

O'Sullivan v 1448 First LLC

2024 NY Slip Op 32261(U)

July 3, 2024

Supreme Court, New York County

Docket Number: Index No. 162073/2023

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

CHRISTOPHER O'SULLIVAN,
Plaintiff,

INDEX NO. 162073/2023

MOTION DATE 02/29/2024

MOTION SEQ. NO. 001

- v -

1448 FIRST LLC, ELIE SARRAF, IRENE SARRAF, ELI FISCHER

DECISION + ORDER ON MOTION

Defendant.

-----X

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

were read on this motion to/for DISMISS

This action arises out of a residential lease agreement. Defendants, officers, managers, and members of the corporation, now move, pre-answer, to dismiss the complaint. Plaintiff opposes. For the reasons set forth below, the motion to dismiss is denied in part.

Background

Plaintiff O'Sullivan entered into a one-year residential lease agreement (the "Original Lease") with 1448 First LLC for an apartment on May 12, 2021, for a lease term starting on June 1, 2021, and ending on May 31, 2022. The Original Lease, and several accompanying documents relating to the tenancy, were executed by defendant Irene Sarraf on behalf of 1448 First LLC. The monthly fee under the Original Lease was \$1,800, it was renewed for an additional year and the fee increased to \$2,200 per month. Plaintiff then entered into a new lease for the same apartment, also executed by Irene Sarraf, for the monthly fee of \$2,240.

1 The Court would like to thank Frederick Jackson for his assistance in this matter.

Plaintiff alleges the apartment she rented from Defendant is rent stabilized pursuant to the Rent Stabilization Law and the Rent Stabilization Code. Plaintiff commenced this action alleging that Defendants failed to perform their legal obligations as landlords of a rent stabilized apartment and is seeking relief against 1148 (“1448” or “Landlord”), Elie Sarraf, Irene Sarraf, and Eli Fischer (“Individual Defendants”). Eli Fisher is the director of the property management company hired by 1448, and Elie and Irene Sarraf are members and officers of 1448. Defendants move to dismiss, in its entirety, the complaint by Plaintiff, against the Individual Defendants and the third cause of action, which seeks to pierce the corporate veil, against Landlord.

Legal Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Id.*

Discussion

The concept of “piercing the corporate veil” is a limitation on accepted principles that a corporation exists independently of its owners as a separate legal entity, that owners are normally not liable for debts of corporation, and that it is perfectly legal to incorporate for the express purpose of limiting liability of corporate owners. *Morris v. State Dep't of Taxation & Fin.*, 82 N.Y.2d 135 [1993]. Although there are no definitive rules governing circumstances when

corporate veil may be pierced, there is generally required showing that: (1) owners exercised complete domination of corporation in respect to transaction attacked; and (2) such domination was used to commit fraud or wrong against plaintiff which resulted in plaintiff's injury. *Id.*

Further, it has been held by the Court of Appeals that, at the pleading stage, a plaintiff seeking to pierce the corporate veil must adequately allege the existence of a corporate obligation and that the defendant exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice. *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30 [2018].

Here, Plaintiff alleges that the Individual Defendants have exercised complete domination over 1448 to fraudulently advance their personal interests and evade legal obligations owed to Plaintiff. The complaint lacks specific allegations on how the Individual Defendants abused the corporate form for personal gain. For this reason, Plaintiff's third cause of action is dismissed. Moreover, as Plaintiff has failed to allege the individual defendants personally committed any actionable wrong against Plaintiff and has failed to make factual allegations that warrant piercing the corporate veil, all causes of action as to the Individual Defendants, are dismissed.

ORDERED that Plaintiff's third cause of action is dismissed; and it is further

ORDERED that the motion of defendants _____ ELIE SARRAF, IRENE SARRAF, ELI FISCHER to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk of the Court is directed to enter judgment accordingly in favor of said defendants; and it is further

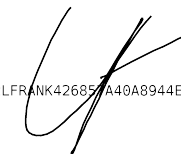
ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

7/3/2024
DATE


20240703094012LFRANK426857A40A8944E49CB49BA00E568B75

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
--------------------------	--------------

<input type="checkbox"/>	SUBMIT ORDER
--------------------------	--------------

CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
--------------------------	----------------------------

<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
--------------------------	-----------------------	--------------------------	-----------