

STATE OF CONNECTICUT

DOCKET NO. (X10) CV-166033559S : SUPERIOR COURT  
PERSONNA NOBLE, ET AL. : COMPLEX LITIGATION DOCKET  
v. : AT WATERBURY  
NORTHLAND INVESTMENT CORP., :  
ET AL. : AUGUST 15, 2018

**RULING ON MOTION TO STRIKE (# 143)**

This is a putative class action brought “to remedy injuries caused by the defendants’ practices in connection with ownership and management of the Church Street South housing complex in New Haven.” (Church Street South) The defendants are Northland Investment Corporation (Northland), Lawrence R. Gotteisdiener (Gotteisdiener), Church Street New Haven LLC (defendant LLC), Northland Fund II LP (defendant LP), Northland Fund II Partners LLC (defendant GP), DeMarco Management Corporation (DeMarco) and Wm. M. Hotchkiss Company (Hotchkiss). Defendant LP, defendant GP and Gotteisdiener move to strike all the claims against them in the now operative Second Amended Class Action Complaint at entry # 189 (complaint or operative complaint).

In brief, the complaint alleges that Church Street South was a low-income apartment complex located in New Haven across from Union Station (¶ 3) which was acquired in 2008 with title vested in the defendant LLC. (¶ 11). From the time the property was acquired and

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throughout the relevant time period, the defendants were on notice that it needed repairs to its structural elements (§ 24) and had deficiencies identified by HUD and city inspections (§ 28). Nonetheless, they allowed conditions to deteriorate “by choosing to spend much less than necessary on repairs and maintenance, with the plan to allow the property to become uninhabitable beyond repair” (§ 27). The named plaintiffs, along with the putative class members, resided at Church Street South until such time as the alleged uninhabitable conditions of the premises resulted in their relocation (§ 33). The operative complaint alleges that as a result of the conduct of the defendants, the named plaintiffs and members of the putative class suffered physical and emotional injuries, loss of personal property and other losses (Count One, §§ 45-53).

In deciding a motion to strike, Practice Book § 10-39, the court must examine the allegations of the complaint in the light most favorable to the plaintiffs to determine the legal sufficiency of the causes of action from the pleaded facts, as well as the reasonable inferences that can be drawn from those facts. *Violano v. Fernandez*, 280 Conn. 310, 317–18, 907 A.2d 1188 (2006). Moreover, the “pleadings must be construed broadly and realistically, rather than narrowly and technically.” *Lawrence v. O and G Industries, Inc.*, 319 Conn. 641, 649, 126 A.3d 569 (2015). Finally, the court’s role is not to decide whether the evidence will support the cause of action but only to determine whether the allegations are legally sufficient to state the cause of action. *Coe v. Board of Education*, 301 Conn. 112, 117, 19 A.3d 640 (2011).

Defendant LP, defendant GP and Gotteisdiener maintain that the complaint fails to allege sufficient facts to impose liability on them on two grounds. First, they maintain that there are insufficient facts pleaded to impose liability on defendant LP and defendant GP on all counts. Second, Gotteisdiener maintains there are insufficient facts pleaded of his direct and individual

participation in the conduct alleged in the first through fourth counts. The plaintiffs maintain the operative complaint contains sufficient factual allegations in both respects.

## I.

There are allegations against four entity defendants in the operative complaint: Church Street New Haven LLC (defendant LLC), the entity alleged to hold the title to Church Street South (§ 11), is a Delaware limited liability company whose sole member is Northland Fund II LP (defendant LP) (§ 9.a)). Defendant LP is a Delaware limited partnership whose general partner is Northland Fund II Partners LLC (defendant GP) (§ 9.b)). Defendant GP is a Delaware limited liability company whose sole member is defendant Northland (§ 9.c)). The operative complaint not only alleges that Northland was in possession and control of the Church Street South complex, which could make it directly liable to the plaintiffs, but also alleges that the defendant GP and the defendant LP were used by Northland as alter-egos to create the defendant LLC (§ 11) and that all three entities are “shell defendants” which, by inference, cannot insulate Northland from liability under the general law of corporations and partnerships. The moving defendants maintain that the defendant LLC, defendant LP and defendant GP are distinct and legitimate entities and that the complaint fails to allege sufficient facts to disregard their corporate and partnership structures.

Ordinarily, a corporate structure protects shareholders and members from personal liability. However, the equitable doctrine known as “piercing the corporate veil” allows a court to disregard the corporate structure if specific facts are established pursuant to the governing law of the state of incorporation, *Weber v. U.S. Sterling Securities, Inc.*, 282 Conn 722, 730, 924

A.2d 816 (2007), here Delaware.<sup>1</sup> Similarly, a limited partnership ordinarily protects its limited partners from liability and the circumstances under which a foreign limited partnership may be held liable are governed by the laws of the state in which it was organized. General Statutes § 34-38f.

Delaware law favors corporate structures. See *Harco National Insurance Co. v. Green Farms, Inc.*, 1989 WL 110537, at \*4 (Del. Ch. 1989) (“It should be noted at the outset that persuading a Delaware Court to disregard the corporate entity is a difficult task. The legal entity of a corporation will not be disturbed until sufficient reason appears.”). Delaware courts have held that the corporate veil may be pierced where there is fraud. *Pauley Petroleum Inc. v. Continental Oil Co.*, 43 Del.Ch. 366, 231 A.2d 450, 452–53 (1967), *aff’d*, 239 A.2d 629, 633 (1968). Delaware courts have also disregarded the corporate form when the entity “is in fact a mere instrumentality or alter ego of its owner.” *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 793 (Del.Ch.,1992). Fundamentally, Delaware courts will not disregard the corporate structure unless there is sufficient evidence of misuse of the corporate form. See *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 989 (Del.Ch.,1987) (“the cases inevitably tend to evaluate the specific facts with a standard of ‘fraud’ or ‘misuse’ or some other general term of reproach in mind.”). However, “the underlying cause of action does not supply the necessary fraud or injustice.” *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 268 (D. Del. 1989). “To support piercing the corporate veil, however, the fraud or injustice must consist

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<sup>1</sup> The original briefing in support and opposition to the motion to strike relied on Connecticut law regarding veil piercing (see entries ## 144, 168, 169). At oral argument on May 17, 2018, the court requested supplemental briefing regarding the choice-of-law issue and the parties now agree that Delaware law controls (see entries ## 183, 184, 193, 194).

of something more than the alleged wrong in the complaint and relate to a misuse of the corporate structure.” *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical*, 2004 WL 415251, at \*7 (Del.Ch.,2004). Courts construing Delaware law have concluded that the standards for corporate veil piercing also apply to pierce the limited liability veil. *NetJets Aviation, Inc. v. LHC Communications, LLC*, 537 F.3d 168, 176 (2d Cir. 2008).

The plaintiffs’ briefed position is that the defendant LP is an “alter ego” of the defendant LLC and they only need to allege facts to pierce its veil because, if successful, the defendant GP will be held liable by operation of Delaware statute (entries # 183, 194), allowing them to reach Northland.<sup>2</sup> The moving defendants argue that to hold Northland liable by way of veil piercing, rather than directly, there must be facts alleged to pierce not only the veil of the defendant LLC, but also the veil of the defendant GP, another Delaware limited liability company. The plaintiffs are correct that under Delaware law, specifically 6 Del. Code Ann. §§ 15-306 (a) and 17-403 (b), a general partner of a limited partnership may be held liable to third parties for actions taken by the partnership. See *Smith v. GC Services Limited Partnership*, 2018 WL 1864929, at \*1 (S.D.Ind., 2018); *Valdez v. Capital Management Services, LP*, 2010 WL 4643272, at \*2, n.4 (S.D.Tex.,2010). But since the general partner of defendant LP is Northland Fund II Partners, LLC, another Delaware limited liability company, its veil likewise must be pierced under the alter ego theory to vicariously reach Northland Investment Corporation which is otherwise

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<sup>2</sup> At oral argument on May 17, 2018, the plaintiffs stated that they were relying on veil piercing ultimately to hold Northland Investment Corporation, as the sole member of Northland Fund II Partners, LLC (defendant GP) liable, but that they were not seeking to pierce Northland’s corporate veil to hold its shareholders liable.

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