

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3495-13T4

PORT DRIVERS FEDERATION
18, INC.,

Plaintiff-Appellant,

v.

ANTHONY M. FORTUNATO,

Defendant-Respondent.

Argued May 27, 2015 - Decided June 4, 2015

Before Judges Fasciale and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Docket No. L-
2683-12.

David A. Cohen (The Cullen Law Firm) argued
the cause for appellant (Mr. Cohen and
Robert J. Basil (The Basil Law Group),
attorneys; Messrs. Cohen and Basil, on the
brief).

John A. Craner argued the cause for
respondent (Craner, Satkin, Scheer, Schwartz
& Hanna, P.C., attorneys; Mr. Craner, on the
brief).

PER CURIAM

Plaintiff appeals from a February 28, 2014 order granting
defendant's motion for summary judgment. We reverse and remand.

I.

Defendant was the sole shareholder of All Saints Express, Inc. ("All Saints") and St. George Trucking and Warehouse ("St. George"). St. George was a bonded warehouse responsible for accepting and distributing overseas shipments from the ports of New York and New Jersey. Defendant used All Saints to hire owner-operator tractor-trailer drivers as independent contractors. The dispatch personnel at St. George would then contact All Saints' contracted drivers to transport freight.

Plaintiff sued All Saints and St. George in federal court for violations of federal motor carrier laws. A federal court judge granted summary judgment in favor of plaintiff and entered a permanent injunction enjoining All Saints from transporting goods until it complied with the federal motor carrier laws. Port Drivers Fed'n 18, Inc. v. All Saints Express, Inc., 757 F. Supp. 2d 443, 462 (D.N.J. 2010). The federal court judge also granted summary judgment to St. George on plaintiff's claim that St. George was an alter ego of All Saints. Id. at 456-58.

Plaintiff moved to recover attorney's fees, and the federal court judge entered a judgment against All Saints in the amount of \$278,837 (the "judgment"). Plaintiff was only able to recover \$11,774 from All Saints, and subsequently filed this

action in state court seeking to pierce the corporate veil of All Saints to recover \$267,063 from defendant personally.

Depositions taken from defendant and St. George employees indicated that All Saints had no official place of business, offices, rent, or expenses. Other than defendant, All Saints had no other directors, officers, or employees. Defendant "did not draw any salary from [All Saints]" and did not "receive any profit distributions in the form of bonuses or dividends" from All Saints. Defendant also admitted having "no idea" what was "the amount of capital . . . put into All Saints at the time it was incorporated[.]" However, an All Saints balance sheet appeared to indicate that the total capitalization of All Saints was \$100.

Additionally, plaintiff learned that defendant authorized St. George's employees to write checks from All Saints' bank account directly to defendant. Defendant received from All Saints two checks totaling over \$11,000 after entry of the judgment, and St. George's chief financial officer ("CFO") indicated these payments were made in order to "close the bank accounts down." Defendant acknowledged terminating the existence of All Saints and winding up its affairs shortly after the entry of the judgment as well.

St. George's CFO stated that prior to ceasing operations, All Saints transferred a \$140,000 account receivable to St. George, which defendant's financial expert confirmed. The CFO also admitted that there were no contracts between All Saints and St. George memorializing their relationship.

Defendant moved for summary judgment asserting that no facts existed to support plaintiff's claim that All Saints was an alter ego of defendant. The judge agreed, granted summary judgment to defendant, and entered the order under review.

On appeal, plaintiff primarily argues that there exists genuine issues of material facts that preclude the issuance of summary judgment to defendant.

II.

A court should grant summary judgment when the record reveals "no genuine issues as to any material fact" and "the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "A ruling on summary judgment is reviewed de novo" and we do not defer to the "trial court's . . . interpretation of the meaning of a statute or the common law[.]" Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014) (citation and internal quotation marks omitted).

In deciding whether summary judgment was properly granted, we apply "the same standard governing the trial court[.]" Ibid.

(citation and internal quotation marks omitted). We consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Thus, we must give plaintiff "the benefit of the most favorable evidence and most favorable inferences drawn from that evidence." Gormley v. Wood-El, 218 N.J. 72, 86 (2014). Applying this standard, we conclude that the judge erred in granting summary judgment.

The doctrine of piercing the corporate veil is an "equitable remedy whereby the protections of corporate formation are lost" in order to remedy 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) (alteration in original) (citations and internal quotation marks omitted), certif. denied, 189 N.J. 429 (2007). The purpose 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[.]" Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195

N.J. 457, 472 (2008) (alteration in original) (citation and internal quotation marks omitted).

To pierce the corporate veil, a plaintiff must establish "1) that the subsidiary was dominated by the parent corporation, and 2) that adherence to the fiction of separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law." Verni, supra, 387 N.J. Super. at 199-200 (citing State, Dept. of Env'tl. Prot. v. Ventron Corp., 94 N.J. 473, 500-01 (1983)). Factors to consider when determining whether the parent dominated the subsidiary are "'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.'" Canter v. Lakewood of Voorhees, 420 N.J. Super. 508, 519 (App. Div. 2011) (quoting Verni, supra, 387 N.J. Super. at 200). However, "[o]wnership alone is not enough for piercing." Id. at 520.


Here, giving plaintiff every reasonable inference, as we must, genuine issues of material fact exist as to whether All Saints was merely an alter ego of defendant. The record shows that All Saints had no corporate formalities, may have been grossly undercapitalized, and had no other directors or other

persons in charge besides defendant. Defendant allegedly gave orders that checks should be directly written to him and little information exists as to All Saints' financial records. Defendant also admitted not receiving any salary or dividends from All Saints. These facts create a material dispute as to whether defendant dominated All Saints as it related to the first prong of the piercing the corporate veil standard.

Moreover, evidence exists that defendant may have used All Saints to avoid complying with the judgment. Despite defendant's argument that any revenue earned by All Saints went to pay legal bills, defendant received at least \$11,000 from All Saints right after the entry of the judgment and before All Saints ceased to operate. The record also indicates that All Saints transferred a \$140,000 account receivable to St. George after the entry of the judgment. These facts create a material dispute regarding the second prong of the piercing the corporate veil standard as to whether defendant used All Saints to circumvent the law and avoid the judgment.

Reversed and remanded for trial. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION