

Js Equity Holdings 1 LLC v 527Myrtle LLC
2021 NY Slip Op 31822(U)
May 27, 2021
Supreme Court, Kings County
Docket Number: 513368/20
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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JS EQUITY HOLDINGS 1 LLC,

Plaintiff,

Decision and order

- against -

Index No. 513368/20

527MYRTLE LLC, 527MYRTLEVC LLC, JERICO
BLUE LLC, KINAM HAN and "JOHN DOE #1 through
JOHN DOE #99", such names being fictitious and
unknown to Plaintiff, the person or parties
intended being the persons or entities with whom
the named defendants have conspired or transacted
with as described in the Complaint,

Defendants,

May 27, 2021

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PRESENT: HON. LEON RUCHELSMAN

Yoon Sun Choi, the purported sole member of defendant Jerico Blue LLC has moved pursuant to CPLR §6514 seeking to cancel a notice of pendency filed on property located at 527 Myrtle Avenue in Kings County. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on February 20, 2018 the plaintiff loaned an entity called Jerico Blue LLC one million dollars. The loan was guaranteed by Jason Lee. Further, between January and March 2018 the plaintiff loaned Lee personally an additional \$545,000. Jerico Blue and Lee failed to repay any of the funds and an action was commenced in New York County. A settlement agreement was reached wherein Lee filed confessions of judgement in the amount of \$1,545,000 and agreed to repay the

funds by May 20, 2019. Lee failed to repay the money and on July 8, 2019 the plaintiff filed the confession of judgement. The Complaint alleges that Lee transferred property he owned to his wife on July 16, 2018 in efforts to avoid the consequences of the confession of judgement. A year later Lee's wife transferred the property to another entity. Further, the Complaint alleges that on December 18, 2019 Lee and defendant Han purchased property located at 527 Myrtle Street through defendant entity 527Myrtle LLC which is owned by Jerico Blue LLC and Yorkshire Equity LLC. The Complaint contends that these entities are the alter egos of Lee and that pursuant to the confession of judgement the plaintiff should be declared the owner of these entities in place of Lee's interests. The plaintiff thus filed a Notice of Pendency on the property. The movant now seeks to cancel the notice of pendency on the grounds it was filed in bad faith since the judgement does not affect any real estate owned by Lee. This is true, argue the defendants, because there is no evidence any loan was given to Jerico Blue LLC. Rather, any loan was made to Jerico LLC a different entity entirely. Thus, there is no basis to impose a notice of pendency upon property owned by entities owned by Lee and the notice of pendency must be vacated.

Conclusions of Law

It is well settled that "a notice of pendency may be filed in any action in a court of the state . . . in which the judgment

demand would affect the title to, or the possession, use or enjoyment of, real property" (CPLR § 6501). Further, the filing of a notice of pendency "puts the world on notice of the plaintiff's potential rights in the action and thereby warn[s] all comers that if they then buy the realty or land on the strength of it or otherwise rely on the defendant's right, they do so subject to whatever the action may establish as the plaintiff's right" (In re Sakow, 97 NY2d 436, 741 NYS2d 175 [2002]). The defendant's entire basis seeking to dismiss the notice of pendency is that the property is owned by an entity that has no connection to Lee at all. They assert that even if Lee owns one of the entities that owns the owner of the property that is not the entity that owed any money which Lee guaranteed. Further, in any event they argue that merely asserting ownership claims in an entity does not afford the right to encumber property with a notice of pendency.

It is well settled that a party seeking to pierce the corporate veil must establish that "the owners exercised complete domination of the corporation in respect to the transaction attached, and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury" (see, Matter of Morris v. New York State, 82 NY2d 135, 603 NYS2d 807 [1993]). Conclusory claims of domination or assertions the corporation acted as an "alter ego" without more

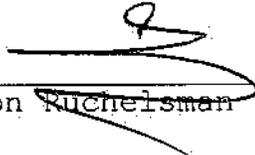
will not support the piercing of the corporate veil (Goldman v. Chapman, 44 AD3d 938, 844 NYS2d 126 [2d Dept., 2007]). The Verified Complaint alleges that "Lee failed and continues to fail to adhere to corporate formalities" and "Lee and the LLC Defendants comingle funds amongst themselves" and "Lee uses corporate funds belonging to the LLC Defendants for personal use" and that "Lee used his dominion over the LLC Defendants to conceal his assets which has resulted in injury to Plaintiff" (see, Verified Complaint, ¶¶ 38, 39, 43). These allegations establish, at this juncture, that Lee abused the privilege of operating in corporate form by dominating or controlling the corporation (Sacks v. Knolls at Pinewood LLC, 157 AD3d 917, 69 NYS3d 677 [2d Dept., 2018]). As the court noted "under New York law, the corporate veil will be pierced to achieve equity, even absent fraud, '[w]hen 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'" (see, Island Seafood Co., Inc., v. Golub Corp., 303 AD2d 892, 759 NYS2d 768 [3rd Dept., 2003]). Thus, it is of no moment whether the entities which own 527Myrtle LLC are entities upon which a judgement was secured because the basis for the lawsuit and indeed the notice of pendency is that Lee is not entitled to any corporate protection and that consequently the lien affects Lee

and is therefore proper. Of course, further discovery will broaden the allegations of piercing the corporate veil and will shed light upon whether the allegations may prove true. However, at this stage of the litigation there are surely sufficient indicia that Lee in fact is not entitled to corporate protections. Therefore, the notice of pendency is proper and the motion seeking to dismiss such notice is consequently denied.

So ordered.

ENTER:

DATED: May 27, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC