Hudson-Spring Partnership, L.P. v P+M Design Consultants, Inc.
2013 NY Slip Op 33082(U)
March 15, 2013
Sup Ct, New York County
Docket Number: 652229/2010
Judge: Joan A. Madden
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INDEX NO. 652229/2010
RECEIVED NYSCEF: 04/08/2013

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

PRESENT: JOAN A. MADDEN
Justice

PART 11

Hudson - Spring Partnership, LP

Plaintiffs,

-v-

P + H Design Consultants, Inc.

Defendants.

INDEX NO. 652229/10

MOTION DATE ______

MOTION SEQ. NO. 006

MOTION CAL. NO. ______

The following papers, numbered 1 to _____ were read on this motion to/for ______________

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☒ No

Upon the foregoing papers, it is ORDERED that this motion is decided in accordance with the annexed Memorandum Decision + Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: March 15, 2013

HON. JOAN A. MADDEN
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-- X

HUDSON-SPRING PARTNERSHIP, L.P.,

Plaintiff,

-against-

P+M DESIGN CONSULTANTS, INC.,

Defendant.

-- X

Decision and Order
Index No. 652229/2010

Joan A. Madden, J.:

Plaintiff Hudson-Spring Partnership, L.P. ("Hudson") moves to amend its complaint to include, inter alia, a claim based on the theory of piercing the corporate veil.. Defendant P+M Design Consultants, Inc. ("P+M") opposes the motion, and cross moves for sanctions. For the reasons below, the motion is granted and the cross motion is denied.

BACKGROUND

This action to recover rents allegedly due and owing arises out of a landlord-tenant relationship between P+M, as tenant, and Hudson, as landlord. P+M leased a commercial space from Hudson pursuant to a lease agreement, which was extended twice. The second of these extension agreements was for a 10-year term, beginning January 1, 2006 at a monthly rate of $8,921 subject to annual increases (hereinafter the "Agreement"). Poulin + Morris, Inc. ("Poulin + Morris") is a corporation incorporated by the same principals as P+M. Hudson maintains that although Poulin + Morris was not a party to the underlying lease or the extension agreements, it was the actual occupant of the leased premises during the term of the Agreement and that P+M was simply a "shell" company formed for the sole purpose of paying rent to Hudson.

Under the Agreement, P+M had the right to terminate the lease on or after December 31, 2010, with a minimum of 180 days written notice to Hudson. Any termination prior to

December 31, 2010, required that P+M provide plaintiff with a minimum of 12 months written notice. On October 27, 2010, P+M sent an e-mail to Hudson, indicating that it would be vacating the premises prior to the end of the lease. P+M subsequently vacated the premises on or around November 1, 2010, in violation on the requirement that it provide 12 months notice. P+M allegedly did not make any more rent payments to Hudson after it moved out.

Hudson brought this action in which it asserted causes of action for breach of the lease, fraudulent conveyance pursuant to DCL §275, and for fraud against Richard Poulin and Douglas Morris who are principals of both P+M and Poulin+Morris, in their individual capacities.

By decision and order dated May 25, 2011, the court dismissed the third cause of action for fraud against Richard Poulin and Douglas Morris on the ground that the pleadings were insufficient to support the claim.

By decision and order dated April 23, 2012, this court dismissed the second cause of action for fraudulent conveyance on the grounds that the record contained no evidence of money being transferred from P+M to Poulin + Morris. The court also declined to search the record and grant summary judgment in Hudson's favor on the unpleaded theory that P+M was the alter ego of Poulin + Morris. The court noted that there were no factual allegations in the complaint to support this theory and that a "motion for summary judgment addressed to one claim or defense does not provide a basis for the court to search the record and to grant summary judgment on an unrelated claim or defense."

Hudson now moves for leave to amend its complaint to include allegations to pierce the corporate veil, and to assert claims for unjust enrichment, and use and occupancy.

According to the proposed amended complaint, Poulin + Morris, the John Does, and the John Doe Companies exercised complete dominion and control over P+M, which existed only as

a shell company for the sole purpose of shielding the true occupants of Hudson's premises from liabilities under the lease agreement (¶¶ 20, 25-26). Hudson alleges that P+M had no clients and did not conduct any legitimate business (¶ 22). Hudson further alleges that P+M was undercapitalized and that Poulin + Morris, the John Does, and the John Doe Companies funded P+M with contributions sufficient to only pay the obligations under the Extension and Assignment, taxes and other incidental expenses (¶¶ 21, 23-24).

Hudson argues that leave to amend should be granted as P+M will not be prejudiced by the amendment as no depositions have been taken and evidence supporting Hudson's theory of piercing the corporate veil was first revealed in connection with P+M's motion for summary judgment motion.

P+M counters that Hudson's allegations are legally insufficient. Specifically, P+M asserts that Hudson fails to plead all the requisite elements to pierce the corporate veil and that the allegations in the proposed amended complaint are conclusory and lacking in particularity. P+M also argues that res judicata bars the proposed claims as the court previously dismissed Hudson claim for relief under the Debtor and Creditor Law, which was based on the same facts as the proposed claims.

In response, Hudson contends that it has alleged sufficient facts, including that P+M was undercapitalized, existed as a shell company in order to avoid rent obligations and that Poulin + Morris exercised complete dominion and control over P+M, to support its theory of piercing the corporate veil. In fact, Hudson asserts that P+M's counsel even admitted that P+M existed solely to pay Hudson rent and that proof of undercapitalization exists and that the bank statements submitted with the prior motion support its allegations that P+M existed as a shell

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company and served only as an agent of Poulin + Morris to pay rent to Hudson. Hudson also argues that the doctrine of res judicata is inapplicable.

DISCUSSION

"Leave to amend a pleading should be 'freely given' (CPLR 3025(b)) as a matter of discretion in the absence of prejudice and surprise." Zaid Theatre Corp. v. Sona Realty Co., 18 A.D.3d 352, 355-56 (1st Dep't 2005)(internal citation and quotations omitted). That being said, however, "in order to conserve judicial resources, an examination of the underlying merits of the proposed cause of action is warranted." Eight Ave. Garage Corp. v. H.K.L. Realty Corp., 60 A.D.3d 404, 405 (1st Dep't), lv dismissed, 12 N.Y.3d 880 (2009). At the same time, leave to amend will be granted as long as the proponent submit sufficient support to show that the proposed amendment is not "palpably insufficient or clearly devoid of merit." MBIA Ins. Corp v. Greystone & Co. Inc., 74 A.D.3d 499 (3rd Dep't 2010) (citation omitted). Here, there is no prejudice resulting from the amendments, as discovery is not complete. Therefore, the only issue is whether the proposed amended pleading is of sufficient merit.

As a preliminary matter, contrary to defendants' argument, res judicata does not apply here, as there has been no final judgment on the merits in this matter. See O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981); AutoOne Ins. Co. v. Valentine, 72 A.D.3d 953 (2d Dept 2010). Furthermore, to the extent that P+M asserts that collateral estoppel bars the proposed amendment, such assertion is also unavailing as the issue of whether the theory of piercing the corporate veil provided a potential theory of recovery against the proposed additional defendants was not necessarily decided in the court's prior decision. See Rebh v. Rotterdam Ventures, Inc., 252 A.D.2d 609 (3d Dept 1998); see generally Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449 (1985).

As for the merit of the proposed amendment, a party seeking to pierce the corporate veil and impose alter ego liability must plead that, (1) the owners of the corporation exercised complete domination of the corporation in respect to the transactions at issue; and (2) such domination was used to commit a fraud or otherwise resulted in wrongful or inequitable consequences causing plaintiff's injury. TNS Holdings, Inc. v. MKI Securities Corp., 92 N.Y.2d 335, 339-40 (1998), citing, Morris v. New York State Dept. of Taxation and Fin., 82 N.Y.2d 135, 141-42 (1993). The theory of piercing the corporate veil involves a fact intensive inquiry that is not well suited for determination prior to discovery. See Ledy v. Wilson, 38 A.D.3d 214, 215 (1st Dept 2007).

Under this standard, the court finds that the allegations in the proposed amended complaint are sufficient to establish prima facie merit of a claim based on the theory of piercing the corporate veil. Specifically, Hudson alleges that "Poulin + Morris, the John Does, and the John Doe Companies exercised complete dominion and control over P+M," and that "P+M was funded by contributions from Poulin + Morris, the John Does and the John Does Companies." Moreover, Hudson alleges that the "sole purpose for the existence of P+M was to shield [Poulin + Morris] from liability for the lease obligations."

Similar allegations have been found sufficient to sustain a theory of piercing the corporate veil. See Teachers Ins. Annuity Ass'n of America v. Cohen's Fashion Optical of 485 Lexington Ave. Inc., 45 A.D.3d 317 (1st Dept 2007) (landlord stated claim to pierce the corporate veil based on allegations that the corporate parent negotiated lease on behalf of its subsidiary while holding itself out as the real party of interest and without notice to parent installed a shell as tenant with no assets); Ventresca Realty Corp. v. Houlihan, 41 A.D.3d 707 (2d Dept 2007) (piercing corporate veil of shell entity created solely for the purpose of signing a commercial

lease was warranted so as to permit imposition of personal liability against corporation's principals for corporation's debt under commercial lease).

Finally, as the proposed additional defendants are not parties to the Agreement but may be potentially liable for use and occupancy, or based on a theory of unjust enrichment, the proposed claims for this relief may also be added.

CONCLUSION

In view of the above, it is

ORDERED that the motion by Hudson to amend its complaint is granted; and it is further

ORDERED that the proposed amended complaint annexed to Hudson's 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 shall serve as answer to the amended complaint or otherwise respond thereto within 20 days of such service; and it is further

ORDERED that defendants' cross motion for sanctions is denied; and it is further

ORDERED that a status conference shall be held in Part 11, room 351, 60 Centre Street, New York, NY on April 25, 2013, at 9:30 am, and any previously scheduled conferences shall be adjourned to that date.

Dated: March 15 2013

J.S.C.