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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3987-09T2

QUGEN, INC.,

Plaintiff-Appellant,

v.

ANUPAMA CHAWLA a/k/a ANUPAM CHAWLA, ACE AMERICA PLUS, L.L.C., JUPMINDER SINGH t/a US DOLLAR PLUS, INC. and ONE DOLLAR DEPOT a/k/a JUPMINDER SINGH CHAWLA and SUNNY SINGH,

Defendants-Respondents.

Argued September 27, 2011 - Decided December 2, 2011

Before Judges Reisner, Simonelli and Hayden.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-603-08.

Michelle L. DeLuca argued the cause for appellant (Potters & Della Pietra, L.L.P., attorneys; Gary Potters, of counsel and on the brief; Ms. DeLuca and Drew D. Krause, on the brief).

George F. Hendricks argued the cause for respondents (Hendricks & Hendricks, attorneys; Mr. Hendricks and Patricia M. Love, on the brief).

PER CURIAM

Plaintiff Qugen, Inc. appeals from an April 14, 2010 order dismissing its complaint against defendants Anupama Chawla and Jupminder Singh. Briefly, this is a commercial dispute in which plaintiff obtained summary judgment against corporate defendants Ace America, L.L.C. and U.S. Dollar Plus, L.L.C, and then sought to pierce the corporate veil and impose personal liability on defendants Chawla and Singh. After a bench trial on the veil-piercing issue, Judge Martin E. Kravarik found no basis to hold Chawla and Singh personally liable. Based on our review of the record, we conclude that Judge Kravarik's decision is supported by substantial credible evidence and is consistent with applicable law.[1] Accordingly, we affirm.

I

This was the most pertinent evidence. The lawsuit arose from a November 1, 2006 contract between Qugen, an importer of generic over-the-counter medications manufactured in India, and Ace America Plus, L.L.C. (Ace), a corporation formed for the sole purpose of distributing those goods to dollar stores, gas stations and convenience stores (collectively, bargain stores) in the United States. Chawla was the president of Ace. Singh, who lived with Chawla and is the father of her two children, was

[1] The judge dismissed defendants' counterclaim concerning alleged problems with a second shipment of merchandise. They have not cross-appealed from that dismissal.

the president of U.S. Dollar Plus, Inc. (U.S. Dollar), the corporation that signed the Qugen-Ace contract as guarantor.

Ace ordered, received, and paid for the first shipment of merchandise. A dispute arose when Ace failed to pay for the second shipment of merchandise. Ace eventually paid Qugen $70,000 for a portion of a third shipment. After obtaining a judgment for over $300,000 from Ace, Qugen sought to collect the judgment from the individual defendants, claiming that they made material misrepresentations to induce Ace to sign the contract; undercapitalized Ace; commingled their personal funds with those of Ace and used Ace's funds for personal purposes; and fraudulently induced Ace to ship merchandise with false promises of payment.

To be charitable, plaintiff's trial proofs were less than overwhelming. Through no fault of its current counsel, plaintiff's prior attorney had failed to complete discovery. Instead of beginning with testimony from plaintiff's employees, plaintiff first presented defendants as its witnesses and, in essence, conducted discovery during their direct examinations. This time-consuming process elicited considerable information about the fast-food meals and other relatively small expenses defendants charged to Ace's credit card, and extensive testimony

about Chawla's unreported income from sources other than Ace. It produced little evidence to support plaintiff's claims.

In their direct testimony, and the cross-examination conducted by their own counsel, defendants gave the following version of events. A representative of Qugen approached Singh with an offer to distribute Indian-made generic products in the United States. Singh, who was then operating a dollar store, was unwilling to enter into an agreement himself or through his corporation, U.S. Dollar. However, he told the Qugen representative that his "wife" Chawla could set up a separate corporation to engage in the distribution. At the time, Chawla was working at a Dunkin Donuts restaurant. Neither Singh nor Chawla made any representations about her assets or business acumen or about the assets that the new corporation, Ace, would have. Qugen insisted that U.S. Dollar guarantee the contract, but did not ask for any financial information about U.S. Dollar, Ace, or either of the defendants. Nor did Qugen seek a personal guarantee from either defendant.

The contract required Ace to provide a $25,000 deposit in escrow against payment for the first shipment of merchandise, plus a post-dated check for the balance owed on the first shipment, and required Qugen to escrow $5000 as a guarantee of prompt delivery of that shipment. The contract did not provide

for any other financial security, beyond the guarantee from U.S. Dollar. The contract also contained an integration clause limiting the agreement to the four corners of the written contract. Significantly, the clause provided: "This Agreement contains the entire agreement between the parties . . . and prior or collateral representations, promises or conditions in connection with or in respect to the subject matter hereof that are not incorporated herein are not binding upon either of the parties."

According to defendants, Qugen understood that Ace would take delivery of the goods, sell them to wholesalers or to individual bargain stores in the United States, and pay Qugen out of the proceeds of those sales. Defendants testified that Ace took delivery of the first shipment, sold it with relative ease, and paid Qugen with the proceeds. They testified that Qugen then sent them a second shipment prematurely; this shipment contained defective goods; and they were unable to sell it because their customers had not yet sold the first shipment and did not need to restock. According to Singh, Qugen pleaded with Ace to take the goods anyway, try to sell them, and pay when they sold them.

Both defendants testified that after Qugen's representatives repeatedly pressed them for payment, Chawla

agreed to provide Qugen with four checks, three of which were undated, with the agreement that Qugen was not authorized to cash the checks until Ace was able to sell the merchandise and she gave authorization for payment. Defendants insisted that Qugen was well aware that Ace did not have the funds to cover the checks at the time they were written; that is why three of the checks were undated.

Eventually, Ace sold some of the merchandise, and Chawla issued a dated check for about $70,000 to pay for that merchandise.[2] After Qugen insisted that it was going to deposit the three undated checks, Chawla arranged to stop payment on them. She insisted that Ace was never able to sell the merchandise for which it had not paid Qugen; that the merchandise was still sitting in a warehouse; and that she had offered to return the merchandise but Qugen refused to take it back.

Chawla testified that she took a $4000 monthly salary from Ace, and also paid Singh several thousand dollars for work he performed for the company. Because he did most of the traveling to drum up business for Ace, she allowed him, on limited occasions, to use the company credit card to pay for travel

[2] There is no dispute that there were insufficient funds to cover the first $70,000 check; Chawla borrowed money and then reissued the check to Qugen. That re-issued check cleared.

expenses. She explained that numerous other credit card receipts for fast food meals, cups of coffee, and similar expenses, were incurred during business meetings or business-related travel. She and Singh also testified that they borrowed from friends to raise the initial $25,000 deposit to Qugen, and, as Ace fell into financial difficulties, they used personal loans from friends to prop up the company's finances.

Plaintiff also presented testimony from Qugen's director of business development, Varun Suri, who helped negotiate the contract for Qugen. In his testimony, Suri contended that defendants defrauded Qugen by telling him that a third individual named Rajesh Kapoor, who had considerable experience in marketing generic products, would be involved in operating Ace. However, he admitted that the contract between Ace and Qugen said nothing about Kapoor's participation. Suri conceded that his company did not perform any financial due diligence before signing the contract with Ace and sought no personal guarantees from defendants. While he testified that Singh represented that Chawla was his wife, when in fact they were not married, Suri was unable to explain how this was material to the contract beyond asserting that a married couple would be more "stable." He also admitted that Singh lived up to his oral

promise to be very active in the management of Ace, even though he was not an owner of that company.

Although Suri asserted that defendants defrauded Qugen by issuing checks in payment for merchandise and then stopping payment on the checks, Suri conceded that Ace provided Qugen with undated checks. He admitted that someone from Qugen inserted dates on the checks and cashed them.

Suri conceded he had no personal knowledge as to whether defendants had sold the products at issue and kept the proceeds for themselves, or whether, as defendants claimed, they were unsuccessful in their efforts to sell them. Qugen had no proof to rebut Chawla's testimony that the merchandise was still in a warehouse. Suri agreed that Ace had offered to return the merchandise and that Qugen had refused the offer.

II

In a lengthy oral opinion issued on March 26, 2010, Judge Kravarik found no basis to pierce the corporate veil and impose personal liability on defendants for the judgment against the corporations. He found that defendants were credible witnesses on all of the essential issues in the case. He found that Ace was "undercapitalized but not because [it was] adequately capitalized and [defendants] siphoned off the money. They put in what they had. They even put in what they borrowed." The

judge also credited defendants' testimony that Qugen accepted the undated checks from defendants knowing that there were insufficient funds to cover them. He found that defendants hoped to be able to cover the checks, because they "wanted to keep the business going." He also credited defendants' testimony that the bulk of the expenses they charged to Ace were for business travel. He noted that they stayed in the least expensive accommodations, such as Motel 6, and ate fast food while on business trips. They did not spend company assets on luxuries.

He concluded that Qugen did not prove either legal fraud or equitable fraud. He found defendants had no intent to defraud plaintiff and made no material misrepresentations, and plaintiff was not misled by, and did not rely on, any alleged misrepresentations by defendants. He found that all parties expected that defendants would be able to sell the second shipment of goods and, after selling them, would be able to make good on the undated checks. Unfortunately, due to the worsening economy and competition from other, larger dollar store operations, defendants were not able to sell the goods. The judge also found that any commingling of defendants' assets with those of the corporation was de minimus and did not justify piercing the corporate veil.

III

Piercing the corporate veil is an equitable doctrine designed to provide a remedy for an underlying wrong, where a remedy would otherwise be unenforceable because the primary defendant is a corporation without assets to pay it. See Verni v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006), certif. denied, 189 N.J. 429 (2007). "Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law." State v. Ventron Corp., 94 N.J. 473, 500 (1983) (citations omitted). In an appropriate case, the doctrine may be applied to hold an individual liable for an otherwise-uncollectible judgment against a corporation. See Marascio v. Campanella, 298 N.J. Super. 491, 502 (App. Div. 1997); Stochastic Decisions, Inc. v DiDomenico, 236 N.J. Super. 388, 394-95 (App. Div. 1989), certif. denied, 121 N.J. 607 (1990).

In reviewing a judge's determination whether to pierce the corporate veil, we are bound by the judge's factual findings so long as they are supported by substantial credible evidence. See Marioni v. Roxy Garments Delivery Co., 417 N.J. Super. 269,

275 (App. Div. 2010). We owe particular deference to a trial judge's evaluation of witness credibility. See State v. Locurto, 157 N.J. 463, 471-72 (1999). We owe no deference to the trial judge's interpretation of the law. Marioni, supra, 417 N.J. Super. at 275. However, we review a judge's decision whether to grant an equitable remedy for abuse of discretion so long as it is consistent with the judge's factual findings. Id. at 275-76. Having reviewed the record in light of these principles, we find no basis to disturb Judge Kravarik's decision.

On this appeal, plaintiff argues that the judge incorrectly held plaintiff to the clear and convincing standard of proof. However, the judge did not state that he was applying the clear and convincing standard to plaintiff's veil piercing claim in general. The only references to the clear and convincing standard of proof appear in the section of the judge's opinion discussing plaintiff's claim for punitive damages. The judge correctly noted that plaintiff was required to prove that claim by clear and convincing evidence. See N.J.S.A. 2A:15-5.9.

However, as a matter of law, the judge would not have erred if he had applied the clear and convincing evidence standard to the veil piercing claim. See Canter v. Lakewood of Voorhees, 420 N.J. Super. 508, 519 (App. Div. 2011); Trs. of the Nat'l

Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk, 332 F.3d 188, 194 (3d Cir. 2003). It was clear from Suri's testimony, as well as plaintiff counsel's summation, that plaintiff was primarily asserting intentional fraud. Suri testified that defendants fraudulently induced Qugen to send additional merchandise by promising to pay for it and by providing undated checks which they had no intention of honoring. See Stochastic Decisions, Inc., supra, 236 N.J. Super. at 395-96 (holding that a similar claim of fraud must be proven by clear and convincing evidence). Suri also testified that, to induce Qugen to enter into the contract, defendants falsely told him they were husband and wife and falsely told them that a second individual, Mr. Kapoor, would be participating in running the Ace operation.

Judge Kravarik rejected all of those contentions based on the facts as he found them, including his evaluation of witness credibility. We find no merit in plaintiff's arguments that Judge Kravarik's factual findings were against the weight of the evidence. There is no basis in this record to disturb his credibility findings, to which we owe deference. See Locurto, supra, 157 N.J. at 472.

Further, even if we accept plaintiff's argument that because its claim did not depend on proving legal fraud, its

burden of proof was by a preponderance, plaintiff's evidence was inadequate to justify piercing the corporate veil. There was no evidence that defendants stripped Ace of assets it would otherwise have had available to pay the judgment in this case. There was no evidence that Ace was undercapitalized for the business it agreed to undertake with Qugen. For example, there was no testimony about the normal level of capitalization expected of a company that, like Ace, was in the business of reselling cut-rate merchandise. There was no proof that Ace "'was established to defraud its creditors'" or to avoid "'the risks known to be attendant'" to its business. Verni, supra, 387 N.J. Super. at 200-01 (quoting Trs. of the Nat'l Elevator Indus., supra, 332 F.3d at 197). And the judge found credible defendants' testimony that, with very minor exceptions, they used the Ace credit card to pay business expenses not personal expenses. Again, we find no basis in the record to interfere with the judge's credibility determinations. Locurto, supra, 157 N.J. at 472. In light of the judge's factual findings, there was no legal or equitable basis to pierce the corporate veil.

Finally, piercing the corporate veil is an equitable doctrine, application of which is fact-sensitive and aimed at preventing fraud and injustice. Contrary to plaintiff's

appellate argument, the doctrine is not to be applied automatically whenever there is some de minimus use of corporate funds to pay personal expenses. See Brenner v. Berkowitz, 134 N.J. 488, 516 (1993); Wis. Dep't of Revenue v. William Wrigley, Jr., Co. 505 U.S. 214, 231, 112 S. Ct. 2447, 2457-58, 120 L. Ed. 2d 174, 191 (1992) (discussing the doctrine of de minimus non curat lex). Plaintiff's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.