

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: SHLOMO HAGLER J.S.C. Justice

PART 17

Index Number : 162327/2014
TOKTASSYNOVA, NAZYM
vs.
VICTOR, ADAM
SEQUENCE NUMBER : 003
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is granted as per an decision dictated on the record today

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/26/15

SHLOMO HAGLER J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: 17

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NAZYM TOKTASSYNOVA,

Index No.:

Plaintiff(s)

162327/2014

-against-

ADAM VICTOR, TRANSGAS DEVELOPMENT SYSTEMS,
LLC, GAS ALTERNATIVE SYSTEMS, INC.,
TRANSNATIONAL ENERGY, LLC, TRANSNATIONAL
MANAGEMENT SYSTEMS, LLC, TRANSNATIONAL
MANAGEMENT SYSTEMS II, LLC, ADAM VICTOR &
SON STABLE LLC and ADAM VICTOR GRANTOR TRUST,

Defendant(s).

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60 Centre Street
New York, New York
October 26th, 2015,

B E F O R E:

HONORABLE SHLOMO HAGLER, J.S.C.,

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THE COURT: Good afternoon. Thank you for being patient.

I want to deal with this in reverse order. Let's deal with the sequence number four which is a motion under CPLR 3018(a), to strike scandalous material and other material that's not allegedly relevant to this action.

At the request of the parties I am in my robing room rather in the courtroom in order to insure some more privacy with regard to this delicate case.

Counsel, you may be heard.

MR. COSTIGAN: The allegations that we're dealing with were in defendants' answer. They're in response to specific allegations. They are not responsive in the slightest to those allegations. The allegations are that Adam Victor was involved in plaintiff's apartment search or that she had stomach pains when he would talk to her and in response the defendants put in allegations that she was a prostitute. They are completely unresponsive to the allegations that were pled and they should be stricken.

Likewise, there are allegations that Eve Khatskevich, K-H-A-T-S-K-E-V-I-C-H, was involved in her case in trying to extort the defendants. Again, not that there's any substance to that allegation. In fact, it's something that they say in their papers all the time here, but there's no substance to it. The only basis for it that we have yet

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2 seen in that case was a complaint that at the beginning of
3 the case I made a settlement offer to MPC through the
4 defendants' counsel.

5 So it was a counsel-to-counsel settlement offer
6 that is the basis for the allegation that Eve Khatskevich
7 and Tyler Erdman were somehow trying to extort the
8 defendants. Again, these are claims of criminal conduct.
9 They're unresponsive to the allegations. And we
10 respectfully submit they should be stricken.

11 THE COURT: Counsel in opposition.

12 MR. KRAKOWSKY: Sure.

13 The answers are relevant and the standard for
14 whether or not to strike allegations from pleading is simply
15 whether or not they're admissible. In this case I don't see
16 new argument as to why the allegations and the answer would
17 not be admissible. This is a claim primarily for sexual
18 harassment, that the plaintiff worked as a prostitute prior
19 to working for Mr. Victor and stopped working for Mr. Victor
20 and, again, worked as a prostitute after she worked for Mr.
21 Victor I think is directly relevant to her allegations that
22 she was somehow offended by certain sexual statements that
23 were made.

24 It's directly relevant. And it's also necessary to
25 be in the answer because there's a person named Tyler Erdman
26 who you know who he is -- we call him a computer hacker --

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2 and he has been trying to solicit media attention to this
3 case. Mr. Victor has been called by different media outlets
4 and different journalists are saying Tyler Erdman is
5 contacting them. So we need something in the public record
6 to diffuse the allegations and their allegations aren't the
7 only ones out there.

8 I can address each of the allegations. The fact
9 that Mr. Victor was involved in Ms. Khatskevich's apartment
10 search. That was really because of Mr. Victor's concerns
11 for her and wanted to make sure she was safe and the
12 plaintiff takes these innocuous actions by Mr. Victor and
13 twists them into something that is really disgusting and we
14 need to be able to address that in our answer, saying, no,
15 it wasn't because Mr. Victor was doing anything untoward
16 plaintiff or her roommate. It was because Mr. Victor
17 actually wanted to care and protect Ms. Khatskevich. And
18 that part he was involved in an apartment search because
19 before I don't know what her living circumstances were, but
20 I know that she was employed as doing and it was a dangerous
21 position and Mr. Victor had genuine concern for it.

22 So unless you have any specific questions, again,
23 issue is whether it's relevant and admissible. And these
24 allegations are clearly admissible. At best, it's
25 premature. At the time of trial a motion might be made in
26 limine to try to exclude these allegations. At this point

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2 to try to shield discovery of these types of facts I think
3 is improper and premature.

4 THE COURT: Okay. Now any reply?

5 MR. COSTIGAN: Your Honor, obviously we are
6 disputing the allegations that either of these two women
7 were prostitutes and, frankly, it is a bizarre allegation
8 that Mr. Victor is claiming that he hired prostitutes for
9 such key positions including as an organizational
10 psychologist for his businesses.

11 At any rate, though, it isn't responsive in the
12 slightest to the allegations that they were asserted and
13 responsive.

14 THE COURT: Thank you. Let's read CPLR 3018(a). A
15 party shall deny those statements known or believed to be by
16 him to be untrue.

17 MR. KRAKOWSKY: 3024 you mean.

18 THE COURT: Specify those statements as to the
19 truth in which he lacks knowledge or information sufficient
20 to perform a belief and this shall have the affect of
21 denial. All other statements of the pleading are deemed
22 admitted except that where no responsive pleading permitted
23 deemed to be denied to avoid it.

24 Pursuant to 3018(a) you can either admit, deny or
25 state that language or information sufficient to form a
26 response. I have never seen such a responsive pleading.

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2 You may assert affirmative defenses which is spelled out in
3 3018(b), which could then apply certain defenses, but to
4 short-circuit and change the method, try and true method
5 that courts rely upon to determine allegations are deemed
6 admitted or denied is inappropriate. There's a distinction
7 between relevant information and what a pleading requirement
8 and responsive pleading requirement is.

9 You have mixed up 3024 and 3018. There are certain
10 relevant information you can get into a case, but you can't
11 do it through 3018 through denial or admission. May want to
12 put in a affirmative defense, may do so. You make motion to
13 dismiss, motion summary judgment, motion for discovery, but
14 you can't do it this way.

15 Moreover, even if it was proper under the relevancy
16 standard or admissibility standard set forth in the papers,
17 if you just look at the allegations they're all not
18 responsive to the question.

19 Let's take the first one, paragraph 72.

20 Victor involved himself in that apartment search,
21 recommending brokers and going to see apartments with them.
22 There's an admission. And then it goes forward dealing with
23 she accumulated -- just paraphrasing, not saying the whole
24 thing -- accumulated funds from previous work as a
25 prostitute in order to pay and approximately \$8,000 security
26 deposit for a new apartment in cash.

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What does that have to do with whether he involved himself in the apartment? That's irrelevant.

MR. KRAKOWSKY: Should I answer it or is that rhetorical?

THE COURT: Rhetorical.

Let's go on to another one.

Paragraph 552. She then started to get stomach pains every time Victor spoke to her. Denied. And then states that any physical ailment suffered by plaintiff may be the result of injuries sustained by sexually transmitted diseases plaintiff obtained during her prior employment as a prostitute.

Stomach pains and sexual transmitted diseases are two different things. Want to put in affirmative defense that these allegations set forth in the complaint, you may do so. But this is wholly improper and irrelevant to the questions posed in addition to the 3018 failure to comply. Therefore, this court grants the motion to the extent of striking the portions of defendants' verified answer that's not in conformity with 3018(a). Only the word denied admit shall be there.

MR. KRAKOWSKY: Just so I'm clear this is not a ruling that this is certain area subject to discovery.

THE COURT: I did not say that you can have discovery or not have discovery. I said it's improper to

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2 3018 to put it in this matter. It's a procedural decision
3 that it's improper to do as a 3018 response to pleading.
4 Admit, deny or denied knowledge of information. That's what
5 I did at the very beginning as a lawyer until I worked for
6 the courts. Used to respond to complaints and that's what I
7 did. I never seen anything else. Used to put in
8 affirmative defense, that's true. Counterclaims. There's a
9 way to assert certain information and if I believe the
10 complaint was improper for various reasons I moved pursuant
11 to 3211 and I moved to dismiss. If I believe discovery was
12 needed and I did a request and a summary judgment on that
13 issue, or if I believe that there's factual issues I waited
14 for trial to assert defenses. Not every defense has to be
15 asserted. Only affirmative defenses have to be asserted
16 pursuant to 3018(b). In a case like this could say deny and
17 that's the answer. Don't need more, quite frankly.

18 I'm granting the relief sought in the motion by the
19 plaintiff.

20 MR. KRAKOWSKY: Just again, so the record is clear,
21 you're granting it pursuant to 3018.

22 THE COURT: Yes.

23 Now we're up to motion sequence number three, which
24 is a motion to dismiss eleventh cause of action, which seeks
25 to pierce the corporate veil.

26 MR. KRAKOWSKY: Thank you, Judge.

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2 There are a number of reasons why the eleventh
3 cause of action fails to state a claim. I think primarily
4 it's superfluous and duplicative because they are already
5 suing Adam Victor and they are already suing all of the
6 other defendants.

7 THE COURT: I hear you.

8 MR. KRAKOWSKY: So there's no reason to pierce any
9 corporate veil.

10 Again, they're not even identifying whose veil,
11 whose corporate veil they're seeking to pierce. Not
12 identifying what transaction they're seeking to attack.
13 This is really just a very obtuse way of trying to obtain
14 financial discovery, trying to obtain financial discovery
15 that is not relevant for any of these claims of sexual
16 harassment.

17 Also, there was a similar motion in Ms.
18 Khatskevich's case where we made a motion to dismiss,
19 piercing the corporate veil claim, and your Honor found in
20 that case [and in the same issue here, even assuming that
21 there is wrongdoing with respect to the account holdings and
22 one company doing something on behalf of the other, even
23 assuming that those allegations are true, the plaintiff here
24 failed to explain how that specific wrongdoing has caused
25 her any harm. So in the absence of that there can be no
26 claim for piercing the corporate veil.

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2 Ordinarily, you'll have a defendant shell company
3 and you have a plaintiff trying to go beyond the shell
4 company to get at the defendant who has the real assets.

5 Here, as I explain, it's duplicative because all of
6 these defendants are already defendants and they don't
7 explain whose veil they're trying to pierce and they
8 couldn't explain what transaction they're trying to attack.
9 They're not saying these are, any of these companies are
10 shell companies. All they have are allegations. A few
11 times one accountant was used or another accountant should
12 be used or that the defendants were improperly charging
13 things to a nonparty in Manhattan placed condominium. That
14 is simply not sufficient to state a claim for piercing the
15 corporate veil under the relevant case law.

16 MR. COSTIGAN: I think the most important thing in
17 that is that this issue came up in Khatskevich case and the
18 court's basis for that was that Khatskevich hasn't shown how
19 any wrongdoing effecting the corporation actually hurt her.

20 In this case the complaint deals with specifically
21 that issue. And it's this: Victor's companies are sham
22 companies. He doesn't have a real business. He doesn't do
23 coal gasification like he says he does. These corporations
24 have been setup only to further his sexual harassment
25 activities.

26 THE COURT: Are you alleging at this time that the

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2 corporation hadn't done any corporate work at all from the
3 very beginning?

4 MR. COSTIGAN: Correct. He never had any real coal
5 gasification activities. He never gasified any coal. He
6 never had any coal gasification plans. He doesn't own --

7 THE COURT: So you're saying it's just setup for
8 sexual harassment?

9 MR. COSTIGAN: Yes.

10 THE COURT: Isn't that stretch of a --

11 MR. COSTIGAN: It is a very unusual claim. I can't
12 say I have never seen one like that.

13 THE COURT: Generally, it's the reverse.

14 MR. COSTIGAN: Normally be a real business purpose.

15 THE COURT: You're alleging that your clients --
16 Strike that. Who did your client work for? N corporation?

17 MR. COSTIGAN: According to her business card she
18 worked for TransGas Development Systems.

19 THE COURT: Are you saying she never did any work
20 for TransGas Development Systems?

21 MR. COSTIGAN: She did but TransGas doesn't have
22 any legitimate business.

23 THE COURT: Doesn't matter if it has any corporate
24 purpose. You just told me she did some work for that
25 corporation.

26 MR. COSTIGAN: Right. She's enrolled as a MBA

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2 program at Fordham and as part of this education she took
3 this job with Victor to get --

4 THE COURT: Did she have any real world experience
5 for this corporation?

6 MR. COSTIGAN: She certainly worked for the
7 company.

8 THE COURT: So, unfortunately, the case law is very
9 clear. If there's any corporate purpose that it was set up
10 for than it fails.

11 MR. COSTIGAN: This is an alterego claim and in
12 this case the evidence will be clear that he completely
13 subverted any corporate purpose for his own --

14 THE COURT: This doesn't matter. I don't
15 necessarily disagree with you, but the same problem occurs
16 here again as in the other case.

17 The case law -- I'll read you the case and you all
18 cited the right cases. The Morris case essentially Court of
19 Appeals case in 1993. That's the best recitation of what it
20 means to pierce the corporate veil. I'll read you a couple
21 of passages from the case.

22 Before I do that, I have a question.

23 Are you alleging that the corporation itself is
24 liable? What is the corporate liability?

25 MR. COSTIGAN: Corporate liability is for having
26 Victor as its president and permitting his harassment.

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2 THE COURT: That would not -- You already are suing
3 Mr. Victor in that capacity. You are seeking a judgment
4 against the individual and the corporation.

5 MR. COSTIGAN: Right. New York City Human Rights
6 Law permits both.

7 THE COURT: I understand that. So the only action,
8 the corporation is the action of Victor. Is that what
9 you're saying?

10 MR. COSTIGAN: They have responsibilities to
11 supervise their employees under the New York City Human
12 Rights Law. So it's a bit different for the corporation.

13 THE COURT: One second.

14 (Pause in proceedings.)

15 THE COURT: Another First Department case, Sheridan
16 versus City Small and actually has language I was looking
17 for and that's 19 AD3d 331 First Department 2005.

18 In the instant situation motion court aptly
19 determined that plaintiffs have not alleged the requisite
20 particularized statements defraud or other corporate
21 misconduct. The facts that warrant piercing the corporate
22 veil is especially since the inference of abuse does not
23 arise where for corporation is formed for a specific purpose
24 or he is engaged in general business. Here, you said that
25 the corporation did have legitimate business. Also was
26 setup in order to further sexual harassment of Mr. Victor.

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2 Here, since it was setup for legal purposes, quite frankly,
3 corporation was setup previously and you just admitted on
4 the record that she did do legitimate work. So it's
5 insufficient now on this record to show that there was wrong
6 to her and, therefore, this court, as in the other case,
7 believes that you have not met the element, in that the
8 corporation was used in order to wrong her.

9 In addition, it's duplicative. You're suing
10 Victor, you're suing corporations. You have both of them
11 here. There's no necessity for piercing the corporate veil.
12 Seeking a judgment against the corporation and you can seek
13 judgment against the individual. So you have both. No
14 necessity here. It's duplicative. Therefore, for all these
15 reasons court grants the motion to the extent of dismissing
16 the eleventh cause of action for piercing the corporate
17 veil.

18 Thank you. Have a good day.

19 Order the transcript.

20
21 * * * *

22 Certified to be a true and accurate transcript of the
23 stenographic minutes taken within.

24
25 
26 William D. Leone
Senior Court Reporter

WILLIAM D. LEONE, SENIOR COURT REPORTER