

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2
Justice

Public Administrator of Queens County as Administratrix of the Estate of RUFUGIO RENDON ZUNIGA, deceased, and CELIA HERNANDEZ GUZMAN, individually and as Guardian of JONATHAN RENDON HERNANDEZ,	x	Index Number <u>29745</u> 2003 Motion Date <u>April 5,</u> 2006 Motion Cal. Number <u>23</u>
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Plaintiffs,

- against -

TWO CORNERS, INC., T.K.U.
CONSTRUCTION CORP., FORSTER BROS.,
INC. and FORSTER BROS. HOLDING
CORP., FULTON/MAX INTERNATIONAL
(HOLDINGS), INC., F & T INT'L
(FLUSHING, NEW YORK) LLC., F & T
MANAGEMENT & PARKING CORP., SAFWAY
STEEL PRODUCTS, INC., SAFWAY
SERVICES, INC., TDC CENTER
CONDOMINIUM CORP., TDC
INTERNATIONAL (HOLDINGS) CO., LTD.,
TDC DEVELOPMENT CORPORATION, TDC
DEVELOPMENT & CONSTRUCTION CORP.
and TOP A & S CORP.,

Defendants.

x

The following papers numbered 1 to 20 read on this motion by defendant Fulton/Max International Holdings) Inc. for an order granting summary judgment dismissing plaintiffs' complaint and all cross claims, and for an award of attorneys' fees pursuant to CPLR 8303-a against plaintiffs and their counsel. Defendants Fulton/Max International(Holdings)Inc., F & T Int'l (Flushing, New York)LLC, and F & T Management & Parking Corp., cross move for summary judgment dismissing the complaint and all cross claims, and seek an award of sanctions against the plaintiffs pursuant to 22 NYCRR § 130-1.1(a).

Papers
Numbered

Notice of Motion-Affirmation-Exhibits(A-K).....	1-4
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Upon the foregoing papers it is ordered that these motions are decided as follows:

On September 7, 2002, plaintiffs' decedent Refugio Rendon Zuniga, was employed by defendant T.K.U. Construction Corp. at a construction site known as 39-07 Prince Street, and/or 39-15 Prince Street, Flushing, New York. It is alleged that Mr. Zuniga "was caused to fall, suffer and sustain severe and serious injuries, conscious pain and suffering all of which resulted in his death while working upon the aforesaid premises and work site". It is also alleged that Mr. Zuniga was "struck by construction materials, objects and/or debris thrown and/or dropped and/or inadequately secured at or from a height above him upon said premises and work site. Plaintiffs allege in their complaint that all of the defendants, except Safway Steel Products, Co. and Safway Steel Services, Inc., owned, developed, managed, maintained, and controlled the subject premises, and assert causes of action for negligence, violations of the Labor Law, violations of OSHA, and for wrongful death.

Defendant Fulton/Max International(Holdings)Inc. (Fulton/Max) now seeks an order dismissing the complaint and all cross claims, and granting it costs and attorneys' fees pursuant to CPLR 8303-a, on the grounds that it had no ownership, proprietary or other interest in the subject premises where the construction work was being performed; that it had no involvement with said construction work; and that it had no relationship with either Two Corners, Inc, the owner of the premises, or with T.K.U. Construction Corp., the general contractor. It is noted that defendant Fulton/Max is also represented by a second law firm. Defendants Fulton/Max, F & T Int'l (Flushing, New York) LLC, and F & T Management & Parking Corp., cross move for summary judgment dismissing the complaint and all cross claims, and seek an award of sanctions against the plaintiffs pursuant to 22 NYCRR § 130-1.1(a), on the identical grounds.

Defendant Two Corners Inc. in its answer did not deny the plaintiffs' allegation that it owned the subject premises and therefore is deemed to have admitted ownership of the subject real property. (See CPLR 3018[a].) Moreover, Sunny Chiu, the sole, principal, shareholder and president of Two Corners, Inc., testified that Two Corners, Inc. is a holding company for real estate, that it owned the subject real property in September 2002, and that it developed the property by building retail condominium offices which were then sold. He further stated that Two Corners, Inc. was incorporated by the previous owner, Forster Brothers, and that he purchased the corporation in either 1998 or 1999. Mr. Chiu testified that Two Corners, Inc, hired T.K.U. Construction, to perform construction work at the subject premises.

Fulton/Max in support of its motion has submitted the deposition testimony of Sunny Chiu, the president of both Two Corners Inc., and Fulton/Max; the deposition testimony of Christian Lee, the president of T.K.U. Construction Corp. In addition this defendant submitted proposed contracts of sale dated May 28, 1992 between Two Corners, Inc. and a third party for Block 4976, Lot 23 and 27, and for Block 4973 Lot 24; documents from the New York City Department of Finance, Office of the City Register and New York City Building Department Property Profile, which shows that one of the subject blocks, Block 4976 is where the address of 39-07 or 39-15 Prince Street is located. In addition, Fulton/Max has submitted a copy of its an insurance policy effective June 8, 2002 to June 8, 2003, which identified "all premises owned, rented, occupied or controlled by the insured" as "133-32 41 Rd, Ste 3B, Flushing, New York 11355", and named as an additional insured TDC Center Condominium, with an address of "133-32 41st Rd Cellar Level Flushing New York 11355".

Plaintiffs in opposition assert summary judgment is not warranted as triable issues of fact exist as to whether defendant Fulton/Max was the alter ego company of defendant Two Corners Inc. It is asserted that these two companies engaged in the similar business of real estate development and were both led by Sunny Chiu as president; that Two Corners Inc, and Fulton Max have the same business address, and that co-defendants TDC Development Corporation and TDC Development Construction are also located at this address; that Christian Lee the president of T.K.U. Construction, is also a shareholder in Fulton/Max, a shareholder in TDC Development Corp., and a member of F & T International, LLC. Plaintiffs, have submitted documentary evidence in support of their claims, including copies of Westlaw searches pertaining to Fulton/Max, a subordination of mortgage and spreader agreement concerning Fulton/Max, Two Corners and others regarding real property other than the subject real property, and a print out from

the Department of Buildings regarding property owned by Fulton/Max.

Corporations are legal entities distinct from their managers and shareholders and have an independent legal existence. Ordinarily, their separate personalities cannot be disregarded (Rapid Tr. Subway Constr. Co. v City of New York, 259 NY 472, 487-488 [1932]) In a broad sense, the courts do have the authority to look beyond the corporate form where necessary "to prevent fraud or to achieve equity" (International Aircraft Trading Co. v Manufacturers Trust Co., 297 NY 285, 292 [1948]). Here, plaintiffs' opposing papers, with its mere bare-bones allegations, is completely devoid of any sufficiently particularized facts, as required, for the assertion that Fulton/Max acted as agent for, or as the "alter ego" of Two Corners, Inc. (see Walkovszky v Carlton, 18 NY2d 414, 420 [1966]; Retropolis, Inc. v 14th St. Dev. LLC, 17 AD3d 209, 211 [2005]). Those seeking to pierce a corporate veil bear a heavy burden of showing that the corporation was dominated as to the transaction attacked and that such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences (Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135 [1993]; see Walkovszky v Carlton, supra). Furthermore, evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance (TNS Holdings Inc. v MKI Sec. Corp., 92 NY2d 335 [1998]; Matter of Morris v New York State Dept. of Taxation & Fin., supra, at 141-142).

Although plaintiffs assert that the external indicia of separate corporate identities were not maintained, the documentary evidence submitted by plaintiffs is insufficient to support such a claim. Neither the fact that Mr. Chiu testified that the construction project was assigned the name of Fultonex Office Condominium Project and was later changed to Prince Center Condo, nor the letter dated January 31, 2002 from an entity known as Metro Structural Steel Inc., addressed to a Mr. Lee, which refers to the "Fultonex Office Condominium Project (39-07 Prince Street, Flushing, N.Y.)" are sufficient to establish that Two Corners and Fulton/Max are alter egos of one another. Mr. Chiu testified that he had no knowledge of Metro Structural Steel. Furthermore, it is apparent from this letter that Metro Structural Steel had supplied material and labor involved in the construction of the building, and not the scaffolding, and that as of February 5, 2002 it would not continue work at the project due to lack of payments. The court further finds that the documents produced by plaintiffs' Westlaw searches are not official agency records and therefore do not constitute evidence in admissible form. Moreover, none of the documents submitted by plaintiffs are related to the subject real property nor are they sufficient to raise a triable issue of fact, so as to warrant the denial of summary judgment.

Defendant Two Corners Inc. in its answer did not deny the plaintiffs' allegation that it owned the subject premises and therefore is deemed to have admitted ownership of the subject real property (see CPLR 3018[a]). Moreover, Sunny Chiu, the sole, principal, shareholder and president of Two Corners, Inc., testified that Two Corners, Inc. is a holding company for real estate, that it owned the subject real property in September 2002, and that it developed the property by building retail condominium offices which were then sold. He further stated that Two Corners, Inc. was incorporated by the previous owner, Forster Brothers, and that he purchased the corporation in either 1998 or 1999. There is no evidence that any other defendant owned the subject real property on September 7, 2002, the date of the accident. Mr. Chiu testified that Two Corners, Inc, hired T.K.U. Construction, to perform construction work at the subject premises. The fact that Mr. Chiu, is the president and sole shareholder of Two Corners, Inc. and is also the president of Fulton/Max and that these corporations share the same address in Flushing, New York, is, by itself, insufficient to justify disregarding the corporate form (see generally Morris v New York State Dept. of Taxation & Fin., supra; Port Chester Electrical Constr. Corp. v Atlas, 40 NY2d 652, 657 [1976]; Sweeney, Cohn, Stahl & Vaccaro v Kane, 6 AD3d 72, 76 [2004]). Furthermore, the fact that Christian Lee is the president of T.K.U. Construction Corp., and is also a shareholder of Fulton/Max, a shareholder of TDC Development Corp. and a member of F & T Int'l (Flushing New York) LLC, and that these corporations also share the same address as Two Corners is insufficient, in itself, to establish that Two Corners and Fulton/Max are alter egos of one another. Finally, the fact that these separate entities have done business with one another, and have may have been involved in some joint business ventures is, in itself, insufficient to disregard their separate corporate forms.

In view of the foregoing, the motion and cross motion by defendants Fulton/Max, F & T Int'l (Flushing, New York) LLC, and F & T Management & Parking Corp. for summary judgment dismissing the complaint and all cross claims is granted, as there is no evidence that these defendants owned, controlled, developed, maintained or managed the subject real property where plaintiffs' decedent was injured, and there is no evidence that defendants Two Corners, Inc. and Fulton/Max are alter egos of one another. That portion of defendants' motion and cross motion which seeks an award of attorneys fees or sanctions is denied.

Dated: June 2, 2006

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J.S.C.