

**Alon Baruch, LLC v David's Landscaping & Lawn  
Sprinklers Inc.**

2026 NY Slip Op 30496(U)

February 4, 2026

Supreme Court, Kings County

Docket Number: Index No. 518133/2023

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 84 of the Supreme Court of the State of New York, held in and for County of Kings, at the courthouse located at 360 Adams Street, Brooklyn, New York 11201 on the 4 day of February, 2026

**PRESENT: HON. CAROLYN E. WADE  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

\_\_\_\_\_  
ALON BARUCH, LLC, X

Plaintiff,

-against-

DAVID'S LANDSCAPING &  
LAWN SPRINKLERS INC. and  
JONATHAN DAVID,

Defendants,

\_\_\_\_\_  
X

**DECISION AND ORDER**

Index No.: #518133/2023

Mot. Seq. #1-2

Defendants, DAVID'S LANDSCAPING & LAWN SPRINKLERS INC. and JONATHAN DAVID ("Defendants"), bring this Motion (Mot. Seq. #1 and 2), pursuant CPLR §§ 3211(a)(1) and (a)(7) for this Court to: (1) dismiss Plaintiff's, ALON BARUCH, LLC ("Plaintiff") First Cause of Action (Breach of Contract) against the individual Defendant, Jonathan David, and (2) dismiss the Second Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing).

Based on the foregoing papers, NYSCEF Doc. Nos. 1-25, 33-39, 42, 47 and 48, and after oral argument, it is decided as follows:

**Factual Background**

Defendants assert that Plaintiff contracted with David's Landscaping, only, for certain landscaping work, pursuant to a Proposal, dated July 31, 2020.<sup>1</sup> Plaintiff concedes that it contracted with David's Landscaping. However, Plaintiff seeks to include Mr. Jonathan David in this action, under the theory of piercing the corporate veil. Plaintiff alleges Mr. David exercised complete domination over the corporate LLC and used his domination to commit a tortious wrong, which resulted in injury to Plaintiff, based on the following allegations: (a) bad-faith inducement, (b) abuse of corporate form, (c) admission of inadequate performance, and (d) avoidance of liability.

Defendants assert that Mr. David acted solely in his corporate capacity as an officer of David's INC., and is, thus, protected by the corporate form. Additionally, Defendants argue that Plaintiff's Second Cause of Action against Mr. David is duplicitous of the breach of the First Cause of Action, thus warranting dismissal.

<sup>1</sup> See NYSCEF Doc. No. 39. Jonathan David Affidavit.

## Legal Standards

### *Dismissal*

Under CPLR § 3211(a)(1), dismissal is appropriate “only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” See Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002). Under CPLR § 3211(a)(7), dismissal is warranted once the Court determines that the proponent of the pleading has failed to state a sufficient cause of action, not, whether it has stated one. See Columbo v. Chase Manhattan Auto. Fin. Corp., 297 AD2d 327, 328, 746 NYS2d 392 (2002).

### *Piercing the Corporate Veil*

To pierce the corporate veil and hold a Defendant personally liable, Plaintiff must establish that the Defendant (1) exercised complete dominion and control over the corporation, and (2) used that dominion and control to commit a fraud or wrong, which resulted in injury to Plaintiff. See Seuter v. Lieberman, 229 A.D.2d 386, 386, 644 N.Y.S.2d 566, 567 (1996). See also Morris v. New York State Dep’t of Tax’n & Fin., 82 N.Y.2d 135, 142, 623 N.E.2d 1157, 1161 (1993). Courts will not pierce the corporate veil merely to reach a shareholder, as the corporate form is a legitimate means of limiting personal liability and corporations are legal entities, which are separate and distinct from their shareholders. See Total Care Health Indus., Inc. v. Dep’t of Soc. Servs., 144 A.D.2d 678, 678, 535 N.Y.S.2d 15, 17 (1988) citing Port Chester Elec. Constr. Corp. v. Atlas, 40 N.Y.2d 652, 656, 357 N.E.2d 983 (1976).

However, Courts do have the ability to disregard the corporate form in order “to prevent fraud or to achieve equity.” See Int’l Aircraft Trading Co. v. Manufacturers Tr. Co., 297 N.Y. 285, 292, 79 N.E.2d 249, 252 (1948). Thus, veil piercing is appropriate where a shareholder uses the corporation to conduct personal business, distinct from corporate business, in which case a shareholder will be held liable for acts of the corporation under general agency principles. See Walkovszky v. Carlton, 18 N.Y.2d 414, 417, 223 N.E.2d 6, 8 (1966).

### *Implied Covenant of Good Faith and Fair Dealing*

A party pleading a cause of action for the breach of the implied covenant of good faith and fair dealing bears a heavy burden of proof, as the complaining party must adequately allege the other party to the contract injured the complaining party’s right to receive the benefits of the agreement. See EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 22, 832 N.E.2d 26, 33 (2005) (Court dismissed Plaintiff’s claim under CPLR §3211, as there was not sufficient evidence to support Plaintiff’s contention that they did not receive the benefit of their agreement with Defendant). See also Amcan Holdings, Inc. v. Canadian Imperial Bank of Com., 70 A.D.3d 423, 426, 894 N.Y.S.2d 47, 49–50 (2010) (Court dismissed Plaintiff’s claim of alleged breach of implied covenant of good faith and fair dealing the claim was deemed duplicative of Plaintiff’s breach of contract claim, as both claims arose from the same facts). Thus, there cannot be a valid contractual provision governing the subject matter since such a contractual provision precludes recovery under the implied covenant of good faith and fair dealing.

## Analysis

### *Piercing the Corporate Veil*

Defendants have established that Plaintiff's Complaint lacks the necessary showing of domination and control sufficient to pierce the corporate veil of David's Landscaping to hold Mr. Jonathan David liable. See Seuter v. Lieberman, 229 A.D.2d 386, 386, 644 N.Y.S.2d 566, 567 (1996). Plaintiff asserts Mr. David exercised both "dominion and control" over the corporation. However, Plaintiff failed to provide evidence of the allegations describing any element of "domination and control" of the corporation, sufficient to pierce the corporate veil. Plaintiff's Complaint simply alleges the existence of a contract between themselves and "David's Landscaping" for the proposed amount of \$290,000.00,<sup>2</sup> the alleged deficient performance of the contract by David's Landscaping and resultant alleged damage. As support, Plaintiff contends that the following text message from Mr. David's is evidence of "domination and control" of the corporation, and is sufficient for piercing the corporate veil:

"I understand your side if the situation regarding how we did the roof pavers. I'm a basic landscaping guy, I have not had the many years of experience like other people."<sup>3</sup>

Plaintiff further posits that piercing the corporate veil is a fact-intensive question, thus, inappropriate for resolution at this juncture.<sup>4</sup> However, the proffered text message does not establish that Mr. David induced Plaintiff into the contract. Mr. David's statement for lacking the requisite "experience" and skill to perform the requirements of the contract appears to be, at most, an acknowledgement of his failure to perform the contract. The text message does not establish a clear and unequivocal acceptance of personal liability to Mr. David.

Additionally, Plaintiff also failed to establish that Mr. David engaged in a sufficient wrongful or unjust act toward Plaintiff, which would warrant corporate veil piercing. See Seuter v. Lieberman, 229 A.D.2d 386, 386 (1996) (Court concluded that veil piercing the Defendant was not proper, as there was insufficient evidence of a wrongful or unjust act that injured Plaintiff. See also Port Chester Elec. Constr. Corp. v. Atlas, 40 N.Y.2d 652, 656, 389 N.Y.S.2d 327, 357 N.E.2d 983 (1976) (Court concluded that veil piercing the Defendant was not proper since each Defendant corporation was pursuing its separate corporate business, with separate identities, and only corporate business affairs was conducted opposed to personal business affairs). Thus, without a showing of domination over the corporation by Mr. David, in addition to showing that Mr. David used the corporation for his personal affairs, the corporate veil cannot be pierced.

Additionally, it has been established that a "simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil." See TMCC, Inc. v. Jennifer Convertibles, Inc., 176 A.D.3d 1135, 1136, 111 N.Y.S.3d 102, 104 (2019) quoting Bonacasa Realty Co. v Salvatore, 109 A.D.3d 946, 947 (2013). Here, Plaintiff's claims do not

<sup>2</sup> See NYSCEF Doc. No. 2, Pg. 2. Contractual Proposal.

<sup>3</sup> See NYSCEF Doc. No. 25. See also NYSCEF Doc. No. 42, Pg. 3 ¶3. Plaintiff's Memorandum in Opposition.

<sup>4</sup> See also NYSCEF Doc. No. 42, Pg. 3 ¶3. Plaintiff's Memorandum in Opposition.

appear to rise beyond a simple breach of contract. Thus, piercing the corporate veil is not warranted at this juncture.

*Implied Covenant of Good Faith and Fair Dealing*

Plaintiff's Second Cause of Action is duplicative of Plaintiff's First Cause of Action and must be dismissed. Plaintiff's Complaint contains details extremely similar against Defendant, as both claims arise from the same facts. Additionally, Plaintiff has not sought any relief as to the Second Cause of Action, as stated in the Complaint. See Amcan Holdings, Inc. v. Canadian Imperial Bank of Com., 70 A.D.3d 423, 426, 894 N.Y.S.2d 47, 49-50 (2010) (Plaintiff's claim of implied covenant of good faith and fair dealing was deemed duplicative of Plaintiff's breach of contract claim, as both claims arose from the same facts). As such, Plaintiff has not met his burden of proof, and thus, Plaintiff's Second Cause of Action warrants dismissal.

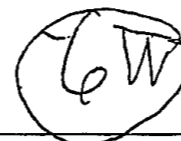
Accordingly, it is

**ORDERED**, Plaintiff's Complaint, as against Defendant, Jonathan David, in his individual capacity, is **DISMISSED**, without prejudice, pursuant to CPLR 3211(a)(1) & (7); and it is further

**ORDERED**, Plaintiff's Second Cause of Action, "Count II - Breach of Implied Covenant of Good Faith and Fair Dealing (In The Alternative to Count I)" as against Defendants, Jonathan David and David's Landscaping, is **DISMISSED**, with prejudice, pursuant to CPLR 3211(a)(7).

**This constitutes the decision and order of this Court.**

ENTER:



Carolyn E. Wade, J.S.C.

**FILED**

FEB 09 2026

**KINGS COUNTY CLERK'S OFFICE**