

33 N. Elliott Place Condominium v Renovate, Inc.

2021 NY Slip Op 31883(U)

June 3, 2021

Supreme Court, Kings County

Docket Number: 508960/2020

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9**

_____x

33 NORTH ELLIOTT PLACE CONDOMINIUM,

Plaintiff,

-against-

RENOVATE, INC. AND HAMID LATA,

Defendants.

_____x

DECISION / ORDER

**Index No. 508960/2020
Motion Seq. No. 1
Date Submitted: 4/8/21
Cal No. 3**

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of defendant Lata's motion to dismiss

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>8-11</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>12-16</u>
Reply Affirmation.....	<u>17</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

This is an action arising from a dispute between a condominium board of managers and a contractor it hired to do work on the exterior of the condominium building. Defendants are the contractor, a corporation, and its principal, Hamid Lata. Defendant Lata moves to dismiss the complaint as against him pursuant to CPLR 3211 (a) (7), alleging that while he is the President of the defendant corporation, he should not be sued personally.

Movant's counsel provides an affirmation in support of the motion, which argues, in pertinent part, "the Condominium states, in purely conclusory fashion, that Lata, the owner of Renovate, operated his company as his 'alter ego': 'Upon information and belief, the individual Defendant, that is Defendant Lata is the sole shareholder, principal,

and owner of Defendant Renovate, and Defendant Lata, directs, dominates, and controls such corporation, as if it was his alter ego, disregarding corporate formalities' . . . and fails to adequately plead allegations demonstrating that the well-established protections afforded by the corporate form should be disregarded in order to hold Lata directly liable for this claim."

Plaintiff's counsel opposes the motion. First, he asserts that it is untimely (late), as in his opinion, a motion pursuant to CPLR 3211 (a) (7) can only be made pre-answer, citing CPLR §3211 (e). This is incorrect. The relevant section of CPLR §3211 (e) states "A motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) may be made at any subsequent time" (CPLR §3211 [e] [emphasis added]).

Plaintiff's counsel next argues that defendant has failed to produce discovery which he has demanded, preventing him from determining the specifics of this claim and making this motion premature. However, the Preliminary Conference Order was issued only a few weeks ago, and in fact, after this motion was submitted for decision. While the action was commenced in June of 2020, plaintiff cannot assert that defendant has been uncooperative with providing discovery in an affirmation prepared before the preliminary conference order was issued in this case.

Discussion

"On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2008]; see *Leon v Martinez*, 84 NY2d 83, 87-88, 638 NE2d 511, 614 NYS2d 972 [1994]).

The problem here is that there are no facts alleged with regard to movant Lata except that "he operated his company as his alter ego." This is insufficient.

"The general rule . . . is that a corporation exists independently of its owners, who are not personally liable for its obligations, and that individuals may incorporate for the express purpose of limiting their liability" (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 126 [2d Dept 2009], *affd* 16 NY3d 775 [2011]). "The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on owners for the obligations of their corporation" (*id.* at 126). "A plaintiff seeking to pierce the corporate veil must demonstrate that a court in equity should intervene because the owners of the corporation exercised complete domination over it in the transaction at issue and, in doing so, abused the privilege of doing business in the corporate form, thereby perpetrating a wrong that resulted in injury to the plaintiff" (*id.*; see *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 142 [1993]; *JGK Indus., LLC v Hayes NY Bus., LLC*, 145 AD3d 979, 980 [2d Dept 2016]). "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'" (*East Hampton Union Free School Dist.*, 66 AD3d at 127, quoting *Millennium Constr., LLC v Loupolover*, 44 AD3d 1016, 1016-1017 [2d Dept 2007]).

Here, the complaint sets forth only the conclusory allegations that Lata and the corporate defendant acted as each other's alter egos. "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 *Sky-Track Tech. Co.*


Ltd. v HSS Dev., Inc., 167 AD3d 964, 964-965 [2d Dept 2018]; *JGK Indus., LLC*, 145 AD3d at 981). The plaintiff has failed to allege sufficient facts to reflect that Lata exercised domination and control over Renovate "which is so complete that the corporation has no separate mind, will, or existence of its own" (*Bowles v Errico*, 163 AD2d 771, 772-773 [3d Dept 1990] [internal quotation marks omitted]). The plaintiff offers nothing more than bald, unsubstantiated allegations that there was an abuse of the privilege of doing business in the corporate form. Therefore, the defendant makes a prima facie case for dismissal of the complaint as against him and plaintiff does not overcome it and raise any issue of fact, instead arguing that the motion is either too late or is premature as discovery is still pending (*see Sacks v The Knolls at Pinewood, LLC*, 157 AD3d 917, 919 [2d Dept 2018]; *East Hampton Union Free School Dist.*, 66 AD3d at 126-127).

Accordingly, it is **ORDERED** that the motion is granted, and the complaint is dismissed as against defendant Hamid Lata.

This constitutes the decision and order of the court.

Dated: June 3, 2021

ENTER:



Hon. Debra Silber, J.S.C.