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FROM THE COMMITTEE ON OPINIONS

MILL ROAD SOLAR PROJECT LLC; NEW ENERGY VENTURES INC.; GHG TRADING PLATFORMS, INC.; Plaintiffs, v. CEP SOLAR LTD.; MILFORD SOLAR FARM, LLC; FWH ASSOCIATES, P.A.; PURE POWER ENGINEERING, INC; ABC CORPS #1-5; and ABC CORPS #6-10; Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-2029-19** Civil Action **OPINION**

Argued: September 10, 2021
Decided: September 23, 2021

THE HONORABLE ROBERT C. WILSON, J.S.C.

Michael S. Kimm, Esq. appearing on behalf of plaintiffs Mill Road Solar Project LLC, New Energy ventures Inc., and GHG Trading Platforms, Inc. (from Kimm Law Firm).

Sean F. Byrnes, Esq. appearing on behalf on defendants CEP Solar LTD., Milford Solar Farm, LLC, FWH Associates, P.A., ABC Corps #1-5, and ABC Corps #6-10 (from Byrnes, O'Hern & Heugle, LLC)

FACTUAL BACKGROUND

THIS MATTER arises out of a dispute between plaintiffs Mill Road Solar Project LLC ("Mill Road"); New Energy Ventures, Inc.; and GHG Trading Platforms, Inc. (collectively, referred to hereinafter as the "Plaintiffs") and defendants CEP Solar, LTD. ("CEP"); Milford Solar Farm LLC (collectively with CEP, referred to hereinafter as the "CEP Defendants"); FWH Associates, P.A.; Pure Power Engineering, Inc.; Gary R. Cicero, Mark Bellin, Esq.; New Jersey Resources; Township of Holland and its Planning Board; and Fiberville Estates, LLC ("Fiberville") regarding a lease for the subject property, solar rights, and the solar project.

The Solar Project

At all times relevant to the allegations set forth in Plaintiffs' Complaint, Fiberville owned real property in Holland Township, Hunterdon County, State of New Jersey, consisting of approximately seventy non-contiguous acres (the "Property"). Fiberville entered a land lease contract with Mill Road on or about September 1, 2015 (the "Lease"). One of the material terms of the Lease was that Mill Road would make an annual rental payment on September 1 of each year.

Mill Road was formed in or around 2015 as a special purpose entity to develop a utility-scale solar energy farm (the "Solar Project") to be located on the Property. Solar project development is a complex endeavor. Developers must juggle numerous interrelated development activities that are often carried out in parallel, such as: obtaining a suitable site; designing the plant; maximizing energy yield; securing power purchasers; obtaining all necessary, authorizations and permissions from the utilities, and local, state and federal agencies; negotiating and executing numerous contracts; and obtaining financing, which is generally contingent on the availability of tax incentives. It can take years to develop a utility scale project and significant financial investment.

On January 15, 2016, Mill Road filed an application for a variance and preliminary and final site plan approval with the Holland Township Planning Board. Mill Road retained Princeton Engineering, which was later replaced by Pure Power Engineering, Inc. and FWH Associates, P.A. in March 2017, to prepare the engineering drawings and site plans. Mill Road also secured legal counsel to represent it before the Planning Board.

On May 8, 2017, the Planning Board granted preliminary and final site plan approval to construct and operate the Solar Project at the Property. Mill Road obtained a Wholesale Market

Participation Agreement (the "WMPA") in conjunction with PJM Interconnection, LLC ("PJM"), and Jersey Central Power & Light Company ("JCP&L"). The WMPA permits the sale of electricity generated at the Property to a local utility. The Interconnection Agreement with JCP&L allows the owner of the Solar Project to connect a utility and obtain the right to earn Solar Energy Renewable Credits from the New Jersey Board of Public Utilities pursuant the New Jersey Solar Act.

The applications, resolutions, leases, plans, approvals, and agreements make up the "Solar Rights". These Solar Rights are contractual in nature. The Solar Rights are also specific to the Property.

The Non-Disclosure and Non-Circumvention Agreement

In or about April 2017, CEP approached Mill Road expressing interest in buying the Solar Rights to the Solar Project. To evaluate the Solar Project, CEP requested access to all the information relating to the Solar Project and Property. Mill Road, two years earlier, had entered into a "Non-Disclosure – Non-Circumvention Agreement[1]" dated September 28, 2015 (the "NDA"). This earlier NDA was between CEP and GHG Trading Platforms, Inc., which owned Mill Road together with NEV. That NDA restricted CEP Defendants from using "confidential" information for any purpose except in conjunction with the sale of the Solar Project between Plaintiffs and the CEP Defendants. However, that 2015 NDA only provided for a one year term.

Default Under the Lease

On September 1, 2017, Mill Road failed to make the annual rental payment due under the Property Lease amounting to $206,045.00. Plaintiffs were negotiating to buy the land from Fiberville. However, internal strife among Plaintiffs and investors interfered with Plaintiffs'

[1] The exact nature of what, if any, "confidential" information was shared is at best not clear.

ability to raise enough money to purchase the land, or apparently to pay the rent due under the Lease.

On September 5, 2017, counsel for Fiberville sent a notice to Mill Road that it was in default of its payment obligations under the Lease. The notice further informed Mill Road that it was required to make payment in the amount of $206,045.00 within ten (10) days from the date of the notice, in accordance with the Lease.

The notice further informed Mill Road that Fiberville had the right to terminate the Lease if payment were not received within the indicated timeframe. In the event of termination, Mill Road would be required to surrender and return the property to Fiberville. Mill Road never did make the required payment under the Lease. Fiberville terminated the Lease with Mill Road on October 17, 2017. Alex Lemus, principal of Mill Road and GHG Trading Platforms, Inc., admitted that Fiberville was within its rights to terminate Plaintiffs' Lease when the annual rental payments were not made. Fiberville further notified Mill Road that because no solar facility equipment had ever been installed by them at the Property, no license was granted to Mill Road for any equipment removal or property restoration.

Plaintiffs' Loss of Solar Project

Once CEP Defendants informed PJM that Plaintiffs were going to lose site control, PJM cancelled the WMPA. In a letter dated January 31, 2018, to the Honorable Kimberly D. Bose, Secretary of the Federal Energy Regulatory Commission, counsel for PJM notified Secretary Bose that PJM was cancelling the WMPA entered among PJM, Mill Road, and JCPL. The letter advised Secretary Bose that the Mill Road Solar WMPA was being cancelled due to the loss of site control resulting in the default of the Mill Road Solar WMPA.

Creation of Milford Solar Farm, LLC, and the New Lease

Gary Cicero then formed Milford Solar Farm, LLC in 2017 after Plaintiff, Mill Road Solar Project, LLC, defaulted on its Lease. Milford Solar Farm, LLC was then able to enter into a lease agreement for the Property with Fiberville. Milford Solar Farm, LLC then requested an extension of the approval for the Solar Project from Holland Township and initiated its own new application process with PJM.

CEP Defendants' Motion for Summary Judgment

CEP Defendants now move for summary judgment. Defendants claim that summary judgment is appropriate at this juncture because Plaintiffs lost its rights to the Solar Project when it defaulted on its payment obligations under the Lease leading to CEP Defendants becoming a successor, and because Plaintiffs have failed to meet their burden of proof with respect to the following claims: (1) breach of contract; (2) tortious interference with a prospective economic advantage; (3) fraud; (4) conversion; (5) unjust enrichment; (6) breach of covenant of good faith and fair dealing; (7) piercing the corporate veil; (8) injunctive relief; and (9) declaratory relief. Essentially, Defendants argue that Plaintiffs had clearly lost their rights to the Solar Project when the Lease was terminated due to their default in payment. Therefore, Defendants contend that once the Lease was terminated CEP Defendants were free to become successors to the Property and Solar Project.

Plaintiffs oppose the motion, arguing that the motion should be denied because the CEP Defendants breached the NDA enabling them to take the Solar Project from Plaintiffs.

For the reasons below, Defendants' Motion for Summary Judgment are **GRANTED** in their entirety.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that "there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of R. 4:46-2." Id. at 540.

RULE OF LAW AND DECISION

I. Summary Judgment is Granted as to Plaintiffs' Claim of Breach of Contract (Count 1)

There are four elements for a breach of contract claim under New Jersey law; "(1) a contract between the parties; (2) a breach of that contract; (3) damages flowing therefrom; and (4) that the party stating the claim performed its own contractual obligations." Frederico v. Home Depot, 507 F.3d 188, 203 (3d Cir. 2007). "A party bringing a claim for breach of contract has the burden of proof to establish all elements of its cause of action, including damages." Improvement Authority v. GSP Recycling Co., Inc., 352 N.J. Super. 484, 503 (App. Div. 2003). The essential elements of a *prima facie* claim for breach of contract are: (1) a valid contract, (2) defective performance by

the defendant, and (3) resulting damages. Coyle v. Alexander's, 199 N.J. Super. 212, 223 (App. Div. 1985).

In this matter, Plaintiffs fail to prove any breach of contract by CEP Defendants resulted in the damages Plaintiffs allege. All damages set forth by Plaintiff relate directly to their loss of the Solar Project. The facts demonstrate that Plaintiffs defaulted under their Lease for the subject Property, lost possessory interest in the Property upon which the Solar Project was to be built, and subsequently lost the Solar Rights for which they claim damages. Plaintiffs' assertions fail to connect any facts between CEP Defendants and Plaintiffs' default under the lease. If Plaintiffs had not defaulted under the Lease, they would have the Solar Rights and Solar Project, and the subject action would be moot.

Plaintiffs have not proven that any breach of contract by the CEP Defendants resulted in the damages Plaintiffs allege. At all times relevant to Plaintiffs' allegations, Fiberville owned the Property. Fiberville entered the Lease with Mill Road, requiring Mill Road to make an annual payment to Fiberville on September 1 of each year. On September 1, 2017, Mill Road failed to make that annual payment due under the Lease in the amount of $206,045.00. On September 5, 2017, counsel for Fiberville sent notice of default to Mill Road stating that Mill Road was in default under the Lease, that it was required to make the payment within ten (10) days from the date of notice, and that if payment was not received Fiberville had the right to terminate the Lease. Upon termination, Mill Road was required to surrender and return the Property. Mill Road never made the payment under the Lease. As a result, Fiberville terminated the Lease with Mill Road on October 17, 2017.

Therefore, the loss of the Property was the direct and proximate result of Plaintiffs' failure to cure the default under the Lease with Fiberville. Once Plaintiff lost land control of the Property,

PJM voided the Solar Rights for Plaintiffs. CEP Defendants did not void the rights; PJM did so once Plaintiffs lost land control of the Property where the Solar Project was to be built. Plaintiffs cannot seek damages against a blameless third party simply because CEP Defendants signed an NDA. Plaintiffs do not establish the requisite causal link between a breach of the NDA and Plaintiffs default under the Lease and subsequent loss of their Solar Rights.

For any solar project in New Jersey that seeks to connect to the existing power grid, the approvals consist of a Wholesale Market Participation Agreement (WMPA) with PJM, an agreement with the utility power company, such as Jersey Central Power and Light ("JCPL"), and registrations with the New Jersey Board of Public Utilities ("BPU"). However, to finalize and rely upon these approvals, the developer must have a recognized possessory interest in the land to be developed, as well as local land use approval. If a developer does not have this land interest, its approvals to connect to the grid are voidable if the PJM, JCPL, or the BPU learn that the entity does not exercise control over that land. Moreover, if a solar developer fails to obtain or lose one of the approvals comprising the bundle (as in this case), it cannot move forward with the solar project.

In a letter dated January 31, 2018, to the Honorable Kimberly D. Bose., Secretary or the Federal Energy Regulatory Commission ("FERC"), counsel for PJM notified Secretary Bose that PJM was cancelling the Mill Road WMPA entered by and among PJM, Mil Road, and JCPL. Specifically, this letter advised Secretary Bose that the Mill Road Solar WMPA was being cancelled because, "material terms and conditions of the Mill Road Solar WMPA, including the loss of site control, were breached, and were not cured, resulting in the default of the Mill Road Solar WMPA. The Mill Road WMPA is thus terminated pursuant to section 1.1 therein." After

months of notice of the pending termination from PJM and FERC, as required by law and regulation, the requisite approvals were terminated.

Plaintiffs lost the Property and subsequently lost their Solar Rights as a result of their default under the Lease and their failure to cure this default. CEP Defendants had no causal connection to Plaintiffs' default. Had Plaintiffs made their Lease payments, they would still control the Property and would have retained their approvals. Plaintiffs bear the responsibility for their own actions. Therefore, summary judgment is granted, and Plaintiffs' claim for breach of contract is dismissed.

II. Summary Judgment is Granted as to Plaintiffs' Claims for Tortious Interference with a Prospective Economic Advantage (Count 2)

Under New Jersey law, the tort of interference with a prospective economic advantage contains four elements: (1) a protectable interest; (2) malice-the defendant's intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of a prospective gain; and (4) resulting damages. See Printing Mart v. Sharp Electronics., 116 N.J. 739, 751-752 (1989); accord DiMaria Constr., Inc. v. Interarch, 351 N.J. Super. 558, 567 (App. Div. 2011), aff'd, 172 N.J. 182 (2002). A plaintiff proves causation by showing that he or she would have had a reasonable probability of economic gain in the absence of the alleged interference. Printing Mart, supra, 116 N.J. at 759. Damages must be illustrated by facts showing that the plaintiff has suffered or will suffer pecuniary damage. Id. At 760.

Plaintiffs' rest their claim for tortious interference with a prospective economic advantage on an assertion that CEP Defendants acted in a manner that was "both injurious and transgressive of generally accepted standards of common morality or of law." Harper Lawrence, Inc. v. United Merchants & Mfrs., Inc., 261 N.J. Super. 554, 568 (App. Div. 1993) (quoting Di Christorfo v.

Laurel Grove Memorial Park, 43 N.J. Super. 244, 255 (App. Div. 1875)). Plaintiffs assert that CEP Defendants used confidential information under the NDA to negotiate a competing deal with the owners of the Property, and that CEP Defendants "undercut Plaintiffs' deal" and, had they not done so, "Plaintiffs would have received economic benefit of having the Solar Project at the Project Site." The claims ignore Plaintiffs' payment default under the Lease and consequent loss of site control over the Property. Aside from the fact that the NDA mentioned by Plaintiff was executed in 2015 with a one-year term that had expired by 2017, even if Plaintiffs proved a violation of the NDA, it was Plaintiffs' Lease default that led inevitably to their loss of the solar rights tied to the Property. As a result of Plaintiffs' own failures, Plaintiffs lost the ability to continue with the solar project at the Property. Therefore, Plaintiffs cannot establish the "resulting damages" required to maintain a cause of action for tortious interference.

In a typical tort case, a plaintiff must prove tortious conduct, injury, and proximate cause. W. Keeton, D. Dobbs, R. Keeton D. Owen, Prosser Keeton on the Law of Torts § 30, at p. 164-65 (5th ed.1984). Proximate cause is defined as "any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." Conklin v. Hannoch Weisman, 145 N.J. 395, 418 (N.J. 1996) (internal citations omitted). Fundamentally, for a plaintiff to impute tort liability upon a defendant a "plaintiff must prove tortious conduct, injury and proximate cause." Ayers v. Jackson Township, 106 N.J. 557, 585 (1987); see Prosser and Keeton on the Law of Torts, supra, at 164-165.

In the present matter, there exists no proximate cause between Plaintiffs' loss of their Solar Project, the Property, and/or the Solar Rights and any actions of CEP Defendants. Plaintiffs defaulted under the Lease and subsequently lost their interest in the Property when Fiberville

exercised its rights under the Lease to terminate. PJM then terminated Plaintiffs' application, which resulted in the loss of Plaintiffs' Solar Rights. At that time they simply had no rights that CEP Defendants could interfere with. Plaintiffs are unable to demonstrate a direct causal link between the actions of CEP Defendants and Plaintiffs' loss of the Solar Project. Therefore, summary judgment is granted, and Plaintiffs' claim for tortious interference with a prospective economic advantage is dismissed.

III. Summary Judgment is Granted as to Plaintiffs' Claims for Fraud (Count 3), Conversion (Count 4), Breach of Implied Covenant of Good Faith and Fair Dealing (Count 6)

Plaintiffs do not meet the elements for causes of action for fraud, conversion, or breach of covenant of fair dealing as each are premised on the claim that Plaintiffs had a continuing right to develop the Solar Project. After defaulting on the rent payment, Plaintiffs had no ability to develop the Solar Project after the termination of the Lease and Solar Rights.

To allege common law fraud, Plaintiffs must show: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge of belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichery Co. Realtors, 148 N.J. 582, 610 (1997). "Fraud is not presumed; it must be proven through clear and convincing evidence." Stoecker v. Echevarria, 408 N.J. Super. 597, 617 (App. Div. 2009) (quoting Stochastic Decisions, Inc. v. DiDomenico, 236 N.J. Super. 388, 395 (App. Div. 1989)).

Plaintiffs cannot establish the "resulting damages" necessary to sustain a fraud claim against CEP Defendants. Plaintiffs defaulted under the Lease when they failed to make the annual rental payment due to a dispute with their members. Plaintiffs could have made the payment and

continued developing their Solar Project but chose not to. CEP Defendants do not bear the costs and damages flowing from Plaintiffs' own breach of the Lease. Therefore, summary judgment is granted, and Plaintiffs claim for fraud is dismissed.

Under New Jersey law, conversion is defined as the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights." LaPlace v. Briere, 404 N.J. Super. 585, 595 (App. Div. 2009); see also Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 431 (App. Div. 2011). The elements of conversion are: (1) "the property and right to immediate possession thereof belong to the plaintiff;" and (2) "the wrongful act of interference with that right by the defendant." First Nat'l Bank v. North Jersey Trust Co., 18 N.J. Misc. 449, 452 (1940).

Plaintiffs did not own the Solar Rights. After Plaintiffs lost site control of the Property, PJM voided the Solar Rights, and Plaintiffs lost all rights to develop the Solar Project. CEP Defendants, and anyone else for that matter, were free to pursue development of the Solar Rights thereafter. CEP Defendants could not have assumed control of the Solar Rights owned by Plaintiffs because the Plaintiffs had no ownership interests in the Solar Rights after Plaintiffs' default and subsequent withdrawal by PJM. Therefore, summary judgment is granted, and Plaintiffs claim for conversion is dismissed.

Plaintiffs' cause of action for breach of implied covenant of good faith and fair dealing also fails. "To state a claim for breach of the implied covenant of good faith and fair dealing a contracting party must allege that the accused acted in bad faith or engaged in 'some other form of inequitable conduct in the performance of a contractual obligation.'" Pactiv Corp. v. Perk-Up, Inc., 2009 U.S. Dist. LEXIS 72796, at *34 (D.N.J. Aug. 18, 2009) (quoting Black Horse Lane Assoc.., L.P. v. Dow Chemical Corporation, 228 F.3d 275, 289 (3rd Cir. 2000)). "[T]he breach of

the implied covenant arises when the other party has acted inconsistent with the contract's literal terms, but has done so in such a manner so as to have the effect of destroying or injuring the right of the other part to receive the fruits of the contract[.]" Wade v. Kessler Inst., 172 N.J.327, 345 (2002) (citations and quotations omitted). Thus, "a [p]laintiff may not maintain a separate action for breach of the implied covenant of good faith and fair dealing [where] it would be duplicative of [its] breach of contract claim." Adler Eng'rs, Inc. v. Dranoff Props., No. 14-921, 2014 U.S. Dist. LEXIS 153497, *39 (D.N.J. Oct. 29, 2014) (quoting Han v. OnBoard LLC, No. 09-3639, 2009 U.S. Dist. LEXIS 107606, at *15 (D.N.J. Nov. 16, 2009)).

CEP Defendants' actions did nothing to destroy Plaintiffs' rights to receive the "fruits" of the contract. The "fruits" at issue would be the profits Plaintiffs would earn from their development and/or sale of their Solar Project. However, Plaintiffs' own default of payment under the Lease for the Property on which the Solar Project was to be built destroyed the possibility for Plaintiffs to have "fruits" arise from the project. Therefore, summary judgment is granted, and Plaintiffs' claim for breach of implied covenant of good faith and fair dealing is dismissed.

IV. Summary Judgment is Granted as to Plaintiffs' Claim for Unjust Enrichment (Claim 5)

"The doctrine of unjust enrichment rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another." Assocs. Commercial Corp. v. Wallia, 211 N.J. Super. 231, 243 (App. Div. 1986) (citing Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105, 108 (App. Div. 1966)). "A cause of action for unjust enrichment requires proof that 'defendant[s] received a benefit and that retention of that benefit without payment would be unjust.'" County of Essex v. First Union Nat. bank, 373 N.J. Super. 543, 549-50 (App. Div. 2004) (quoting VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994)), aff'd, remanded by 186 N.J.

46 (2006). "Unjust enrichment is not an independent theory of liability but is the basis for a claim of quasi-contractual liability." Nat'l Amusements, Inc. v. New Jersey Tpk. Auth., N.J. Super. 468, 478 (Law Div. 1992), aff'd, 275 N.J. Super. 134 (App. Div.), certify. Denied, 138 N.J. 269 (1994). Courts have recognized, however, that a claim for unjust enrichment may arise outside the usual quasi-contractual setting. County of Essex, supra, 373 N.J. Super. At 550.

In this matter, CEP Defendants did not receive any benefit from the Plaintiffs for which compensation is due. Plaintiffs failed to make the required payments under the Lease and, as a result, the Lease was terminated, and Plaintiffs lost site control of the Property and Solar Rights. Plaintiffs cannot claim CEP Defendants were unjustly enriched when the cause of Plaintiffs' loss of the Solar Rights was of their own doing. Therefore, summary judgment is granted, and Plaintiffs' claim of unjust enrichment is dismissed.

V. Summary Judgment is Granted as to Plaintiffs' Claim to Pierce the Corporate Veil (Claim 7)

A corporate and a limited liability company is a legal person or entity that exists separately from its shareholders. Lyon v. Barrett, 89 N.J. 294, 300 (1982). In this matter both CEP Defendants are corporate structures that shields their shareholders and/or members from personal liability. Plaintiffs, however, assert a cause of action to pierce the corporate veil and hold the shareholders and members of CEP Defendants personally liable under this equitable remedy. "[P]iercing the corporate veil is not technically a mechanism for imposing 'legal' liability, but for remedying the 'fundamental unfairness [that] will result from a failure to disregard the corporate form.'" Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006) (quoting Trs. Of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk, 332 F.3d 188, 193 (3d Cir. 2003)).

In State, Dept. of Environmental Protection v. Ventron Corp., 94 N.J. 473 (N.J. 1983), the New Jersey Supreme Court addressed those circumstance that allow for piercing the corporate veil:

> Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. Lyon v. Barrett, 89 N.J. at 300, 445 A.2d 1153. 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, Telis v. Telis, 132 N.J. Eq. 25, 26 A.2d 249 (E. & A. 1942), to perpetrate fraud, to accomplish a crime, or otherwise to evade the law, Trachman v. Trugman, 117 N.J. Eq. 167, 170, 175 A. 147 (Ch.1934).

Personal liability may be imposed upon a controlling stockholder of a close corporation where the controlling stockholder disregards the corporate form and utilizes the corporation as a vehicle for committing equitable or legal fraud. Walensky v. Jonathan Royce Intern., 264 N.J. Super. 276, 283, (App. Div.), certify denied, 134 N.J. 480 (1993); Marascio v. Campanella, 298 N.J. Super. 491, 502 (App. Div. 1997). A plaintiff seeking to pierce the corporate veil must establish: (1) that the entity was dominated by the individual owner, and (2) "that adherence to the fiction of separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law." Verni, 387 N.J. Super at 199-200 (citing Ventron, supra, 94 N.J. at 500-01). However, these circumstances do not exist in the present matter.

Plaintiffs' claims are based on the fact that CEP Defendants share officers and directors and allegedly do not abide by corporate formalities, which amount to fraud or injustice upon Plaintiffs. CEP Defendants did not perpetrate a fraud or other injustice upon Plaintiffs. The fact that CEP Defendants share officers and directors does not amount to fraud or injustice. As a result of Plaintiffs' default under the Lease by its failure to make the payments due, Plaintiffs do not

meet the burden necessary to sustain a claim for veil piercing. Therefore, summary judgment is granted, and Plaintiffs' claim to pierce the corporate veil is dismissed.

VI. Summary Judgment is Granted as to Plaintiffs' Claims for Injunctive Relief (Claim 8)

Plaintiffs seek temporary and permanent injunctive relief pursuant to the NDA and Equity to prevent irreparable injury. Injunctive relief is a remedy, not an independent cause of action.

Injunctive relief may be granted where the moving party demonstrates: (1) a reasonable probability of success on the merits based on well-settled law, (2) that a balance of hardships and equities favors injunctive relief, (3) that the moving party will suffer irreparable harm in the absence of injunctive relief, and (4) that the public interest will not be harmed. Waste Mgmt. of New Jersey v. Union City Util. Auth., 499 N.J. Super. 508, 519-20 (App. Div. 2008) (citing Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982)). The movant must demonstrate each factor by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (citing Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

As set forth above, Plaintiffs' claims fail due to their damages being the direct and proximate result of Plaintiffs' own failure to make the payments due under the Lease. Therefore, summary judgment is granted, and Plaintiffs' claim for injunctive relief is dismissed.

VII. Summary Judgment is Granted as to Plaintiffs' Claim for Declaratory Relief (Claim 9)

Plaintiffs seek a declaration that they are the owners of the subject Solar Rights. There is no factual or legal basis to support a finding that Plaintiffs own the Solar Rights. Therefore, summary judgment is granted, and Plaintiffs' claim for declaratory relief is dismissed.

CONCLUSION

Plaintiffs in this action are Mill Road Solar Project LLC, New Energy Ventures Inc., and GHG Trading Platforms, Inc. Plaintiffs defaulted under its Lease with Fiberville for the Property on which Plaintiffs were going to pursue the Solar Project. After several notices, Fiberville then terminated the Lease with Plaintiffs. CEP Defendants then entered into a lease with Fiberville and became the successor to the Solar Project.

Plaintiffs claim that CEP Defendants somehow breached the NDA and somehow caused the termination of its Lease and the loss of the Solar Project. However, CEP Defendants are not the cause for Plaintiffs' loss. The termination of the Lease was due simply because of Plaintiff's own default. That event enabled CEP Defendants to become successors to this solar farm development.

As such, and for the reasons set forth at length in this decision, Defendants' Motion for Summary Judgment is **GRANTED** in its entirety. It is so **ORDERED**.