

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH SWINK,
Plaintiff

vs.

MARK SPRINGMAN and EPIC CONSTRUCTION
SPECIALTIES, LLC,
Defendants

: CV-22-00086

: CIVIL ACTION – LAW

OPINION AND ORDER

AND NOW, this 11th day of August, 2022, following argument on Defendants' Preliminary Objections, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Defendants commenced this matter on January 28, 2022 by filing an appeal from the judgment of Magisterial District Judge Gary A. Whiteman, in favor of Plaintiff and against Defendant Epic Construction Specialties, LLC ("Epic"). On February 25, 2022, Plaintiff filed a Complaint in the Court of Common Pleas, alleging a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law and conversion against both Defendants. Relevant here, Plaintiff alleges that "Defendant Mark Springman¹ used the corporate form to perpetuate fraud allowing for the disregarding of the corporate form and holding of its principal and owner Mark Springman personally liable for the obligations of Epic Construction Specialties, LLC" – that is, Plaintiff asks the Court to "pierce the corporate veil" in this case, disregarding the corporate form and holding Springman liable for the acts and liabilities of Epic.²

¹ "Springman."

² The theory of "piercing the corporate veil" is discussed in detail *infra*.

On March 17, 2022, Defendants filed Preliminary Objections to Plaintiff's Complaint "in the nature of a demurrer, a motion to strike, and/or a motion for a more specific pleading."³ Defendants first aver that Paragraphs 6, 33, 34, 35 and 36 of the Complaint, which form the basis of Plaintiff's request to pierce the corporate veil, are "general, vague, and boilerplate" and thus do not rise to the requisite level of specificity to satisfy Pennsylvania's pleading standards. Defendants further demur to these portions of the Complaint, arguing that even if true they are insufficient to pierce Epic's corporate veil, and contend they should thus be stricken from the Complaint.

GOVERNING LAW AND ARGUMENTS

"[P]reliminary objections in the nature of a demurrer must be sustained only where it appears with certainty that upon the facts pleaded in the complaint 'the law will not permit recovery by the plaintiff.'"⁴ With regard to specificity, "Pennsylvania is a fact-pleading state. To be legally sufficient, a complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim."⁵ Under this standard, a pleading must include "[t]he material facts on which a cause of action or defense is based... stated in a concise

³ Pa. R.C.P. 1028(a)(2) allows a preliminary objection to strike for "failure of a pleading to conform to law or rule of court or inclusion of a scandalous or impertinent matter." Rule 1028(a)(3) allows preliminary objections for "insufficient specificity in a pleading. Rule 1028(a)(4) allows preliminary objections for "legal insufficiency of a pleading (demurrer)."

⁴ *Village at Camelback Property Owners Assn. Inc. v. Carr*, 538 A.2d 528 (Pa. Super. 1988).

⁵ *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa. Super. 2020) (internal quotations and citations omitted).

and summary form.”⁶ “[I]n pleading its case,” however, “the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense.”⁷

The Supreme Court of Pennsylvania recently reviewed the concept of “piercing the corporate veil” in *Mortimer v. McCool*.⁸ Noting that piercing the corporate veil is “among the most confusing [areas] in corporate law,” the Court explained that the doctrine is an equitable matter that “allow[s] a court to disregard the corporate form... whenever justice or public policy demand, such as when the corporate form has been used to defeat convenience, justify wrong, protect fraud, or defend crime.”⁹ It is well-established that there is a strong presumption against piercing the corporate veil, and that “any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception.”¹⁰ Thus, “veil-piercing cases ‘typically involve truly egregious misconduct’ where the corporate form is abused to such a degree that ‘adherence to the corporate fiction under the circumstances would sanction fraud or promote injustice.’”¹¹

The Commonwealth Court has elucidated, and the Supreme Court of Pennsylvania has endorsed, a number of factors relevant to the issue of piercing the corporate veil: “undercapitalization, failure to adhere to corporate formalities,

⁶ Pa. R.C.P. 1019(a).

⁷ *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com’n (PCG)*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

⁸ *Mortimer v. McCool*, 255 A.3d 261 (Pa. 2021).

⁹ *Id.* at 265, 268 (quoting *Com. by Shapiro v. Golden Gate Nat’l Senior Care LLC*, 194 A.3d 1010, 1034-35 (Pa. 2018)).

¹⁰ *Id.* at 268 (quoting *Wedner v. Unemployment Bd. of Review*, 296 A.2d 792, 794 (Pa. 1972)).

¹¹ *Smith v. A.O. Smith Corporation*, 270 A.3d 1185, 1200 (Pa. Super. Jan. 26, 2022) (quoting *Mortimer*).

substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetrate a fraud.”¹² Piercing the corporate veil is proper “whenever one in control of a corporation uses that control, or uses the corporate assets, to further his or her own personal interests.”¹³

In *Carr*, the Superior Court held that pleadings alleging that a shareholder “undertook personal obligations in connection with the [corporation], committed torts in his capacity as an officer of the various corporate defendants, and breached a personal fiduciary duty” were sufficient to survive a preliminary objection in the nature of a demurrer to the plaintiff’s request to pierce the corporate veil.¹⁴

Allegations that a defendant conducted “substantial intermingling of corporate and personal affairs and... use[d]... the corporate form to perpetuate a fraud” are similarly sufficient to defeat a demurrer when supported by factual allegations.¹⁵

Paragraphs 6 and 33 through 36 of the Complaint read as follows:

- “6. For one of the jobs performed in 2020, Defendant Mark Springman accepted an automobile in exchange for payment for the services of Defendant Epic Construction Specialties, LLC and used the car for his own personal use.
33. Defendant Epic Construction Specialties, LLC is undercapitalized as evidenced by its inability to purchase log siding for Plaintiff’s project, despite Plaintiff’s payment of \$15,000 for the same, and the spontaneous and extra-contractual increase of the project price.
34. Defendant Mark Springman substantially intermingles the corporate affairs of Epic Construction Specialties, LLC with his personal affairs as is evidenced by the fact that he took an

¹² *Mortimer*, 255 A.3d at 268. (quoting *Lumax Indus., Inc. v. Aultman*, 669 A.2d 893, 895 (Pa. 1995)).

¹³ *Id.*

¹⁴ *Village at Camelback Property Owners Assn. Inc. v. Carr*, 538 A.2d at 534.

¹⁵ *Com. by Preate v. Events Intern., Inc.*, 585 A.2d 1146, 1150 (Pa. Cmwlth. 1991).

automobile for his personal use as payment for an Epic Construction Specialties, LLC project at Plaintiff's home.

35. Upon information and belief, based upon the conduct of Defendant Mark Springman, Epic Construction Specialties, LLC fails to adhere to corporate formalities.
36. Defendant Mark Springman used the corporate form to perpetuate fraud allowing for the disregarding of the corporate form and holding of its principal and owner Mark Springman personally liable for the obligations of Epic Construction Specialties."

In support of their preliminary objection, Defendants contend that Plaintiff has simply taken the four Commonwealth Court factors and asserted that they apply to Defendants while providing just a handful of factual averments that only arguably support the piercing of the corporate veil. Defendants highlight that the second of the four factors – "failure to adhere to corporate formalities" – is of limited applicability to LLCs in light of 15 Pa. C.S. § 8106, which states that "[t]he failure of a... limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a partner, member or manager of the entity for a debt, obligation or other liability of the entity." As noted by the Supreme Court of Pennsylvania in *Mortimer*, the official comment to § 8106 explicitly extends the section to piercing the corporate veil inquiries, stating:

"This section pertains to the equitable doctrine of 'piercing the veil' – *i.e.*, conflating an entity and its owners to hold one liable for the obligations of the other. The doctrine of 'piercing the corporate veil' is well-established, and courts regularly (and sometimes almost reflexively) apply that doctrine to limited liability companies and other unincorporated entities. In the corporate realm, 'disregard of corporate formalities' is a key factor in the piercing analysis. In the realm of limited liability companies, that factor is inappropriate, because informality of organization and operation is both common and desired."

Defendants additionally argue that Springman's alleged use of the vehicle given to Epic for payment, even if true, is insufficient to constitute any pattern or practice of intermingling of corporate and personal assets.

Plaintiff responds that he has pleaded multiple specific facts in support of the theory of piercing Epic's corporate veil, and suggests that if these allegations are insufficient to allow him to explore the theory during discovery then it will be impossible for any plaintiff, in any case, to pursue this theory. Specifically, Plaintiff argues that the "elements of such a claim, i.e., undercapitalization, intermingling of funds, and failure to adhere to corporate formalities are not typically the type of facts which can be known to a plaintiff prior to the filing of a complaint," and points out that the cases Defendants cited in which courts have granted preliminary objections on this issue, featured complaints that did not contain specific factual averments in support of the theory.

ANALYSIS

The Court concludes that Plaintiff has alleged sufficient facts to defeat a demurrer as to Plaintiff's request to pierce the corporate veil, and that the allegations in the Complaint are sufficiently specific to put Defendant on notice as to the nature of that request. The allegations in the Complaint, if proven true, would tend to demonstrate that Springman has used the corporate form in a fraudulent manner for personal benefit by 1) dishonestly inducing payment to Epic; 2) using that payment for personal benefit; and 3) failing to ensure that enough capital remained with Epic to allow it to conduct the business it had contracted to perform. For this reason, the

Court cannot say that piercing the corporate veil is inappropriate as a matter of law, and therefore a demurrer is improper at this time.

In order for Plaintiff to ultimately prevail on his request to pierce the corporate veil, he will have to produce evidence sufficient to satisfy the elements of such a claim. As such, the Court's denial of Defendants' Preliminary Objections is without prejudice for Defendants to renew their demurrer to Plaintiff's request to pierce the corporate veil at the summary judgment stage following the close of discovery. However, Plaintiff has pled sufficiently specific facts to survive the pleading stage and justify discovery concerning the relationship between Springman and Epic.

ORDER

For the foregoing reasons, Defendants' Preliminary Objections are DENIED. Defendants shall file an Answer to Plaintiff's Complaint within twenty (20) days of the date of this Opinion and Order.

IT IS SO ORDERED this 11th day of August 2022.

BY THE COURT,


Eric R. Linhardt, Judge

ERL/jcr

cc: Michael J. Zicoello, Esq.
J. David Smith, Esq.
Gary Weber, Esq. (Lycoming Reporter)