



By Order of the Court, Judge Joseph N. Camacho

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION

E-FILED
CNMI SUPERIOR COURT
E-filed: May 30 2012 2:09PM
Clerk Review: N/A
Filing ID: 44523493
Case Number: 10-0114-CV
N/A



**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

BYOONG SEOB CHOI,

Plaintiff,

v.

JUNG JA KIM et. al.,

Defendants.

CIVIL CASE NO. 10-0114

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS THE THIRD
AMENDED COMPLAINT**

I. INTRODUCTION

THIS MATTER came before the Court on May 16, 2012 for a status conference and motions hearing. Attorney Robert T. Torres appeared on behalf of Defendants Jung Ja Kim, Soi-In Corporation, Dr. Ko, LLC, and Kosta LLC. Attorneys Ramon K. Quichocho and Robert H. Myers appeared on behalf of Defendants Ramon K. Quichocho, Frances Quichocho, Tan Dingo LLC, and Latte Stone, LLC (“Quichocho Defendants”). Plaintiff Byoong Seob Choi, and Defendant Anthony Long failed to appear either personally or through counsel.

On March 22, 2011, Quichocho Defendants filed, “Quichocho Defendants’ Motion to Dismiss the TAC, and Memorandum of Points and Authorities” (“Motion”) at issue. The parties have been given ample opportunity for oral argument.¹ Based on the motions, pleadings, oral argument and relevant law, the Court now enters this written order.

¹ On March 19, 2012 the parties appeared for a status conference and motions hearing, at which time the matter was reset for a status conference and oral argument on all pending motions. *See Choi v. Kim et. al.*, Civ. No. 10-0114 (NMI Super Ct.

1 **II. DISUCSSION**

2 The Court must address the sufficiency of the Third Amended Complaint ("TAC"). Upon a
3 thorough review of the pleadings and oral arguments the Court finds: (1) that the arguments set forth in
4 the Motion are substantively indistinguishable from arguments in previous motions filed by the
5 Quichocho Defendants which this Court has denied and; (2) the only new argument advanced in the
6 Motion is meritless.

7 **A. PLAINTIFF SUFFICIENTLY STATES A CLAIM FOR COUNT(S) VII AND X**

8 The Quichocho Defendants argue that the TAC is factually insufficient to state a claim for
9 fraudulent conveyance and for an accounting. Both of these arguments have previously been addressed
10 by the Court. Moreover, the facts alleged in the TAC, are the same facts the Court relied on when last
11 considering the sufficiency of the First Amended Complaint. Therefore, for the reasons set forth more
12 thoroughly in those orders, respectively, *Choi v. Kim et. al.*, Civ. No. 10-0114 (NMI Super. Ct. Sept. 3,
13 2010) (Consolidated Opinion and Order on Defendant's Motions to Dismiss at 3-6) (finding the
14 allegations against the Quichocho Defendants in the First Amended Complaint were "sparse but
15 present"), and *Choi v. Kim et. al.*, Civ. No. 10-0114 (NMI Super. Ct. Feb. 14, 2011) (Order Granting
16 Defendants Jung, Eun Mee and Dr. Ko, LLC Motion to Dismiss and Denying Quichocho Defendants'
17 Motion to Strike or Dismiss at 2) ("finding that the First Amended Complaint filed October 15, 2010
18 read together with the First Amended Complaint filed on May 17, 2010, contains sufficient factual
19 allegations to apprise the Quichocho Defendants of the claims against them."), which the Court adopts
20 and incorporates herein, the Court finds that Plaintiffs have met their pleading requirements.

21 **B. QUICHOCHO DEFENDANTS' "CORPORATE VEIL" ARGUMENT FAILS**

22
23 March 21, 2012) (Order RE 3/19/2012 Hearing). At that hearing, the Court clarified to the parties that both pending motions
24 to dismiss would be heard on May 16, 2012. This Court's Order reiterates that all "unresolved motions or motions to
dismiss," will be heard at that time. *Id.* On May 16, 2012, the Quichocho Defendant's cursorily mentioned the motion at
issue.

1 The Quichocho Defendants advance one new argument, namely, that Count VII fails to state a
2 claim because the complaint fails to allege any facts necessary to support a claim to pierce the corporate
3 veil of Tan Dingo, LLC or Latte Stone, LLC.

4 Under NMI R. Civ. P. 12(b)(6), a complaint or pleading is subject to dismissal where it lacks a
5 cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *Bolalin v. Guam*
6 *Publications, Inc.*, 4 NMI 176, 179 (1994). “[D]ismissal is improper unless it appears beyond doubt that
7 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Camacho*
8 *v. Micronesian Dev. Co.*, 2008 MP ¶10 (quoting *Govendo v. Micronesian Garmnet Mfg.*, 2 NMI 270,
9 283 (1991)). Factual argument is inappropriate under Rule 12(b)(6) because the motion only tests the
10 legal sufficiency of the complaint. *Id.* (citing *Govendo*, 2 NMI at 283). Thus, in deciding a motion to
11 dismiss, the court must assume the truth of all well-plead factual allegations in the challenged pleading
12 and construe them in the light most favorable to the non-moving party. *Cepeda v. Hefner*, 3 NMI 121,
13 127-28 (1992); *Govendo v. Marianas Pub. Land Corp.* 2 NMI 482, 490 (1992).

14 To sustain a claim for fraud against the individual Defendants based on actions by co-defendants
15 Tan Dingo, LLC and Latte Stone, LLC, Plaintiff needs to allege facts which plausibly give rise to
16 liability through a theory such as alter-ego/piercing the corporate veil. *Cepeda*, 3 NMI at 127-28
17 (reasoning that to withstand 12(b)(6) motion, complaint must be: (1) supported by direct allegations on
18 every material point necessary to sustain a legal theory; or (2) supported by allegations from which
19 reasonable inferences may be drawn that such evidence will be introduced); *See e.g., United States v. A*
20 *and C Investments, Inc.*, 513 F. Supp. 589, 591 (N.D. Ill. 1981) (dismissing complaint against
21 individuals which was devoid of reference to any claim for piercing the corporate veil).

22 “Generally, a corporation and its shareholders are deemed separate entities and shareholders are
23 not liable to third parties beyond their initial investment in the stock of the corporation.” *Dela Cruz v.*
24 *Hotel Nikko Saipan*, 1997 MP 16, ¶17 (citations omitted).

1 Where, however, shareholders treat the corporation not as a separate entity but
2 instead as an instrument to conduct their own personal business, the
3 corporation and the shareholder are deemed one entity under the alter ego
4 doctrine, and the court may 'pierce the corporate veil' for purposes of liability.

5 *United Enters., Inc. v. King*, 4 NMI 304, 307 (1995).

6 The "piercing the corporate veil," doctrine has also been used to hold a corporation liable for the
7 debts of controlling shareholders where the shareholders have formed or used the corporation to shield
8 themselves from liability. This is generally referred to as "reverse-piercing." *Id.* at 307; *See also Zahra*
9 *Spiritual Trust v. United States*, 910 F.2d 240, 243-244 (5th Cir. 1990) ("The remedy is equally
10 available to hold the corporation liable for debts of the controlling shareholders where the shareholders
11 have formed or used the corporation to secrete assets and thereby avoid . . . liability.").

12 While "no concrete formula exists under which a court will disregard the separate identity of the
13 corporate entity," in determining alter-ego The Commonwealth Supreme Court has adopted a two-part
14 test. *King*, 4 NMI at 307 (citing *Towe Antique Ford Found. v. I.R.S.*, 999 F.2d 1387 (9th Cir. 1993)).

15 First, the court considers various factors in determining whether the entity is an alter-ego of the
16 shareholder or member. Salient factors include among others: "undercapitalization[;] use of the
17 corporation as a facade for the operations of the dominant stockholders[;] use of the corporate entity in
18 promoting injustice or fraud[;] . . . [w]hether the individual uses the entity to shield himself from
19 personal liability; [w]hether the individual uses the business entity for his or her own financial benefit;
20 [w]hether the individual mingles his own affairs in the affairs of the business entity." *Id.*

21 Here, the complaint sufficiently alleges that ***both entities were involved in the alleged fraud*** and
22 were formed for the purpose of diverting martial assets, or at the very least used for that fraudulent
23 purpose. Moreover, the complaint alleges that Latte Stone, LLC was formed at Defendant Quichocho's
24 suggestion with Ms. Quichocho as its sole member, suggesting it was a façade. The Quichochos,
allegedly, never contributed any assets in order to form or acquire Latte Stone, LLC demonstrating that

1 the entity was undercapitalized. Thus, there are facts sufficient to allege an alter-ego theory of liability
2 whether the Plaintiff's are seeking to pierce the corporate veil and hold the individuals liable or seeking
3 to invoke the reverse-piercing doctrine and hold the LLC's liable.

4 Second, once a court determines that an entity is the alter-ego, then it decides whether or not to
5 pierce the corporate veil by determining: "whether the interests of the dominant stockholders are so
6 intertwined with those of the corporation that separate entities no longer exist" and "whether injustice or
7 fraud would result if the fiction of separate entities was upheld." *Id.* (internal citations omitted).

8 In this case, the complaint alleges that Defendant Kim, and the Quichocho Defendants engaged
9 in a systematic and fraudulent scheme to transfer martial property into the LLC's in order to hide it from
10 the Plaintiff, and proceeded to transfer such assets including twenty-six poker machines to Tan Dingo,
11 LLC and twenty poker machines to Latte Stone, LLC. (TAC at 21-26.) These allegations readily show
12 that such entanglement and risk of injustice are plausible here.

13 **III. CONCLUSION**

14 For the aforementioned reasons Quichocho Defendant's Motion to Dismiss is hereby **DENIED**.

15 **IT IS SO ORDERED** this 30th day of May, 2012.
16
17

18 _____
19 /s/
20 Joseph N. Camacho, Associate Judge
21
22
23
24