

631 E. 18th St., LLC v Oneworld Prop. Advisors, Inc.
2020 NY Slip Op 30233(U)
January 13, 2020
Supreme Court, Kings County
Docket Number: 506314/19
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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631 E. 18TH STREET, LLC,

Plaintiff,

Decision and order

- against -

Index No. 506314/19

ONEWORLD PROPERTY ADVISORS, INC.,

Defendant,

January 13, 2020

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ONEWORLD PROPERTY ADVISORS, INC.,

Third-Party Plaintiff,

MS # 1,283

- against -

MAXIMILLION REALTY INC., BORIS TANSKY,

AND OLEG KRASNITSKY,

Third-Party Defendants.

-----x
PRESENT: HON. LEON RUCHELSMAN

The third party defendants Boris Tansky and Oleg Krasnitskiy have moved seeking to dismiss the third party complaint pursuant to CPLR §3211. The third party plaintiff Oneworld Property Advisors Inc., opposes the motion. The plaintiff has also moved seeking summary judgement. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff is the owner of a condominium apartment building located at 631 East 18th Street in Kings County. The plaintiff instituted the within lawsuit against Oneworld who alleges it signed a brokerage agreement with third party defendant Maximillion Realty Inc., through it's principal Boris

Tansky. The agreement provided that all commissions due any successful sales or rentals of the property would be split between Oneworld and Maximillion. Indeed, Oneworld filed an affidavit of entitlement pursuant to Real Property Law §294-b(2). The plaintiff's complaint contains one cause of action, namely a determination that no such lien or restraint exists and that the affidavit of entitlement of commissions be removed.

Oneworld instituted a third party action against Maximillion and Tansky and Krasnitskiy, the owners of Maximillion. The third party action alleges that Tansky and Krasnitskiy are the owners of an entity called TK Construction LLC which is the manager of the plaintiff and that TK caused the plaintiff to hire other brokers thereby circumventing any commissions due Oneworld in violation of a non-circumvention agreement. The third party complaint alleges breach of contract, fraud, breach of good faith and fair dealing and unjust enrichment.

Tansky and Krasnitskiy have moved seeking to dismiss the third party complaint. Tansky has moved on the grounds he cannot be sued in his individual capacity. Krasnitskiy further argues that in any event he is not a real estate broker and had no connection with the contract between Maximillion and Oneworld. Oneworld counters the motions should be denied at this time since there are significant allegations the individual defendants

should be liable for the causes of action.

Conclusions of Law

It is well settled that if a defendant so dominated the activities of the corporation then piercing of the corporate veil would be permitted and defendant could then be liable personally (see, Matter of Morris v. New York State, 82 NY2d 135, 603 NYS2d 807 [1993]). To succeed on a request to pierce the corporate veil the plaintiff must demonstrate that "(1) the owners exercised complete dominion of the corporation in respect to the transaction attacked; and (2) that such dominion was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (Conason v. Megan Holding LLC, 25 NY3d 1, 6 NYS3d 206 [2015]). As the Court of Appeals observed, at the pleading stage "a plaintiff must do more than merely allege that [defendant] engaged in improper acts or acted in 'bad faith' while representing the corporation" (East Hampton Union Free School District v. Sandpebble Builders Inc., 16 NY3d 775, 919 NYS2d 496 [2011]). Rather, the plaintiff must allege facts demonstrating such dominion over the corporation and that "through such domination, abused the privilege of doing business in the corporate form to perpetuate a wrong or injustice against the plaintiff such that a court in equity will intervene"

(Oliveri Construction Corp., v. WN weaver Street LLC, 144 AD3d 765, 41 NYS3d 59 [2d Dept., 2016]). "Factors to be considered in determining whether an individual has abused the privilege of doing business in the corporate or LLC form include the failure to adhere to [corporate or] LLC formalities, inadequate capitalization, commingling of assets, and the personal use of [corporate or] LLC funds" (see, Grammas v. Lockwood Associates LLC, 95 AD3d 1073, 944 NYS2d 623 [2d Dept., 2012]). Thus, mere conclusory statements that the individual dominated the corporation are insufficient to defeat a motion to dismiss (AHA Sales Inc., v. Creative Bath Products Inc., 58 AD3d 6, 867 NYS2d 169 [2d Dept., 2008]).

In this case the third party plaintiff does not describe any manner in which either Tansky or Krasnitskiy so dominated the corporation that they abused the privilege of doing business in the corporate form and that they may be sued individually. The third party complaint alleges that Oneworld entered into a 'Non-Circumvention, Non-Disclosure Agreement' with Nadkos Inc., and Maximillion Realty that was executed by Krasnitskiy and Tansky respectively. That agreement provides that the entities "irrevocably agreed not to directly or indirectly, interfere with, circumvent or attempt to circumvent, avoid, bypass, or obviate the Defendant/Third Party Plaintiff's interest in

connection with any of their current or future transactions” (see, Third party Complaint, ¶ 26). The gravamen of the third party complaint is that another entity called TK Construction LLC which is owned by Tansky and Krasnitskiy induced the plaintiff 631 East 18th Street LLC to utilize another broker to avoid paying commissions to Oneworld thereby breaching the non-circumvention agreement. However, the third party complaint does not allege any conduct that would permit the piercing of the corporate veil.

However, that does not end the court’s inquiry. The Non-Circumvention, Non-Disclosure Agreement states that it obligates the parties as well as “their respective partners, associated employers, affiliates, subsidiaries, parent company, nominees, representatives employees, successors, clients, and assigns jointly, severally, mutually, and reciprocally for the terms and conditions expressly stated and agreed to...” (see, Non-Circumvention, Non-Disclosure Agreement, opening paragraph). At this stage of the litigation before any discovery has taken place there are surely questions whether Tansky and Krasnitskiy are included within the list of affiliates to which the agreement extends. This is particularly true since there is no dispute that TK, which comprises the same corporate owners as Maximillion is surely an affiliate pursuant to the agreement. Whether the

individual defendants are likewise affiliates which be explored during discovery. At this juncture the motion seeking to dismiss on the grounds they cannot be part of the lawsuit is denied.

Turning to the plaintiff's motion seeking summary judgement, it is well settled that summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgment in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). In this case there has been no evidence presented that Oneworld entered into a contract with the plaintiff. That might have been due to the interference of the third party defendants which comprises the third party lawsuit, however, there is no evidence any contract exists.

Therefore, based on the foregoing, the plaintiff's motion seeking summary judgement is granted.

So ordered.

ENTER:



DATED: January 13, 2020
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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