

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

VITEK RECOVERY ENTERPRISES, LLC,

Plaintiff/Counter-Defendant,

vs.

Case No. 2014-652-CK

UUSI, LLC, d/b/a NARTRON and/or NARTRON
CORPORATION,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Plaintiff/Counter-Defendant Vitek Recovery Enterprises, LLC (“Plaintiff”) has filed a motion for summary disposition pursuant to MCR 2.116(C)(8). Defendant/Counter-Plaintiff UUSI, d/b/a Nartron and/or Nartron Corporation (“Defendant”) has filed a response and requests that the motion be denied.

Facts and Procedural History

On October 14, 2013, non-party Vitek Technology Co., Ltd. (“Vitek Tech.”) assigned, transferred and conveyed all right, title and interest in all claims it may have against Defendant to Plaintiff. On October 15, 2013, Plaintiff filed its complaint in this matter based on an alleged breach of a contract between Vitek Tech and Defendant (the “Contract”). On March 17, 2014, Defendant filed its counter-complaint. Defendant’s counter-complaint consists of a single breach of contract claim arising out of Vitek Tech’s alleged breach of the Contract.

On April 4, 2014, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(8). On April 28, 2014, Defendant filed its response.

Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

Arguments and Analysis

In its motion, Plaintiff contends that Defendant's claim is based on the Contract, to which Plaintiff was not a party, that it has not assumed any of the Vitek Tech's liability and/or obligations under the Contract, and that as a result Defendant has failed to state a claim against it upon which relief can be granted.

In response, Defendant contends that Plaintiff is merely an alter ego of Vitek Tech and that as a result it may pursue its breach of contract claim. In order to state a claim based on an alleged parent-subsidary relationship, a plaintiff must allege: (1) the existence of a parent-subsidary relationship, and (2) facts that justify piercing the corporate veil. *Seasword v Hilti, Inc (After Remand)*, 449 Mich 542, 548; 537 NW2d 221 (1995). In its counter-complaint, Defendant alleges that Plaintiff is a subsidiary of Vitek Tech. *See Counter-Complaint at ¶ 3.* Therefore, the pertinent question is whether Defendant has alleged sufficient facts to, if proven, justify piercing the corporate veil.

It is well settled under Michigan law that "absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." *Seasword, supra*, at 547.

However, the courts may ignore this presumption and the corporate veil may be pierced if, under the circumstances, respecting an otherwise separate corporate existence will “subvert justice or cause a result that would be contrary to some other clearly overriding public policy.” *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650, 364 NW2d 670 (1984). For the corporate veil to be pierced, the plaintiff must aver facts that show (1) that the corporate entity is a mere instrumentality of another entity or individual, (2) that the corporate entity was used to commit fraud or a wrong, and (3) that, as a result, the plaintiff suffered an unjust injury or loss. *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 715, 762 NW2d 529 (2008).

In this case, Plaintiff was formed 4 days prior to being assigned Vitek Tech’s claims against Defendant and it filed its complaint in this matter the next day. In addition, Jamie Gatt is the managing member of both entities. *See* Defendant’s Exhibit A. Further, Mr. Gatts has testified that he is responsible for the books and records of both entities. *See* Defendant’s Exhibit G.

The Court is convinced that the above-referenced evidence is sufficient to form the basis for potentially piercing the corporate veil in this case, but after reviewing the counter-complaint the Court is convinced that Defendant has failed to sufficiently plead its basis for piercing the corporate veil. Defendant’s allegations on this issue are limited to alleging that Plaintiff is Vitek Tech’s subsidiary. Defendant has failed to allege, in its counter-complaint, that Defendant is a mere agent or instrumentality of Vitek Tech that was formed in order to avoid the Vitek Tech’s legal obligations. However, in its response, Defendant requests leave to amend its counter-complaint to satisfy the pleading requirements. Based on the evidence presented in its response, as discussed above, the Court is convinced that Defendant’s request must be granted to allow Defendant to properly plead its claims.

Conclusion

For the reasons set forth above, Plaintiff/Counter-Defendant Vitek Recovery Enterprises, LLC's motion for summary disposition pursuant to MCR 2.116(C)(8) is DENIED, WITHOUT PREJUDICE. Further, Defendant/Counter-Plaintiff UUSI, d/b/a Nartron and/or Nartron Corporation's request for leave to amend its counter-complaint is GRANTED. Defendant/Counter-Plaintiff shall file its amended counter-complaint within 14 days of the date of this Opinion and Order. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 19, 2014

JCF/sr

Cc: *via e-mail only*

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