaint are dismissed.

ENTER

HON. LIZETTE COLON, JSC