IN THE
COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BERNELL HAILEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. CPU4-17-000964
	)	
RACE PROVEN MOTORSPORTS, FRAN SCHATZ, and BILL SCHATZ,	)	
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER
ON DEFENDANTS' MOTION TO DISMISS

Submitted: September 19, 2017
Decided: October 23, 2017

Brian T.N. Jordan
704 N. King St., Ste. 600
Wilmington, DE 19801
Attorney for Plaintiff

Douglas A. Shachtman
1200 Pennsylvania Ave., Ste. 302
Wilmington, DE 19806
Attorney for Defendants

WELCH, J.

This case involves the alleged unauthorized repair by Defendants Race Proven Motorsports, Fran Schatz, and Bill Schatz (collectively "Defendants") of a 2006 Pontiac GTO owned by Plaintiff Bernell Hailey ("Plaintiff"). On June 30, 2017, the Court heard Defendants' Motion to Dismiss Plaintiff's Complaint under *res judicata* and failure to state a claim, reserving its decision on the motion. Subsequent to the hearing, the Court directed counsel to submit supplemental briefing. This is the Court's Decision on the Motion after consideration of the pleadings, oral argument, and supplemental briefing.

PROCEDURE AND FACTS

At this phase of the proceedings, the Court will briefly summarize the procedure and facts relevant to the determination of this motion.

In 2014, Plaintiff contracted with Race Proven Motorsports ("RPM") for repairs to Mr. Hailey's 2006 Pontiac GTO (the "vehicle"). RPM made certain repairs and Plaintiff made payments to RPM—totaling $15,150.00. After the two parties exchanged communications on the repairs that Plaintiff desired, totaling $13,305.00, Plaintiff claimed certain repairs were improperly performed and refused to make further payments on his account. At this time, RPM began charging Plaintiff for storage of the vehicle.

On June 20, 2016, after receiving no further payments, Defendants filed an Application to Conduct a Lien Sale on the vehicle in JP Court, seeking permission to sell the vehicle. The grounds for the claim were "Repairs, storage."[1] On August 19, 2016, the JP Court issued service by certified mail, which was returned. Defendants subsequently gave public notice and filed an affidavit attesting to service by publication.

[1] See Defendant's Motion to Dismiss, Exhibit A, which contains a copy of Defendants' Application to JP Court to conduct a lien sale, noting that the total amount of the claim is $15,000 for $5,115 in outstanding repair costs, and 692 days of storage at a rate of $55 per day, totaling $38,060 in storage fees.

The JP Court granted the Authorization for a Lienholder's Sale on September 26, 2016.[2] RPM filed confirmation of advertising of the sale. According to the Disposition of Proceeds from Defendants filed with the Court, the car was sold at auction on September 29, 2016 and the JP Court sent Plaintiff notice of the sale.[3]

On February 27, 2017, Plaintiff filed a Complaint in the Court of Common Pleas against Defendants, alleging that they unlawfully modified the vehicle, which resulted in damage to the vehicle's engine. Plaintiff asserts that he paid $15,150.00 prior to Defendants completing the modification of the vehicle. Because Defendants allegedly made modifications that Plaintiff did not agree to, and those modifications "caused catastrophic damage" to his vehicle's engine, Plaintiff refused to pay Defendants the remaining balance for the vehicle. Plaintiff seeks $46,208.13 in damages for Defendants' violation of the Auto Repair Fraud Prevention Act.

On April 12, 2017, Defendants filed the instant Motion to Dismiss pursuant to Rule 12(b)(6), arguing that Plaintiff's action is barred *inter alia* by *res judicata* and failure to state a claim. On June 15, 2017, Plaintiff filed his response to Defendants' Motion to Dismiss. On June 30, 2017, a hearing was convened on Defendants' Motion to Dismiss. Following the hearing, the Court requested supplemental briefing. Plaintiff submitted his Opening Brief on July 20, 2017.[4] Defendants filed their Answering Brief on August 7, 2017.[5] Plaintiff then filed his Reply Brief on September 19, 2017.[6]

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[2] *See id.*, Exhibit C (a copy of the JP Court's grant of authorization to conduct a lienholder's sale of the Plaintiff's vehicle).
[3] *See id.*, Exhibit C (Disposition of Proceeds filed with JP Court, noting that the final sale price of the vehicle was for $0). In Plaintiff's *pro se* Complaint, he alleges that Defendants received $12,000 for the vehicle.
[4] *See* Plaintiff's Opening Brief.
[5] *See* Defendants' Answering Brief.
[6] *See* Plaintiff's Reply Brief.

PARTIES' CONTENTIONS

Defendants assert that Plaintiff's claim is barred by *res judicata* because (1) the JP Court had jurisdiction over the prior claim, (2) Plaintiff and RPM were both parties to the prior action and the additional Defendants are in privity with the parties, (3) the cause of action is the same, (4) the prior issues in the JP Court Action were decided adversely against Plaintiff, and (5) the prior adjudication was final. Moreover, Defendants argue that any claims Plaintiff brings regarding the exercise of the garage keepers' lien, or contesting the amount of the repair or storage charge upon which the lien was based, are also barred because *res judicata* extends to all claims a party *could have* asserted in the prior proceeding. Finally, Defendants argue that Plaintiff cannot sue Defendants Bill Schatz and Fran Schatz because agents of corporations are not personally liable, and the Complaint fails to distinguish their actions from RPM's actions. Defendants note that only the Court of Chancery has jurisdiction to pierce the corporate veil and seek judgment against shareholders or officers of a corporation.

Plaintiff retorts that *res judicata* does not apply because his claim was greater than the $15,000 jurisdiction limit of the JP Court, and 10 *Del. C.* § 9536(b) does not require a defendant to file a counterclaim that exceeds $15,000 in JP Court. Plaintiff further asserts that RPM's corporate status does not shield Defendants Bill Schatz and Fran Schatz from liability because Plaintiff's claims are tortious, and the Personal Participation Doctrine does not allow corporate officers to be shielded from tort claims if the Plaintiff shows that the officer "directed, ordered, ratified, approved, or consented to the tortious act."

LEGAL STANDARD

On a motion to dismiss, the Court "'must determine whether it appears with reasonable certainty that, under any set of facts which could be proven to support the claim, the plaintiffs

would be entitled to relief.'"[7] In making this determination, the Court is limited to consider only facts contained within the four corners of the complaint, and must accept all well-pled allegations as true.[8] In applying this standard, the Court will draw every reasonable factual inference in favor of the non-moving party.[9] While the Court "is required to accept only those 'reasonable inferences that logically flow from the face of the complaint,' [it] 'is not required to accept every strained interpretation of the allegations proposed by plaintiff.'"[10] Ultimately, "[d]ismissal is warranted only when 'under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.'"[11]

DISCUSSION

I. Delaware Law Allows Plaintiff to Proceed with His Claims in the Court of Common Pleas.

Pursuant to Delaware law, Plaintiff is permitted to file his tort claims, seeking damages that exceed JP Court's civil monetary jurisdictional limit, in this Court as a new claim.

A. Res judiciata does not bar Plaintiff's tort claims based on a violation of the Auto Repair Fraud Prevention Act.

Plaintiff is not barred from litigating his present claims before this Court based on the doctrine of *res judicata*. Attempting to prevent repetitive litigation, the doctrine of *res judicata* asks:

> (1) did the court making the prior adjudication have jurisdiction over the subject matter of the suit and the parties to it; (2) are the parties to the second action parties or privies of parties to the first action; (3) is the present cause of action the same as the prior case or were the issues necessarily decided in the prior action

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[7] *Steila v. Steila*, 2009 WL 2581887, at *1 (Del. Com. Pl. Aug. 20, 2009) (quoting *Mortgage Electronic Registration Sys., Inc. v. Haase & Flanagan*, 2006 WL 1454807, at *1 (Del. Super. May 19, 2006)).
[8] *Bowden v. Pinnacle Rehab. & Health Ctr.*, 2015 WL 1733753, at *1 (Del. Super. Apr. 8, 2015) (citing *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. 2009)).
[9] *Dept. of Labor v. Brady*, 2010 WL 8706963, at *2 (Del. Com. Pl. Mar. 23, 2010).
[10] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2003)).
[11] *Bowden*, 2015 WL 1733753, at *1 (citing *Thompson v. Medimmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. 2009)).

> the same as those raised in the pending case; (4) were the issues in the prior action decided adversely to the contentions of the plaintiffs in the pending case; and (5) is the prior judgment a final personal judgment in favor of the defendant.[12]

Res judicata is intended to "'provide a definite end to litigation, prevent vexatious litigation and promote judicial economy.'"[13] The doctrine is transactional in nature; that is, it applies to claims that were raised below "or should have been raised in a court of competent jurisdiction."[14] The Superior Court has found *res judicata* preventative in cases where JP Court litigants seek a second bite at the apple in Delaware courts.[15]

Plaintiff is not seeking a second bite of the apple. Plaintiff's claims in his *pro se* Complaint that Defendants "made unauthorized changes to the engine," these modifications "caused catastrophic damage to the engine," and that Defendants "were unable to produce printed reports of engine settings," which are claims under Delaware's Auto Repair Fraud Prevention Act, 6 *Del. C.* § 4901A *et al.*[16] While these claims concern the vehicle, these tort claims are not duplicative of matters addressed below. Thus, Defendant's contention that Plaintiff's action amounts to a collateral attack of the underlying JP Order is unfounded.[17]

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[12] *Elder v. El Di, Inc.*, 1997 WL 364049, at *7 (Del. Super. Apr. 24, 1997) (quoting *Playtex Family Prod. v. St. Paul Surplus Lines Ins. Co.*, 564 A.2d 681, 683-84 (Del. Super. 1989)).
[13] *Newark Shopping Ctr. Owner, LLC v. Pizza Univ. of Delaware, Inc.*, 2016 WL 3951719, at *2 (Del. Super. July 14, 2016) (quoting *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009)).
[14] *See id.* (internal quotation marks omitted).
[15] *See generally Newark Shopping Ctr. Owner, LLC*, 2016 WL 3951719; *Jezyk v. Brumbaugh*, 1995 WL 264555 (Del. Super. Apr. 19, 1995).
[16] Plaintiff's Complaint at 1.
[17] Defendant relies on *Lismore v. Fed. Nat'l Mortgage Ass'n*, for the proposition that Plaintiff is contravening Delaware law by engaging in a collateral attack of the underlying matter. However, *Lismore* is inapplicable. First, *Lismore* involved a plaintiff appealing to the Supreme Court after failing to object to the Superior Court granting a petition for writ of possession. *See Lismore v. Fed. Nat'l Mortgage Ass'n*, 74 A.3d 654, 2013 WL 4538363, at *1 (Del. Aug. 23, 2013) (TABLE). Second, the Supreme Court specifically noted that, "Delaware law provides that confirmation of a foreclosure sale generally bars a collateral attack on the sale." *See id.* In other words, Delaware law has expressly addressed an appeal right regarding a foreclosure sale. Neither of these elements are present in this case.

Defendants are essentially asserting that Plaintiff's claims are barred by *res judicata* because the tortious claims *could have* been raised in the JP Court as a defense.[18] However, this Court has allowed claims that "arise out of same set of facts" to proceed.[19] In *McManus v. East Pointe Apartments*, the Superior Court held that a personal injury claim filed in the Court of Common Pleas based on the same insect infestation incident that was the basis for a retaliation counterclaim in JP Court was not barred by *res judicata*.[20] The Court specifically addressed Defendants' argument in the present case:

> Even though McManus' counterclaim arises out of the same set of facts and circumstances as those which gave rise to East Pointe's summary possession claims against her, her personal injury claim is not barred by *res judicata* because McManus was the defendant in the summary possession cases and the JP Court does not have jurisdiction over personal injury claims.[21]

McManus is patently applicable. Not only does JP Court not have civil jurisdiction over the amount or substance of Plaintiff's tortious claims in the present case, Plaintiff did not choose the JP Court as his forum in the former action.[22]

As the JP Court also has exclusive jurisdiction over summary possession actions, a comparison to summary possession cases in JP Court is instructive.[23] In summary possession cases, despite the JP Court's exclusive jurisdiction, the Superior Court has held that a litigant in JP Court can "split his or her cause of action and pursue the summary possession action in the JP

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[18] *See* Defendants' Answering Brief at 4-5. Defendants rely on *Orloff v. Shulman* for their position that potential actions based in the same transaction are also barred by *res judicata*. 2005 WL 3272355 (Del. Ch. Nov. 23, 2005). However, Defendants fail to note that the Court also states that the "extent to which separate events constitute one transaction is a matter to be determined flexibly by the court." *See id.* at *7 n.47.

[19] *See Dennis Boggi Enters., Inc. v. Murowany*, 2001 WL 1555672, at *3 (Del. Com. Pl. Jan. 21, 2001) (allowing claims for breach of contract and negligence in the use of faulty materials for a roof installation to be separated from a claim of negligent installation of the roof).

[20] *McManus v. East Pointe Aparts.*, 2017 WL 1401330, at *2, 6 (Del. Super. Apr. 17, 2017).

[21] *See id.* at *6.

[22] *See id.* at *5. Relying on *Jankus v. Petroleum Equipment, Inc.*, the Superior Court also held that *res judicata* does not apply to the litigant with the same force when the litigant below was "forced into court" as a defendant. *See id.* at *6 (quoting *Jankus v. Petroleum Equip., Inc.*, 1996 WL 453329, at *1 (Del. Super. May 16, 1996)).

[23] *See Newark Shopping Ctr. Owner, LLC v. Pizza Univ. of Delaware, Inc.*, 2016 WL 3951719, at *2 (Del. Super. July 14, 2016).

Court while maintaining 'a plenary action between the same parties over the same lease in another court.'"[24] That is, JP Court's exclusive jurisdiction over certain claims stemming from factual circumstances does not prevent other claims stemming from those same circumstances. For instance, in *Newark Shopping Center Owner, LLC v. Pizza University of Delaware, Inc.*, Newark Shopping Center Owner, LLC ("NSC") filed an action for summary possession of the commercial property it leased and damages against Pizza University of Delaware, Inc. ("Pizza University") for failing to remain open, as required under Section 8.3 of the commercial lease agreement ("Lease").[25] NSC also sued William Keeney and Marcia Hepps ("Individual Defendants") as guarantees of the lease.[26] While NSC claimed damages of approximately $60,000, it demanded only the JP Court's jurisdictional limit of $15,000.[27]

The JP Court entered judgment in NSC's favor against only Pizza University; NSC received possession of the commercial space, $15,000.00 in damages, and costs.[28] In January 2013, NSC appealed the JP Courts decision to a three judge panel and the panel ultimately found in NSC's favor regarding the liability of the Individual Defendants.[29] In January 2016, NSC filed an original action in the Delaware Superior Court seeking damages arising from Pizza University and Individual Defendants' breach of the commercial lease agreement.[30] The Individual Defendants moved to dismiss based on the doctrine of *res judicata*.[31] Relating to damages that NSC could have received in the original JP Court action but for the JP Court's jurisdictional limit

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[24] *McManus*, 2017 WL 1401330, at *5 (quoting *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De Law Warr Hotel, Inc.*, 1996 WL 453329, at *1 (Del. Super. May 16, 1996); *Newark Shopping Ctr. Owner, LLC v. Pizza Univ. of Delaware, Inc.*, 2016 WL 3951719, at *2 (Del. Super. July 14, 2016)).
[25] *See Newark Shopping Ctr. Owner, LLC,* 2016 WL 3951719, at *1.
[26] *See id.*
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] *See id.*
[31] *See id.*

of $15,000.00, the Superior Court refused to grant NSC its requested damages.[32] Separating these requested damages from "additional damages" that were not ripe for the JP Court's review, the Court found NSC was not entitled to said damages "because NSC could have, but did not, split its Section 8.3 claim at the time of the JP Court Action."[33]

Similarly, in *Jezyk v. Brumbaugh*, the Superior Court found that defendants who sought summary possession and $17,000.00 in overdue rent in the JP Court and obtained a judgment of $5,000.00—the JP Court's jurisdictional limit prior to 1995—could not also assert a counterclaim for overdue rent as part of a Superior Court action.[34] The Superior Court analysis focused on the fact that Defendants could have split their claim for overdue rent in excess of $17,000.00 from the summary possession action proceeding before the JP Court, and file the rent claim in the Superior Court.[35] This Court sees no reason to diverge from this analogous Superior Court precedent.

B. The applicable statutes to Plaintiff's claims relating to storage fees and sounding in conversion do not require Plaintiff to bring these claims in the JP Court when the damage amount exceeds $15,000.

Defendants also argue that Plaintiff's claims in his *pro se* Complaint relating to storage fees and sounding in conversion must have been raised below according to the doctrine of *res judicata*. Defendants argue that because JP Court has exclusive jurisdiction over "Garage Keeper's Liens," as codified in 25 *Del. C.* § 3901 *et seq.*, and Defendants properly followed the procedure for conducting a sale to satisfy the lien by applying for such approval in JP Court, as described in 25 *Del. C.* § 3903, Defendants argue that Plaintiff failed to counter the lien claims brought by Defendants in the JP Court proceeding. Defendants believe that, instead of filing the

[32] *See id.* at *3.
[33] *See id.* at *3.
[34] *See Jezyk v. Brumbaugh*, 1995 WL 264555, at *11 (Del. Super. Apr. 19, 1995).
[35] *See id.* at *12.

present Complaint in this case, Plaintiff should have initiated a replevin action, outlined in 25 *Del. C.* § 3908, challenging the repair and storage costs and seeking return of the car.

Defendants are incorrect. Since Plaintiff's claims allege damages exceeding $15,000, Delaware law does not mandate that these claims be brought in the JP Court. Section 3908 states, in its entirety,

> The owners or other persons claiming an interest in the property, in addition to the right to a hearing as provided herein, shall have the right to file an action in replevin or detinue at any time in accordance with Chapter 95 of Title 10, and no bond shall be required to be posted as a prerequisite to the filing of such an action or the issuance of the writ.[36]

While Plaintiff *could* have brought a replevin action in JP Court and argued similar claims to the claims he argues in the action before this Court, he would have been limited to the JP Court's $15,000 jurisdictional limit.[37] Because of this limitation, Plaintiff was not required to bring such an action in JP Court—despite its grant of exclusive jurisdiction over replevin actions in garage keeper lien cases.[38]

Basic rules of statutory construction provide that "[i]f the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court's role is limited to an application of the literal meaning of those words."[39] Further, "[i]t is well-established that this court must give effect to a statute's plain meaning in order to implement the General Assembly's intent."[40] Whereas the statute Defendants rely on, 25 *Del. C.* § 3909, does not address filing

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[36] 25 *Del. C.* § 3908. Replevin is a "form of action which is employed to recover possession of personal chattels that have been unlawfully taken or detained by their owner." *Hitch v. Riggin*, 80 A. 975, 976 (Del. Super. 1911).
[37] *See Eaton v. Jeff White's Auto Inc.*, 2014 WL 5780708, at *2 (D. Del. Nov. 5, 2014) (finding for the plaintiff under the Auto Repair Fraud Prevention Act within the jurisdictional limit).
[38] 25 *Del. C.* § 3909; *see also Allstate Ins. Co. v. Rossi Auto Body, Inc.*, 787 A.2d 742, 743, 749 (Del. Super. 2001) (holding a prior version of § 3909 unconstitutional and noting that the JP Court retained "exclusive jurisdiction" over replevin actions in garage keeper lien cases "up to the jurisdictional monetary limit").
[39] *See In re Adoption of Swanson*, 623 A.2d 1095, 1096-97 (Del. 1993) (citing *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1244 (Del. 1985)).
[40] *Nelson v. Best, Inc.*, 768 A.2d 473, 478 (Del. Ch. 2000).

procedure in relation to Garage Keeper's liens, § 3903(e) states that should a hearing be requested during the JP Court proceeding, "the person requesting the hearing *may* present and have determined any defenses, setoffs, counterclaims, cross-claims, or third-party actions."[41] Likewise, the applicable section regarding counterclaims that seek damages exceeding $15,000.00, 10 *Del. C.* § 9536(b), states:

> If the defendant has any account, demand, or cause of action, against the plaintiff, exceeding $15,000, the defendant *may* bring it forward and plead it as a setoff as specified in subsection (a) of this section, or not, at the defendant's pleasure, and shall not, by neglecting so to plead it, lose such cause of action.[42]

Neither statute's language strikes the Court as ambiguous. BLACK'S LAW DICTIONARY defines "may" as "(1) to be permitted to; (2) to be a possibility."[43] This term is methodically chosen instead of other terms like "shall" ("has a duty to; more broadly, is required to") to indicate a legislative intent of litigant choice.[44] In fact, the Superior Court has found that "may" does not mean "must" when interpreting a similar provision under summary possession proceedings.[45] The legislature certainly did not intend a litigant to forever lose his or her right to bring a counterclaim exceeding $15,000.00 in a separate Delaware court. Defendants have failed to present case law or legislative history that support their contrary interpretation.

Indeed, not only is there no mandate in § 9536(b) that Plaintiff bring his claims during the JP Court proceeding ("at defendant's pleasure"), the statute explicitly protects the right of Plaintiff to bring those claims in the future (defendant "shall not, by neglecting so to plead it, lose such

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[41] 25 *Del. C.* § 3903(e) (emphasis added).
[42] 10 *Del. C.* § 9536(b) (emphasis added).
[43] BLACK'S LAW DICTIONARY at 1000 (8th ed. 2004).
[44] *Id.* at 1407.
[45] *El Di, Inc. v. Justice of the Peace Court*, 1998 WL 109823, at *8 (Del. Super. Feb. 20, 1998) (interpreting 25 *Del. C.* § 5709).

cause of action").[46] Therefore, a plain reading of the applicable statute does not prevent Plaintiff from filing his claims in this Court.

II. Plaintiff has not Failed to State a Cause of Action Against Defendants Fran and Bill Schatz as Individuals.

The Court will not dismiss Plaintiff's claims against Defendants Fran and Bill Schatz. At this pre-discovery phase of the proceeding, Plaintiff's *pro se* filing will be granted some leniency in accordance with Delaware's public policy considerations of hearing claims on their merits.[47] As noted above, Plaintiff's claims are based in tort and allege that Defendants engaged in actions which violated the Auto Repair Fraud Prevention Act. In tortious actions, the Superior Court has stated:

> [U]nder Delaware tort law, corporate officials may be held individually liable for their fraudulent tortious conduct, even if undertaken while acting in their official capacity. An agent who performs tortious fraud is not excused from personal liability for his actions solely on account of acting on behalf of a principal. This concept is embodied with the well-established personal participation doctrine. According to the personal participation doctrine, a corporate official cannot shield himself behind a corporation when he is an actual participant in the tort. Therefore, unlike a contractual fraud claim, the relevant question when examining a tortious fraud claim is whether or not the defendant personally participated in the tortious conduct.[48]

Hence, it appears piercing the corporate veil is not required "if the officer 'directed, ordered, ratified, approved or consented to the tort.'"[49] Based on the "liberal standard" at this phase—under "some conceivable set of facts"—the Court finds that Plaintiff has met

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[46] 10 *Del. C.* § 9536(b).
[47] *Damiani v. Gill*, 116 A.3d 1243, 2015 WL 4351507, at *1 (Del. July 14, 2015) (TABLE).
[48] *Sens Mech., Inc v. Dewey Beach Enters., Inc.*, 2015 WL 4498900, at *3 (Del. Super. June 23, 2015) (internal footnotes omitted).
[49] *Eden v. Oblates of St. Francis de Sales*, 2006 WL 3512482, at *8 (Del. Super. Dec. 4, 2006) (quoting *Heronemus v. Ulrick,* 1997 WL 719320, at *4-5 (Del. Super. Aug. 20, 1997) (implying that finding a corporate officer liable for tortious action does not require the piercing of the corporate veil).

his burden.[50] Therefore, the Court will not dismiss Defendants Fran and Bill Schatz from the action at this time.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED this 23 day of October, 2017.

John K. Welch, Judge

cc: Ms. Tamu White, Chief Civil Clerk

[50] *Yavar Rzayev, LLC v. Roffman*, 2015 WL 5167930, at *6 (Del. Super. Aug. 31, 2015).