

Axel Protection Servs. v Trinity Bldrs., Inc.
2020 NY Slip Op 33683(U)
September 14, 2020
Supreme Court, Queens County
Docket Number: 706927/20
Judge: Timothy J. Dufficy
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Short Form Order

FILED

NEW YORK SUPREME COURT - QUEENS COUNTY

**9/18/2020
12:20 PM**

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

**COUNTY CLERK
QUEENS COUNTY**

-----X
AXEL PROTECTION SYSTEMS, INC.,

Plaintiff,

-against-

Index No. 706927/20
Mot. Date: 9/8/20
Mot. Seq. 1

TRINITY BUILDERS, INC., LORI GONZALEZ,
CANDICE COLUCCI, and SHIRLEY LIN,

Defendants.

-----X
The following numbered papers were read on this motion by defendants **LORI GONZALEZ, CANDICE COLUCCI and SHIRLEY LIN** for an order pursuant to CPLR 3211(a)(7) and Rule 3016(b) dismissing the plaintiff’s complaint against them individually.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	EF 7-11
Answering Affidavits-Exhibits	EF 12-19
Replying Affidavits.....	EF 20

Upon the foregoing papers, it is ordered that the motion is granted.

Plaintiff Axel Protection Systems, Inc. brings this action against defendants seeking damages for, *inter alia*, alleged breach of contract arising out of an agreement to provide security services to defendant Trinity Builders, Inc, at 111 East 24th Street, New York, New York, 10010, from December 2017 to March, 2020. Via the Summons and Complaint, plaintiff states, in relevant part: “The corporate veil of Trinity Builders, Inc. should be pierced and personal liability should be found against **LORI GONZALEZ, CANDICE COLUCCI and SHIRLEY LIN** because of the fraud perpetrated by them

against the plaintiff. Defendant Trinity Builders, Inc. was provided services by the plaintiff and the defendants failed to timely forward the payment to the plaintiff.”

Defendants Lori Gonzalez, Candice Colucci and Shirley Lin now move, pursuant to CPLR 3211(a)(7), to dismiss the action against them individually.

In considering a motion to dismiss a complaint for failure to state a cause of action (*see* CPLR 3211[a][7]), the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court’s function is to determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Morone v Morone*, 50 NY2d 481, 484 [1980]; *Rochdale Vil. v Zimmerman*, 2 AD3d 827 [2d Dept 2003]). The criterion is whether the proponent of the pleading has a cause of action, not whether it has stated one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). As moving defendants have moved pursuant to CPLR 3211(a)(7), the Court addresses only the pleading itself, keeping in mind that the motion should be denied if the facts alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Further, the Court must afford the pleading a liberal construction, accept the facts as alleged as true, and accord the pleading the benefit of every possible favorable inference (*id.*).

Veil-piercing is a narrowly construed doctrine limiting "the accepted principles that a corporation exists independently of its owners . . . and that it is perfectly legal to incorporate for the express purpose of limiting the liability of the corporate owners" (*Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 140[1993]; *see Vivir of L I, Inc. v Ehrenkranz*, 145 AD3d 834 [2d Dept 2016]). The party seeking to pierce the corporate veil bears the heavy burden of "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" (*id.* at 141; *Sheridan Broadcasting Corp. v Small*, 19 AD3d 331, 332 [1st Dept 2005]). Piercing the corporate veil is an equitable concept that allows a claimant or creditor to disregard a corporation and to hold its controlling shareholders personally liable for corporate debts or other liabilities. "Additionally, the corporate veil will be pierced to achieve equity, even absent fraud, when a corporation

has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego" (*Williams v Lovell Safety Mgt. Co., LLC*, 71 AD3d 671, 672 [2d Dept 2010][*internal quotation marks omitted*]; see *DeMartino v 3858, Inc.*, 114 AD3d 634, 636 [2d Dept 2014]; *Campane v Pisciotta Servs., Inc.*, 87 AD3d 1104, 1105 [2d Dept 2011]).

To make out a cause of action for liability on the theory of piercing the corporate veil the complaining party must, above all, establish that the owners of the entity, through their domination of it, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the party asserting the claim such that a court in equity will intervene (see *ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 229 [2011]). Piercing of the corporate veil is not a cause of action independent of that against the corporation; it is established when the facts and circumstances compel a court to impose the corporate obligation on its owners, who are otherwise shielded from liability (*Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167 [1st Dept 2013]; *Matter of Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 141[1993]). "Because a decision whether to pierce the corporate veil in a given instance will necessarily depend on the attendant facts and equities, the New York cases may not be reduced to definitive rules governing the varying circumstances when the power may be exercised" (*id.*). "In determining the question of control, courts have considered factors such as the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the alleged dominated corporation; whether the corporations are treated as independent profit centers; and the payment or guarantee of the corporation's debts by the dominating entity . . . [n]o one factor is dispositive" (*TNS Holdings v MKI Sec. Corp.*, 243 AD2d 297, 300 [1st Dept 1997], *revd on other grounds*, 92 NY2d 335 [1998]).

In the case at bar, even according the plaintiff the benefit of every positive favorable inference, the cause of action for liability on the theory of piercing the corporate veil has not been established for any of the three individual defendants. Conspicuously absent is any factual allegation of a disregard for corporate formalities and

that degree of domination of the corporate entity by the individuals required to sustain the cause of action. Moreover, the Complaint fails to even allege that any of the three individual defendants are officers or owners of the defendant corporation Trinity Builders, Inc. In light of the above, the Complaint is dismissed as against the individual defendants.

Accordingly, it is

ORDERED that the motion by defendants Lori Gonzalez, Candice Collucci, and Shirley Lin is granted; and it is further

ORDERED that the plaintiff's Complaint is dismissed ONLY as against defendants Lori Gonzalez, Candice Collucci, and Shirley Lin.

The forgoing constitutes the decision and order of the Court.

Dated: September 14, 2020



TIMOTHY J. DUFFICY, J.S.C.

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