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*New York Law Journal November 3, 2004, Wednesday*

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New York Law Journal

November 3, 2004, Wednesday

**SECTION:** DECISION OF INTEREST; Pg. 19

**LENGTH:** 2146 words

**HEADLINE:** Decision of Interest;  
null;  
Defendants, Operating Under Different Corporate Names, Were Not Separate Entities

**BODY:**  
Judge King

**Pariser Industries Inc. v. T & T Laundry Corp.** - Plaintiff, **Pariser Industries Inc.**, a manufacturer of commercial soap and detergent, commenced this action against the named defendant, T & T Laundry Corp. d/b/a Oceana Towel & Linen Service and d/b/a Modern Towel & Linen Service to recover the value of goods sold and delivered in the amount of \$13,600.79. A trial was held on January 26, 2004 after the Appellate Term affirmed an order of the Civil Court, Richmond County [E. Vitaliano, J.] granting defendant's motion to vacate a default judgment entered in the within matter and restoring the matter to the calendar. Both parties were represented by counsel.

At trial, it was established that the genesis of this action arose from plaintiff's relationship with Modern Towel & Linen Service, Inc. [hereinafter "Modern Linen"]. On plaintiff's direct case, Andrew **Pariser**, President of plaintiff, testified that his company began doing business with Modern Linen in 1998 at its commercial laundry facility located at 465 Bay Street, Staten Island. The "Modern Linen Account" as it was referred to by plaintiff was billed using account number M0151. **Pariser** testified that all transactions regarding account number M0151 were consummated by Todd Pincus, whom he believed to represent Modern Linen. **Pariser** further testified that in March 1999 plaintiff ceased sales and delivery on account number M0151 due to a history of bounced checks and delinquent payments. He further testified that sales resumed in January 2000, after Todd Pincus agreed to make additional payments on the outstanding M0151 account balance, and stay current on new invoices. According to **Pariser**, once sales resumed there was a billing change on the M0151 account, resulting in the account name being changed from Modern Linen to Oceana-Modern Linen and a billing address change from 465 Bay Street to 1449 Richmond Terrace, Staten Island, New York.

As part of its prima facie case, plaintiff proffered its aged receivables reports and copies of invoices representing goods sold and shipped. The most recent report generated on January 19, 2004 indicated that a total of \$13,600.79 is due and owing to plaintiff representing invoices for the period October 19, 2001 to February 01, 2002, inclusively. The invoices indicate that at the time sales were suspended by plaintiff in March 1999, the billing name and address on the M0151 account was Modern Linen located at 465 Bay Street, Staten Island, New York, and that as of September 29, 2000, when sales resumed, the address and name appearing on plaintiff's invoices was Oceana-Modern Linen formerly Modern Linen located at 1449 Richmond Terrace, Staten Island, New York. Both the reports and invoices establish that even after the name change, plaintiff continued to bill using account number M0151.

Notably, plaintiff submitted copies of checks drawn from the following entities which were credited to

account number MO151.

DATE PAYEE PAYEE ADDRESS

September 28, 1998 TPD Corporation 465 Bay Street, SI, NY

August 24, 1999 to

April 22, 2000 Todd & Issac Services 465 Bay Street, SI

April 7, 2000 to Modern Towel & PO Box 40683, SI &

May 20, 2000 Linen Service Inc. 1449 Richmond

Terrace, SI

October 13, 2000 T& T Laundry Corp 1449 Richmond

to January 24, 2002 dba Oceana Towel & Terrace, SI

Linen Service

The direct examination and largely incredible testimony of Tracy Pincus, the sister of Todd Pincus, revealed a tangled web of corporate entities, all having Todd Pincus as principal. Ms. Pincus testified that she is a co-owner and employee of defendant, T&T Laundry Corp. [hereinafter "T&T"]. According to Ms. Pincus, the corporations were created for the purpose of facilitating her brother's entry into the laundry business, since Abraham Samuelson, her grandfather and the deceased owner and founder of Modern Linen, would not let her brother buy Modern Linen. Ms. Pincus testified that Modern Linen moved to 465 Bay Street at the suggestion of her brother, who was operating TPD Corporation, a commercial laundry, at the same address. The space had been previously occupied by Rainbow Linen, a related concern. Ms. Pincus further testified that her brother Todd Pincus formed TPD in 1998 and formed Todd and Isaac LLC in 1998 to acquire the assets of Rainbow Linen. Ms. Pincus also testified that in December 1999 TPD assigned a lease to T&T for premises located at 1449 Richmond Terrace. Ms. Pincus explained that while all three corporations shared space at 465 Bay Street, only one entity, TPD ordered and received weekly shipment from the plaintiff which was shipped to the Bay Street location on a weekly basis. She testified that Modern Linen did not order product from plaintiff. Ms. Pincus acknowledged that her mother, Joyce Pincus, was the signatory on the various corporate checks given to plaintiff, however, she was unable to explain what the tender of the checks to plaintiff represented.

Plaintiff seeks to recover for the value of goods sold and delivered to T&T d/b/a Oceana Towel & Linen Service and d/b/a Modern Towel & Linen Service. The Court must first decide, however, whether the named defendants are liable for the indebtedness claimed by the plaintiff even though the defendants may have been acting either under a trade name [d/b/a] or as a separate corporation.

The designation d/b/a means "doing business as" and is merely descriptive of the person or corporation who does business under some other name. [see, *In re Golden Distributors, Ltd. and Capital Cigar & Tobacco Co., Inc., et.al. Debtors vs. Raymond Garced, Individually and d/b/a American Tobacco, and Liberty Bag & Paper Co., Inc., Defendants*, 134 B.R.766[1991]] Under New York Law a corporation doing business under a trade name must file a certificate setting forth the name in which it does business in the office of the secretary of state [New York General Business Law §[130[b]]. In the case at bar, there is no evidence that defendant filed a certificate of doing business. However, the courts have held that failure to comply with this statutory requirement does not relieve a corporation doing business under a trade name of its indebtedness [id. at 766].

A review of the record indicates that T & T was doing business as Oceana Towel & Linen Service.

While it is unclear from the testimony whether T & T formally put plaintiff on notice of a name change from Modern Linen to T&T d/b/a Oceana Towel & Linen Service, the Court finds that such a notice is not required and does not relieve T&T of liability. Indeed, plaintiff's work orders and delivery tickets, also submitted at trial, establish that product was ordered by T&T d/b/a Oceana-Modern Linen, and that the goods were delivered to Oceana-Modern Linen at T&T's corporate address. No evidence of rejection of delivery was submitted. "A tender or delivery of goods made pursuant to a contract of sale... requires affirmative action by the buyer to avoid acceptance." [Official Comment, McKinney's Cons Law of NY, Uniform Commercial Code §[2-602 at 74]. The record also demonstrates that checks were drawn from the account of T&T Corp. d/b/a Oceana Towel and Linen Service for payment of goods sold and delivered from plaintiff.

Although the Court finds that the defendant T&T was doing business as Oceana Towel & Linen Service, the Court cannot agree with plaintiff that Modern Linen transacted business as a d/b/a since Modern Linen is a duly organized corporation under the laws of the State of New York. "Doing business under another name does not create a separate entity from the person operating the business." [In re Golden, 134 B.R.766[1991], supra] It is well established that a duly formed corporation is an independent legal entity, and that the courts do not have authority to look beyond the corporate form except where necessary "to prevent fraud or to achieve equity." Since Modern Linen is a separate legal entity, liability cannot attach to the defendant, T & T, based solely on use of the name Modern Linen. Rather, in the instant case, liability attaches because the corporate form must be ignored and the corporate veil must be pierced.

Under New York law, the corporate veil will be pierced to achieve equity, even absent fraud, "when a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego" [see, In the Matter of Island Seafood Company, Inc., Appellant v. Golub Corporation, et. al., Respondents, 303 AD 2d 892; 795 NYS 2d 768 [2003]. The courts have consistently held that the corporate form will be ignored 'to achieve an equitable result' [see Powder v. McCullough, 216 AD 2d 825, 628 NYS 2d 855 [App Div, 3rd Dept. 1995]... or 'where to preserve the corporate fiction would work inequity or injustice' [see, Petrovich v. Felco, 194 Misc 111; 86 NYS 2d 327 [Supt Ct, Queens County, 1949]]. Generally considered are such factors as whether there is an overlap in ownership, officers, directors and personnel, inadequate capitalization, a commingling of assets, or an absence of separate paraphernalia that are part of the corporate form, such that one of the corporations is a mere instrumentality, agent and alter ego of the other [14 NY Jur 2nd §[41 ].

While legal ownership of Modern Linen subsequent to Samuelson's death was not established, based on the evidence adduced at trial, it is clear that T&T exercised dominion and control over the day to day operations of Modern Linen sharing the same address, same employees, namely Todd Pincus, his mother and sister, same checking accounts and billing records. **Pariser** never met Samuelson, Modern Linen's founder and owner, but instead conducted business transactions exclusively with Todd Pincus who held himself out to "have all the authority." The Court finds that sufficient evidence exists for piercing the corporate veil since it is clear that Modern Linen was used as a shield to run T&T's fledgling business.

Accordingly, defendant's T&T Laundry Corp. d/b/a Oceana Towel & Linen Service and Modern Towel & Linen Service, Inc. are liable to plaintiff for the value of goods sold and delivered.

The Court notes that plaintiff has also established a cause of action for account stated. "As a general rule, where an account is made up and rendered, he who receives it is bound to examine the same, or to procure someone to examine it for him. If, instead of an express admission of correctness of the account, the party receiving it keeps the same... and makes no objection within a reasonable time, his silence will be construed into an acquiescence in its justness, and he will be bound by it as if it were a stated account. An account stated is conclusive upon the parties, unless fraud, mistake, or other equitable considerations are shown which make it improper to be enforced." [See Ziegfeld v. Sixth Ave. Amusement Corp. et al, [Sup Ct., NY County, 1945], quoting Lockwood v. Thorne, 11 NY 170 at 174]." In Werner v. Nelkin, the Second Department [206 AD 2d 422, 614 NYS 2d 66 [1994], affirmed an order of the Supreme Court, New York, granting plaintiff summary judgment on an

account stated. The Court held that the defendant's receipt and retention of the plaintiff's invoices without objection within a reasonable period of time, gave rise to an actionable account stated entitling the plaintiff to summary judgment in his favor. In the instant case, while there is testimony that delivery of product was made only to TPD Corp., the Court finds that it is simply not credible, since the work orders, invoices, and delivery tickets conclusively established that product was not only ordered and billed to account number MO151 but that plaintiff delivered to Modern Linen and no evidence of rejection was presented.

Based on the foregoing, judgment in favor of plaintiff in the amount of \$13,600.79 with interest from February, 2002, plus costs and disbursements, against T & T Laundry Corp. d/b/a Oceana Towel & Linen Service and Modern Towel & Linen Service, Inc.

Plaintiff is directed to serve a copy of this decision with notice of entry within 20 days of the date of this order.

Exhibits, if any, will be available at the office of the Clerk of the Court 30 days after receipt of a copy of this Decision.

The foregoing constitutes the Decision and Judgment of the Court.

**LOAD-DATE:** November 10, 2004

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