SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2253-16T4

NATY SAMRA, MIN PLAST, S.A. de C.V., a Mexican Corporation, NEW PLASTIC, S.A. de C.V., a Mexican Corporation,

Plaintiffs-Appellants,

v.

REHRIG PACIFIC COMPANY, a Delaware Corporation, REHRIG PACIFIC, S.A. de C.V., a Mexican Corporation,

Defendants-Respondents.

Argued April 16, 2018 – Decided May 3, 2018

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-1840-15.

Daniel Louis Grossman argued the cause for appellants (Daniel Louis Grossman and Abraham M. Penzer, on the briefs).

Scott B. Lieberman (Slater Hersey & Lieberman, LLP) of the California Bar, admitted pro hac vice, argued the cause for respondents (Sherman Wells Sylvester & Stamelman, LLP, attorneys; Scott B. Lieberman, of counsel;

Julian W. Wells and Jordan D. Weinreich, on the brief).

PER CURIAM

Plaintiffs Naty Samra, Min Plast, S.A. de C.V. and New Plastic, S.A. de C.V. appeal from an order dismissing their complaint with prejudice for lack of jurisdiction. The only issue presented for our consideration is whether the court erred by determining defendant Rehrig Pacific, S.A. de C.V. (Rehrig Mexico), a Mexican corporation, is not the corporate alter ego of Rehrig Pacific Company (Rehrig US), a Delaware corporation. Because we are satisfied there is sufficient credible evidence supporting the motion court's conclusion that plaintiffs failed to demonstrate Rehrig Mexico is the alter ego of Rehrig US, we affirm.

I.

In June 2015, plaintiffs filed a complaint alleging defendants breached a written and implied joint venture agreement with plaintiffs. Defendants moved to dismiss the complaint asserting the court lacked personal jurisdiction over Rehrig Mexico, and on grounds of forum non conveniens. In response, plaintiffs argued the court had jurisdiction over Rehrig Mexico because it was an "alter ego" of Rehrig US.

At the initial hearing on the motion in November 2015, the court ordered the parties to conduct discovery related to the alter ego issue. Following completion of the discovery, defendants renewed their dismissal motion. At oral argument, the court entered an order directing additional discovery requiring production of Rehrig US and Rehrig Mexico's tax returns and financial statements. The court adjourned disposition of defendants' motion pending exchange of the documents and information.

On November 18, 2016, the court heard argument on defendants' dismissal motion. In a December 22, 2016 detailed written opinion, Judge Craig L. Wellerson determined the evidence did not establish Rehrig US exercised corporate dominance over Rehrig Mexico. Judge Wellerson found that although plaintiffs presented evidence showing "some overlap between the boards of directors and officers of each company" and some cost-sharing between the companies, the evidence demonstrated Rehrig Mexico paid its own taxes, employed several hundred of its own employees, and consistently observed corporate formalities as a company separate from Rehrig US. The court found plaintiffs failed to establish Rehrig Mexico was undercapitalized and that Rehrig Mexico constituted a façade for Rehrig US. The court concluded the evidence failed to establish

Rehrig US exercised the corporate dominance over Rehrig Mexico that was essential to plaintiffs' alter ego claim.

The court also determined plaintiffs failed to present evidence showing Rehrig US utilized Rehrig Mexico to perpetrate a fraud, injustice or to circumvent of the law. The court concluded plaintiffs' failure to present such evidence was fatal to their claim the court had jurisdiction because Rehrig Mexico was Rehrig US's alter ego, and entered an order dismissing the complaint for lack of jurisdiction.[1] This appeal followed.

Plaintiffs present the following legal argument for our consideration:

> POINT ONE
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> DEFENDANTS ARE ONE AND THE SAME.
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> II.

"Plaintiff[s] bear[] the burden of pleading sufficient facts to establish jurisdiction." Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 598 (App. Div.), certif. denied, 231 N.J. 176 (2017) (citing Blakey v. Cont'l Airlines, 164 N.J. 38, 71 (2000)). Our "review of a ruling of jurisdiction is plenary because the question of jurisdiction is a question of law." Rippon

[1] Because the court dismissed the complaint for lack of personal jurisdiction, it did not address defendants' argument the complaint should be dismissed on forum non conveniens grounds.

v. Smigel, 449 N.J. Super. 344, 358 (App. Div. 2017). We will not, however, disturb a trial "court's factual findings with respect to jurisdiction" that are based on "substantial, credible evidence in the record." Ibid. (quoting Mastondrea v. Occidental Hotels Mgmt., S.A., 391 N.J. Super. 261, 268 (App. Div. 2007)).

Plaintiffs make a singular argument.[2] They claim the court erred by finding Rehrig Mexico is not the alter ego of Rehrig US. Generally, a court will not impute personal jurisdiction over a corporation to its subsidiary corporation "without a showing of something more than mere ownership." FDASmart, Inc. v. Dishman Pharm. & Chemicals Ltd., 448 N.J. Super. 195, 203 (App. Div. 2016) (quoting Pfundstein v. Omnicom Grp. Inc., 285 N.J. Super. 245, 252 (App. Div. 1995)). The alter ego theory of jurisdiction is founded on the piercing of the corporate veil doctrine. Ibid.

Under the alter ego theory, a court will impute personal jurisdiction over a foreign subsidiary corporation only where the plaintiff shows: "(1) the subsidiary was dominated by the parent corporation, and (2) adherence to the fiction of separate corporate

[2] We limit our discussion to the argument raised by plaintiffs on appeal. Issues not briefed on appeal are deemed waived. Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001).

existence would perpetrate a fraud or injustice, or otherwise circumvent the law." Id. at 204.

To satisfy the first prong of the alter ego standard, a plaintiff must establish "the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent." Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 200 (App. Div. 2006) (quoting State, Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 501 (1983)). To determine whether such "corporate dominance" is proven, courts must engage "in a fact-specific inquiry considering whether the subsidiary was grossly undercapitalized, the day-to-day involvement of the parent's directors, officers and personnel, and whether the subsidiary fails to observe corporate formalities, pays no dividends, is insolvent, lacks corporate records, or is merely a facade." Ibid. The court may also consider "common ownership, financial dependency, interference with a subsidiary's selection of personnel, . . . and control over a subsidiary's marketing and operating policies." FDASmart, Inc., 448 N.J. Super. at 204.

To satisfy the second prong of the alter ego standard, plaintiffs must prove "the parent . . . abused the privilege of incorporation by using the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law." Shotmeyer v. N.J.

Realty Title Ins. Co., 195 N.J. 72, 86-87 (2008). Thus, "[w]here individuals set up 'legitimate business structures to further their personal and business plans' and 'do not use their partnerships to commit fraud or defeat the ends of justice,' the veil-piercing [alter ego] doctrine will not apply." FDASmart, Inc., 448 N.J. Super. at 205 (first alteration in original) (quoting Canter v. Lakewood of Voorhees, 420 N.J. Super. 508, 522 (App. Div. 2011)).

Based on our review of the record, we affirm substantially for the reasons set forth in Judge Wellerson's written opinion. There is substantial credible evidence supporting the court's determination plaintiffs failed to establish Rehrig US exercised corporate dominance over Rehrig Mexico. Judge Wellerson also correctly determined the record lacks any evidence showing Rehrig US utilized Rehrig Mexico to perpetrate a fraud or injustice. Having failed to satisfy either prong of the alter ego standard, see id. at 204, plaintiffs did not sustain their burden. Plaintiffs' arguments to the contrary are without sufficient merit to warrant any further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.