

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN H. DORAN, ESQUIRE, Trustee	:	NO. 03-02,099
in Bankruptcy for Advanced Electronics,	:	
Inc.,	:	
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION – IN EQUITY
TRI CO. REALTY, INC., a/k/a TRI	:	
COUNTY REALTY, INC., TC	:	
CONSTRUCTION & DEVELOPMENT	:	
CO., COMPRO DISTRIBUTING, INC.,	:	
trading as TC CONSTRUCTION &	:	
DEVELOPMENT CO., MARVIER	:	
ADVERTISING, INC., and 2595	:	
LYCOMING CREEK, INC.,	:	
Defendants	:	Motions for Summary Judgment

OPINION AND ORDER

Before the Court are four motions for summary judgment, filed by the four defendants in this case.¹ Argument on the motions was heard September 9, 2005.²

Plaintiff is the Trustee in Bankruptcy for Advanced Electronics, Inc. On behalf of the bankruptcy estate of Advanced Electronics, Plaintiff obtained a judgment in Bankruptcy Court in 1996 against one Philip Courtright and his wife, Patricia Courtright. The Courtright's own all of the issued and outstanding shares of stock in Marvier Advertising, Inc. and 2595 Lycoming Creek, Inc. In the instant equitable action, Plaintiff seeks to avoid the mortgage foreclosure sale of certain real property from Marvier Advertising to Tri Co. Realty, Inc. and the tax sale of certain other property from 2595 Lycoming Creek to TC Construction and Development Co. as fraudulent transfers under the Pennsylvania Uniform Fraudulent Transfer Act. 12 Pa.C.S. Section 5101 et seq.

¹ Compro Distributing, Inc. and TC Construction & Development Co. are considered one defendant.

² Plaintiff was thereafter given fourteen days in which to provide the Court with a supplemental brief on certain issues and that brief was received September 26, 2005. Defendants were given ten days in which to respond. The instant opinion is being issued prior to the filing of any responses, however, as such are deemed unnecessary.

Section 5105 of the PUFTA provides, in pertinent part:

Section 5105. Transfers fraudulent as to present creditors

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

12 Pa.C.S. Section 5105. In their motions for summary judgment, Defendants seek judgment as a matter of law on the basis that there is no debtor/creditor relationship between Plaintiff and Defendants Marvier Advertising or 2595 Lycoming Creek.³ Plaintiff responds by alleging that Marvier Advertising and 2595 Lycoming Creek are the alter egos of the debtors, Philip and Patricia Courtright, thus seeking to reach the assets of the corporations by a “reverse piercing” of the corporate veil. While such concept has been recognized in this Commonwealth, See In re Blatstein, 192 F.3d 88 (3d Cir. 1999), and In re Mass, 178 B.R. 626 (M.D. Pa. 1995)(Memorandum Opinion), allowing the assets of a corporate entity to be used to satisfy the debts of one of its individual principals, the Court finds Plaintiff has failed to support its claim of “alter ego” with sufficient evidence to withstand summary judgment.

In determining whether the corporate veil should be pierced under the alter ego theory, the court is to consider the following factors: failure to observe corporate formalities, non-payment of dividends, insolvency of the corporation, siphoning of corporate funds by the dominant shareholder, non-functioning of other officers or directors, absence of corporate records, and gross undercapitalization of the corporation. Kaplan v. First Options of Chicago, Inc., 19 F.3d 1503 (3d Cir. 1994). Plaintiff has offered absolutely no evidence to support a finding of any of these factors, however. In his response to the motions for summary judgment, Plaintiff simply argues the motions are untimely inasmuch as discovery has not been completed within the meaning of Pa.R.C.P. Rule 1035.2(2).

³ Defendants raise numerous other grounds but the Court finds it unnecessary to address those issues as the first issue raised is dispositive.

Contrary to Plaintiff's assertion, the discovery deadline was July 8, 2005, as set by a Scheduling Order entered December 20, 2004. While Plaintiff has filed, on August 5, 2005,⁴ a Motion to Extend Discovery Cut-off, he offers insufficient reasons for such to be granted.⁵ Thus, since discovery has been completed, the motions are not untimely. Further, since Plaintiff has failed to produce evidence of facts essential to his cause of action which in a jury trial would require the issues to be submitted to a jury, Rule 1035.2(2), there remain no issues of material fact and Defendants are indeed entitled to summary judgment as a matter of law.

ORDER

AND NOW, this 3rd day of October 2005, for the foregoing reasons, the Motions for Summary Judgment filed by Tri Co. Realty, Inc., TC Construction & Development Co., Marvier Advertising, Inc., and 2595 Lycoming Creek, Inc. are hereby GRANTED and judgment is hereby entered against Plaintiff and in favor of all Defendants. The lis pendens indexed against 3500 West Fourth Street, Williamsport, Pennsylvania 17701, and 2595 Lycoming Creek Road, Williamsport, Pennsylvania 17701, on February 4, 2004, is hereby STRICKEN.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson

⁴ The Court notes the motion to extend the deadline was filed well past the deadline sought to be extended.

⁵ Indeed, the motion is being denied by separate Order issued simultaneous with the instant Opinion and Order.