

Weber v Cafe Blossom, Inc.

2020 NY Slip Op 30166(U)

January 23, 2020

Supreme Court, New York County

Docket Number: 159921/2016

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT R. REED PART 43

Justice

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DANIEL WEBER, OSNAT WEBER,

Plaintiff,

INDEX NO. 159921/2016

MOTION DATE N/A

MOTION SEQ. NO. 004

- v -

CAFE BLOSSOM, INC., BLOSSOM DU JOUR EXPRESS
INC, EACH INDIVIDUALLY AND D/B/A URBAN VEGAN
KITCHEN, BLOSSOM ON CARMINE NYC INC, EACH
INDIVIDUALLY AND D/B/A URBAN VEGAN KITCHEN.,
RSMS INC, EACH INDIVIDUALLY AND D/B/A URBAN
VEGAN KITCHEN, PAMELA BLACKWELL, EACH
INDIVIDUALLY AND D/B/A URBAN VEGAN KITCHEN,
JANUSZ SENDOWSKI, SARSEN REALTY, LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

were read on this motion to STRIKE PLEADINGS.

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

In this personal injury action, plaintiffs move, pursuant to CPLR 3126, to strike defendant Pamela Blackwell’s (Blackwell) verified answer to the second amended complaint, and to dismiss Blackwell’s counterclaims and grant plaintiffs a default judgment with permission to take an inquest and an assessment of damages against Blackwell. In partial opposition, defendants Janusz Sendowski and Sarsen Realty, LLC oppose the scheduling of an inquest prior to the disposition of the claims against non-defaulting defendants. Defendant Blackwell cross-moves, pursuant to CPLR 3211 (a) (7) and/or 3212, to dismiss the action and/or for summary

judgment as against Blackwell, and to direct plaintiffs to pay the expenses undertaken by Blackwell for office rental and stenographic services.

Blackwell argues that this action should be dismissed as against her because she is not personally liable for actions or inactions of the corporation. Blackwell asserts that she is the president, chairman of the board of directors and a shareholder of Blossom on Carmine NYC, Inc. As proof, Blackwell submits the State of New York Department of State certificate of incorporation for Blossom on Carmine NYC, Inc. Blackwell argues that she should not be a party-defendant, and that, if there is liability on the part of the corporate entity, plaintiffs should obtain a judgment against the corporation and not against her personally.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion (*Alvarez v Hospital*, 68 NY2d 320). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the “burden of production” (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact (*id.*). “Generally, piercing the corporate veil requires a showing that the individual defendants (1) exercised complete dominion and control over the corporation, and (2) used such dominion and control to commit a fraud or wrong against the plaintiff which resulted in injury” (*Damianos Realty Group, LLC v. Fracchia*, 34 AD3d 344).

Defendant Blackwell has submitted admissible proof in the form of the corporate entity’s certificate of incorporation. Plaintiffs have failed to proffer admissible evidence to support the argument that Blackwell exercised complete dominion and control over the corporation and used such dominion and control to commit a fraud or wrong against the plaintiff which resulted in

injury. Plaintiffs' opposition to Blackwell's summary judgment cross-motion offers only conclusory allegations and arguments that are otherwise patently without merit. Such opposition is not sufficient to establish that there is a triable issue of fact. Blackwell has demonstrated that she is not a proper party to the action and that she is protected from individual liability due to the business's corporate form.

In light of the court's determination on defendant Blackwell's cross-motion, plaintiffs' motion to strike defendant Blackwell's verified answer to the second amended complaint, and to grant plaintiffs a default judgment with permission to take an inquest and an assessment of damages against Blackwell is denied as moot.

Plaintiffs' motion to dismiss Blackwell's counterclaims is granted inasmuch as Blackwell has, without adequate excuse, failed and refused to comply with court orders that she provide deposition testimony in a place, time and manner directed by the court.

Accordingly, it is

ORDERED that, to the extent that plaintiffs' motion seeks dismissal of defendant Pamela Blackwell's counterclaims, such motion is granted, and such counterclaims are hereby dismissed, without an award of costs or disbursements; and it is further

ORDERED that, except as stated above, plaintiffs' motion is in all other respects denied as moot in light of the court's decision on the cross-motion of defendant Pamela Blackwell; and it is further

ORDERED that the cross-motion of defendant Pamela Blackwell to dismiss the complaint as against her is granted, and it is further

ORDERED that the complaint is dismissed as against defendant Pamela Blackwell, and the remainder of the action is severed and continued.

This constitutes the Decision and Order of the court.

1/23/2020

DATE



ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: