

Ramax Search, Inc. v Dersovitz
2020 NY Slip Op 32199(U)
July 6, 2020
Supreme Court, New York County
Docket Number: 652137/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

RAMAX SEARCH, INC.,

Plaintiff,

- v -

RONI DERSOVITZ, RD LEGAL FUNDING, LLC, RD LEGAL GROUP, LLC, RD LEGAL FINANCE, LLC, and RD LEGAL CAPITAL, LLC,

Defendants.

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INDEX NO. 652137/2019
MOTION DATE 11/14/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35

were read on this motion to/for

DISMISSAL

ORDER

Upon the foregoing documents,

ORDERED that defendants' pre-answer motion to dismiss the complaint is denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual preliminary conference via Skype For Business on August 20, 2020, at 11:00 AM upon the filing of the standard request for conference form by any counsel at least two days in advance of such date.

DECISION

In this action seeking to pierce the corporate veil in order to enforce a judgment, defendants make a pre-answer motion to dismiss the complaint on the grounds that plaintiff fails to state a cause of action, documentary evidence, and lack of jurisdiction. Plaintiff opposes such motion.

Factual and Procedural Background

On June 16, 2015, plaintiff Ramax Search, Inc. entered into a placement agreement with defendant RD Legal Funding, LLC (RD Legal Funding).¹ Pursuant to the terms of the placement agreement plaintiff's candidate, Linda Zheng was hired as chief financial officer of RD Legal Group, LLC, in its New York office (RD Legal Group). In a public hiring announcement, Linda Zheng was announced as chief financial officer of RD Legal Capital, LLC (RD Legal Capital).

On December 27, 2016, plaintiff commenced a breach of contract action against RD Legal Funding seeking payment pursuant to the

¹ Plaintiff herein notes that in 2018, the Consumer Financial Protection Bureau and the New York Attorney General filed a law suit against RD Legal Funding, RD Legal Finance, LLC, nonparty RD Legal Funding Partners, LP, and Roni Dersovitz alleging that they scammed 9/11 first responders and NFL concussion victims out of money intended to cover medical costs, lost income and other critical needs, by luring them into costly advances on settlement payouts by lying about the terms of the deals (see complaint paragraph 16). The action referred to in this paragraph of the complaint is pending in New York County Supreme Court under People of the State of New York v RD Legal Funding, Index No. 452091/2018 (Schecter, J).

placement agreement. On February 7, 2018, a judgment was entered in favor of plaintiff in that action, in the amount of \$142,298.84. To date, only \$4,715.53 of such judgment has been paid, following a marshal's garnishment of RD Legal Funding.

On April 11, 2019, plaintiff commenced this action against Roni Dersovitz (Dersovitz), RD Legal Funding, RD Legal Group, RD Legal Finance, LLC (RD Legal Finance), and RD Legal Capital (collectively, RD Entities). In its complaint, plaintiff alleges that Dersovitz is the sole member of RD Legal Funding and RD Legal Finance. The complaint alleges that RD Legal Funding and Legal Group are New York companies, RD Legal Capital is a New Jersey company, and RD Legal Finance is a Delaware company. The complaint alleges that Dersovitz is a resident of New Jersey, with a law firm office in New York.

The complain asserts that Dersovitz has substantial control and involvement in all of the RD entities. The complaint claims that the RD entities all use the same trademark, and that each is an agent for the other. The complaint also alleges that Dersovitz moves assets among the RD entities, including business opportunities, officers, employees, and intellectual property, without regard to corporate form or formality rendering each its alter ego.

The complaint claims that on May 25, 2016, in satisfaction of an advance RD Legal Funding made to a September 11th Victim

Compensation Fund claimant, Jason Voss (Voss), RD Legal Funding improperly directed that the funds due in satisfaction of the Voss advance be paid to RD Legal Finance, rather than RD Legal Funding (see complaint, paragraph 13).

In its first cause of action, the plaintiff alleges that Dersovitz has moved assets from RD Legal Funding to his other companies, without due consideration, to avoid paying plaintiff's judgment. Plaintiff states that due to the foregoing, each of the named defendants is liable to plaintiff for the RD Legal Funding judgment.

The complaint's second cause of action is a cause of action seeking to pierce the corporate veil on the grounds that Dersovitz shielded profits and revenues from RD Legal Funding to render it judgment proof. The complaint also alleges that Dersovitz exercised dominion and control over the assets of RD Legal Funding, and all of the RD entities, thereby moving assets from RD Legal Funding to other RD entities.

Defendants make this pre-answer motion seeking to dismiss the complaint on grounds that, pursuant to CPLR section 3211 (a) (7), plaintiff has failed to state a cause of action for piercing the corporate veil. Defendants also argue that the agreement for an advance on Voss's September 11th Victim Compensation claim was with RD Legal Finance, not RD Legal Funding (see Kanefsky aff, exhibit B), and therefore payment to RD Legal Finance was proper.

Finally, defendants argue that the complaint should be dismissed pursuant to CPLR 3211 (a) (8) for lack of personal jurisdiction because RD Legal Capital and RD Legal Finance are not New York entities and Dersovitz is a resident of New Jersey, not New York.

In opposition to defendants' motion, plaintiff submits the affidavit of its president Peter Tannenbaum. In his affidavit, Tannenbaum argues that the transaction between plaintiff and RD Legal Funding was a New York transaction, and that Dersovitz used all the RD entities interchangeably. He states further that, in a letter, Dersovitz, writing on behalf of RD Legal Funding, offers Linda Zheng the chief financial officer job. In such letter, Dersovitz states that Linda Zheng was hired to be the CFO in the New York office of RD Legal Group, and "its affiliates" (see Tannenbaum aff, exhibit B). Moreover, in the public announcement, Linda Zheng was described as being hired as the chief financial officer of RD Legal Capital. Tannenbaum argues that this is evidence that the various RD entities acted as one common unit, interchangeably, with one chief financial officer. Moreover, when receiving the payoff for the Voss advance, RD Legal Funding was involved in directing the payment to RD Legal Finance. Tannenbaum concludes that Dersovitz uses the RD entities interchangeably to suit his needs, and to reduce the assets of RD Legal Funding to avoid paying plaintiff's judgment.

Discussion

On a motion to dismiss, the court must accept as true the facts alleged in the complaint and all reasonable inferences that may be gleaned from them (see Amaro v Gani Realty Corp., 60 AD3d 491 [1st Dept 2009]). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged and any inferences that can be drawn from them, the complaint states the elements of a legally cognizable cause of action (see Skillgames, LLC v Brody, 1 AD3d 247, 250 [1st Dept 2003], citing Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). If the defendant seeks dismissal based on documentary evidence, the motion will succeed only if such "evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]; Leon v Martinez, 84 NY2d 83, 88 [1994]).

Although the complaint has a first cause of action and a second cause of action, both causes of action appear to assert a claim for piercing the corporate veil of the various RD entities and Dersovitz, enabling plaintiff to enforce and satisfy its judgment against RD Legal Funding.

Generally, piercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the

plaintiff which resulted in plaintiff's injury (see Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135 [1993]; Matter of Guptill Holding Corp. v State of New York, 33 AD2d 362, 364-3365 [3d Dept 1970], affd 31 NY2d 897 [1972]). Factors to be considered in determining whether the owner has "abused the privilege of doing business in the corporate form" include whether there was a "failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use" (Millenium Constr., LLC v Loupolover, 44 AD3d 1016, 1016-1017 [2d Dept 2007]; see Gateway I Group, Inc. v Park Ave. Physicians, P.C., 62 AD3d 141 [2d Dept 2009]; AHA Sales, Inc. v Creative Bath Prods., Inc., 58 AD3d 6, 24 [2d Dept 2008]). Mere conclusory statements that a corporation is dominated or controlled by a shareholder are insufficient to sustain a cause of action against a shareholder in its individual capacity (see Itamari v Giordan Dev. Corp., 298 AD2d 559, 560 [2d Dept 2002]; see also AHA Sales, Inc. v Creative Bath Prods., Inc., 58 AD3d at 24; Andejo Corp. v South St. Seaport Ltd. Partnership, 40 AD3d 407, 407 [1st Dept 2007]).

Here, plaintiff has sufficiently alleged facts to support a cause of action for piercing the corporate veil to enforce its judgment against RD Legal Funding. In its complaint, plaintiff alleges that each defendant was the alter ego of the other, that Dersovitz exercised dominion and control over all of the RD

entities, and moved assets among them including money, employees and officers. As evidence of this, plaintiff points out that although it contracted with RD Legal Funding to place Linda Zheng, Linda Zheng was hired and placed as CFO in the New York office of RD Legal Group. Further, when Linda Zheng's hiring was made public, she was announced as the CFO of RD Legal Capital. Plaintiff also points out that it was RD Legal Funding that directed who received the funds from the Voss advance payoff, despite the fact that Voss contracted with RD Legal Finance for the advance. Plaintiff urges that each entity is an agent for the other and that they all share the same trademark. Finally, plaintiff claims that this was done to reduce RD Legal Funding's assets to prevent it from having to satisfy the judgment. Based on the foregoing, plaintiff has alleged sufficient facts to support its claim of piercing the corporate veil of RD Legal Funding to reach the other RD entities and Dersovitz. Defendants have not produced any documentary evidence which refutes these allegations as a matter of law (see Goshen v Mutual Life Ins. Co. of New York, 98 NY2d at 326).

Defendants also argue that the complaint must be dismissed because there is no personal jurisdiction over RD Legal Capital, RD Legal Finance, and Dersovitz. Defendants argue that there is no dispute that RD Legal Capital and RD Legal Finance are not New York companies and that Dersovitz is a resident of New Jersey.

They contend that therefore, New York courts do not have jurisdiction over them in this action.

Pursuant to CPLR 302 (a) (1), a New York court may exercise personal jurisdiction over a nondomiciliary if the nondomiciliary has purposefully transacted business within the state and there is "a substantial relationship between the transaction and the claim asserted" (Paterno v Laser Spine Inst., 24 NY3d 370, 376 [2014] [internal quotation marks and citations omitted]). "Purposeful activities are volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" (*id.* [internal quotation marks and citations omitted]). "More than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York" (*id.*).

Although it is well established that "the burden of proving jurisdiction is on the party asserting it" (Roldan v Dexter Folder Co., 178 AD2d 589, 590 [2d Dept 1991]), a plaintiff opposing a pre-answer motion to dismiss pursuant to CPLR 3211 (a) (8) for lack of jurisdiction "need only make a prima facie showing that personal jurisdiction exists" (Opticare Acquisition Corp. v Castillo, 25 AD3d 238, 243 [2d Dept 2005]).

Here, in view of this court's denial of defendants' pre-answer motion to dismiss plaintiff's claim to pierce the corporate

veil to enforce its judgment against Dersovitz and the RD entities as alter egos of RD Legal Funding, and the fact that discovery has not taken place in this case, defendants' motion to dismiss the complaint based on lack of personal jurisdiction over Dersovitz, RD Legal Capital, and RD Legal Finance must be denied at this juncture in the litigation. Notably, if plaintiff is successful in demonstrating that Dersovitz and the RD entities are the alter egos of RD Legal Funding, then New York will have personal jurisdiction over them (see generally Corcoran v Fraser Assoc., 171 AD2d 522 [1st Dept 1991] [Court properly found personal jurisdiction in New York over corporate defendant by piercing the corporate veil based on testimony that corporate defendants supervised insurer's business activities in the state and that corporations were not run with a sufficient degree of separateness]).

The party opposing a motion to dismiss for lack of personal jurisdiction pursuant to CPLR 3211 need only demonstrate that facts "may exist" whereby to defeat the motion. It need not be demonstrated that they do exist; these issues await discovery (see

Peterson v Spartan Indus., 33 NY2d 463, 467 [1974]). Here, plaintiff has sufficiently demonstrated that facts may exist which establish that New York has jurisdiction over RD Legal Capital, RD Legal Finance and Dersovitz.

7/06/2020

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE