

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND JUDICIAL DEPARTMENT**

Matter of Agai v. Diontech Consulting, Inc.

138 A.D.3d 736 (2d Dep't 2016) · No. 2013-10303 · Decided April 6, 2016

SUMMARY

The New York Appellate Division, Second Department, affirmed an order granting petitioners summary judgment to enforce judgments against Stylianos Antoniou and Sokrates Antoniou personally by piercing Diontech Consulting, Inc.'s corporate veil. The court found evidence of domination, failure to observe corporate formalities, misuse of corporate funds, and asset stripping that left the corporation unable to pay its creditors.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; L. Priscilla Hall, J.; Robert J. Miller, J.; Hector D. LaSalle, J.
JURISDICTION	New York
DECIDED	April 6, 2016
DOCKET	2013-10303
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Supreme Court, Richmond County, granting petitioners summary judgment to enforce two judgments against the appellants personally by piercing the corporate veil of Diontech Consulting, Inc., and denying the appellants' cross-motion for summary judgment dismissing the petition as against them.
STANDARD OF REVIEW	Summary judgment is appropriate when the movant establishes entitlement to judgment as a matter of law; the opposing party must then raise a triable issue of fact. A party moving for summary judgment must also demonstrate prima facie entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Appellate Division opinion

PARTIES

Stylianios Antoniou, Sokrates Antoniou v. Jacob Agai, et al.,
Petitioners-respondents

TOPICS

corporate veil piercing

summary judgment

commercial litigation

remedies

civil procedure

PRACTICE AREAS

civil procedure

corporate law

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether petitioners established the elements necessary to pierce Diontech Consulting, Inc.'s corporate veil and enforce the judgments personally against the appellants.
2. Whether the appellants' contradictory, self-serving affidavits raised a triable issue of fact sufficient to defeat petitioners' motion for summary judgment.
3. Whether the appellants established prima facie entitlement to summary judgment dismissing the petition as against them.

HOLDINGS

1. Petitioners established that the appellants exercised complete domination over Diontech with respect to the transactions at issue and used that domination to commit a wrong that injured petitioners; therefore, the judgments could be enforced against the appellants personally by piercing Diontech's corporate veil.
2. The appellants' self-serving affidavits, which contradicted their prior deposition testimony, were insufficient to raise a triable issue of fact and did not defeat petitioners' motion for summary judgment.
3. The appellants were not entitled to summary judgment because they failed to demonstrate their prima facie entitlement to judgment as a matter of law.

KEY QUOTATIONS

“A party seeking to pierce the corporate veil must establish that (1) the owners exercised complete domination of the corporation with respect to the transaction at issue, and (2) such domination was used to commit a fraud or wrong against the party seeking to pierce the corporate veil which resulted in the injury to that party” ([*1])

“Equity will intervene to pierce the corporate veil and permit the imposition of individual liability on owners for the obligations of their corporations in order to avoid fraud or injustice” ([*1])

FACTUAL BACKGROUND

Petitioners held two judgments against Diontech Consulting, Inc. The appellants allegedly dominated Diontech, failed to observe corporate formalities, used corporate funds for personal purposes, and stripped Diontech of assets while winding down the business, leaving it unable to pay creditors. The appellants submitted affidavits that contradicted their prior deposition testimony, but those affidavits did not create a triable issue of fact.

PROCEDURAL HISTORY

Petitioners obtained two judgments against Diontech Consulting, Inc. in underlying actions. They then commenced a CPLR article 52 proceeding to enforce those judgments personally against alleged principals Stylianos Antoniou and Sokrates Antoniou. The Supreme Court granted petitioners' motion for summary judgment on the veil-piercing claim and denied the appellants' cross-motion. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 141
- Campone v Pisciotta Services, Inc., 87 AD3d 1104, 1105
- Weinstein v Willow Lake Corp., 262 AD2d 634, 635
- Ventresca Realty Corp. v Houlihan, 41 AD3d 707
- Godwin Realty Assoc. v CATV Enters., 275 AD2d 269, 270
- Austin Powder Co. v McCullough, 216 AD2d 825, 827-828
- Perez v Bronx Park S. Assoc., 285 AD2d 402, 404
- Philips v Bronx Lebanon Hosp., 268 AD2d 318

OPINION

PER CURIAM.

Matter of Agai v Diontech Consulting, Inc. (2016 NY Slip Op 02646) Matter of Agai v Diontech Consulting, Inc. 2016 NY Slip Op 02646 Decided on April 6, 2016 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on April 6, 2016 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P. L. PRISCILLA HALL ROBERT J. MILLER HECTOR D. LASALLE, JJ. 2013-10303 (Index Nos. 102968/07, 100103/10) [*1]In the Matter of Jacob Agai, et al., petitioners- respondents, vDiontech Consulting, Inc., et al., respondents, Stylianos Antoniou, et al., respondents- appellants.

Silverberg, P.C., Central Islip, NY, for respondents-appellants. Kasowitz, Benson, Torres & Friedman LLP, New York, NY (Michael P. Bowen of counsel), for petitioners-respondents. DECISION & ORDER In a proceeding pursuant to CPLR article 52, inter alia, to enforce two judgments, Stylianos Antoniou and Sokrates Antoniou appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Dollard, J.), entered August 29, 2013,

as granted that branch of the petitioners' motion which was for summary judgment on so much of the petition as sought to enforce the judgments against them personally by piercing the corporate veil of Diontech Consulting, Inc., and denied their cross motion for summary judgment dismissing the petition insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs. In underlying actions entitled *Agai v Diontech Consulting, Inc.*, and *Diontech Consulting, Inc., v 291 Avenue P, LLC*, which were commenced in the Supreme Court, Richmond County, under Index Nos. 102968/07 and 100103/10, respectively, the petitioners obtained two judgments against Diontech Consulting, Inc. (hereinafter Diontech).

The petitioners commenced this proceeding pursuant to CPLR article 52, inter alia, to enforce the judgments personally against two of Diontech's alleged principals, Stylianos Antoniou and Sokrates Antoniou (hereinafter together the appellants), by piercing the corporate veil of Diontech.

The petitioners moved, among other things, for summary judgment on so much of the petition as sought to enforce the judgments against the appellants personally by piercing the corporate veil of Diontech, and the appellants cross-moved for summary judgment dismissing the petition insofar as asserted against them.

The Supreme Court granted that branch of the petitioners' motion and denied the cross motion. Equity will intervene to pierce the corporate veil and permit the imposition of individual liability on owners for the obligations of their corporations in order to avoid fraud or injustice (see *Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141).

A party seeking to pierce the corporate veil must establish that (1) the owners exercised complete domination of the corporation with respect to the transaction at issue, and (2) such domination was used to commit a fraud or wrong against the party seeking to pierce the corporate veil which resulted in the injury to that party (see *id.* at 141; *Campone v Pisciotta Services, Inc.*, 87 AD3d 1104, 1105). [*2]The decision whether to pierce the corporate veil in a given instance will depend on the circumstances of the case (see *Weinstein v Willow Lake Corp.*, 262 AD2d 634, 635).

Here, the petitioners demonstrated their prima facie entitlement to judgment as a matter of law on so much of the petition as sought to pierce Diontech's corporate veil by submitting evidence showing, inter alia, that the appellants dominated Diontech, that Diontech did not adhere to any corporate formalities such as holding regular meetings and maintaining corporate records and minutes, that the appellants used corporate funds for personal purposes, and that the appellants stripped Diontech of assets as they wound down the business, leaving it without sufficient funds to pay its creditors, including the petitioners (see *Ventresca Realty Corp. v Houlihan*, 41 AD3d 707; *Godwin Realty Assoc. v CATV Enters.*, 275 AD2d 269, 270; *Austin Powder Co. v McCullough*, 216 AD2d 825, 827-828).

In opposition, the appellants failed to raise a triable issue of fact. The appellants' self-serving affidavits, which contradicted their prior deposition testimony, were insufficient to defeat summary judgment (see *Perez v Bronx Park S. Assoc.*, 285 AD2d 402, 404; *Philips v Bronx Lebanon Hosp.*, 268 AD2d 318).

As to their cross motion, the appellants failed to demonstrate their prima facie entitlement to judgment as a matter of law. Accordingly, the Supreme Court correctly granted that branch of the petitioners' motion which was for summary judgment on so much of the petition as sought to enforce the judgments against the appellants personally by piercing the corporate veil of Diontech and denied the appellants' cross motion for summary judgment dismissing the petition insofar as asserted against them.

MASTRO, J.P., HALL, MILLER and LASALLE, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court