No. 2007-08334
Appellate Division of the Supreme Court of New York, Second Department

East Hampton v. Sandpebble

66 A.D.3d 122 (N.Y. App. Div. 2009) · 2009 N.Y. Slip Op. 5998 · 884 N.Y.S.2d 94
Decided Jul 28, 2009

No. 2007-08334.

July 28, 2009.

APPEAL from an order of the Supreme Court, Suffolk County (Paul J. Baisley, Jr., J.), dated July 18, 2007. The order denied defendants' motion pursuant to CPLR 3211 (a) (1) and (7) to dismiss the complaint insofar as asserted against defendant Victor Canseco individually.

East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc., 2007 NY Slip Op 34427(U), modified. *123

Esseks, Hefter Angel, LLP, Riverhead (*Theodore D. Sklar* of counsel), for appellants.

Morgan, Lewis Bockius, LLP, New York City (*Bernard J. Garbutt III, Marc J. Shanker* and *Shana Cappell* of counsel), for respondent.

Before: SPOLZINO, J.P., and MILLER, J., concur with FISHER, J.; DILLON, J., and ENG, JJ., concur in part and dissent in part, and vote to modify the order by deleting the provision thereof denying that branch of the defendants' motion which was pursuant to CPLR 3211 (a) (7) to dismiss the cause of action against the defendant Victor Canseco for the alleged wrong committed by the defendant Sandpebble Builders, Inc., under a "piercing the corporate veil theory" as to the estimating services contract and substituting therefor a provision granting that branch of the motion, and, as so modified, to affirm the order, in a separate opinion by DILLON, J.

OPINION OF THE COURT

FISHER, J.

The individual defendant, Victor Canseco, is the principal owner and president of the corporate defendant, Sandpebble Builders, Inc. (hereinafter Sandpebble). The primary issue on this appeal is whether the complaint is sufficient to state a cause of action against Canseco personally for the wrongs of the corporation under the doctrine of piercing the corporate veil.

The complaint names as defendants both Sandpebble and Canseco, as Sandpebble's president and principal owner. It asserts causes of action jointly against them, referring to them, for the most part, as "the defendants." The complaint alleges that in April 2002 the plaintiff, East Hampton Union Free School District (hereinafter the district), entered into an agreement with the defendants, subject to an $18 million municipal bond offering, whereby the defendants would provide construction services to the district in consideration of, inter alia, five percent of the total project cost. In 2004, however, after the Board of Education of the district failed to ratify the agreement, the district abandoned it. Thereafter, in 2005, in anticipation of a new project, the district entered into an estimating services contract with the defendants whereby the defendants would provide certain estimates for use by the district's architects in connection with the new project. The complaint alleges that, although the district paid the defendants the sum of $200,000, the defendants never performed under the agreement, thereby delaying the project. Despite the 124 defendants' failure to perform, *124 however, the

district proposed to them a new construction management agreement in connection with the new project, and an agreement in principle was reached in June 2006. The terms of this agreement were less favorable to the defendants than were the terms of the abandoned 2002 agreement.

The complaint alleges that, notwithstanding this agreement in principle, the defendants refused to execute the contract. The parties reopened negotiations and agreed to a change in the terms, but, again, the defendants refused to execute the contract. According to the complaint, this sequence of renegotiation, agreement in principle, and refusal to execute was repeated twice more until, by letter dated September 15, 2006, the defendants "rejected the contract . . . terminated negotiations with the school district, and stated that [they] were `ready, willing and able' to perform," but only under the terms of the 2002 agreement. Ultimately, the district contracted with a different provider.

In the complaint, the district alleges that the defendants never intended to perform in connection with the new project, and that their repeated demands for new terms constituted bad faith and unfair negotiating tactics designed to delay progress of the project in order to pressure the district to offer them the more advantageous terms of the 2002 agreement. The complaint alleges throughout that the wrongful conduct was engaged in by "the defendants." With respect to Canseco specifically, the complaint alleges only that he is "the President and principal owner of Sandpebble," that he "exercised and exercises complete dominion and control over Sandpebble," that he "exercised complete dominion and control over Sandpebble, including, but not limited to, all the acts and omissions of Sandpebble as alleged herein," that he "used such dominion and control to direct the acts and omissions of Sandpebble as alleged herein, and to commit a wrong against the School District which resulted in injury, harm and damages to the School District," that he "exercised such dominion and control over Sandpebble while [he] and Sandpebble were engaging in the bad faith and unfair negotiating tactics alleged herein," and that therefore he is "liable herein, jointly and severally with Sandpebble, for all the acts, omissions, debts, obligations and liabilities of Sandpebble."

The defendants moved pursuant to CPLR 3211 (a) (1) and (7) to dismiss the complaint insofar as asserted against Canseco individually. The Supreme Court denied the motion (2007 NY Slip Op 34427[U]), and the defendants appeal. *125

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As an initial matter, we find that the Supreme Court properly denied that branch of the defendants' motion which was to dismiss the complaint insofar as asserted against Canseco individually under CPLR 3211 (a) (1), inasmuch as the documentary evidence that the defendants submitted in support of that branch of their motion did not establish a defense as a matter of law (*see Martinez v La Colonia Rest*, 55 AD3d 801).

With respect to that branch of the defendants' motion which was pursuant to CPLR 3211 (a) (7), the principles governing this appeal are familiar.

> "On a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2008]; *see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Smith v Meridian Tech., Inc.*, 52 AD3d 685, 686 [2008]).

Thus, "a motion to dismiss made pursuant to CPLR 3211 (a) (7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (*Shaya B. Pac., LLC v*

Wilson, Elser, Moskowitz, Edelman Dicker, LLP, 38 AD3d 34, 38; *see Leon v Martinez*, 84 NY2d at 87-88; *Fisher v DiPietro*, 54 AD3d 892, 894; *Clement v Delaney Realty Corp.*, 45 AD3d 519, 521). Moreover, the sufficiency of a complaint must be measured against what the law requires of pleadings in the particular case. As our dissenting colleagues correctly point out, the complaint here is not required to meet any heightened level of particularity in its allegations (*cf.* CPLR 3016). Instead, it need only contain "[s]tatements . . . sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action" (CPLR 3013). The issue that now divides the court is whether, under the doctrine of piercing the corporate veil, the complaint contains allegations
126 sufficient to state a cause of action holding *126 Canseco personally liable for actions he took as Sandpebble's president and principal owner.–

– To the extent that the district contends on appeal that the complaint asserts a claim against Canseco for conduct undertaken individually in his own right, and not only for the obligations of Sandpebble under the doctrine of piercing the corporate veil, the argument is not properly before us as it was not made at the Supreme Court. We further note that the district does not argue that Canseco is liable as an officer of Sandpebble for inducing the breach of the contracts between the district and Sandpebble in bad faith (*see Murtha v Yonkers Child Care Assn.*, 45 NY2d 913, 915 [1978]; *First Bank of Ams. v Motor Car Funding*, 257 AD2d 287, 294 [1999]).

The general rule, of course, is that a corporation exists independently of its owners, who are not personally liable for its obligations, and that individuals may incorporate for the express purpose of limiting their liability (*see Bartle v Home Owners Coop.*, 309 NY 103, 106 [1955]; *Seuter v Lieberman*, 229 AD2d 386, 387). The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on owners for the obligations of their corporation (*see Matter of Morris v New York State Dept. of Taxation Fin.*, 82 NY2d 135, 140-141). A plaintiff seeking to pierce the corporate veil must demonstrate that a court in equity should intervene because the owners of the corporation exercised complete domination over it in the transaction at issue and, in doing so, abused the privilege of doing business in the corporate form, thereby perpetrating a wrong that resulted in injury to the plaintiff (*id.; see Love v Rebecca Dev., Inc.*, 56 AD3d 733; *Millennium Constr., LLC v Loupolover*, 44 AD3d 1016).

The complaint here certainly alleges that the district sustained damages by reason of the wrongful conduct of Sandpebble, and that Canseco exercised complete "dominion and control" over the corporation in its dealings with the district. But, if, standing alone, domination over corporate conduct in a particular transaction were sufficient to support the imposition of personal liability on the corporate owner, virtually every cause of action brought against a corporation either wholly or principally owned by an individual who conducts corporate affairs could also be asserted against that owner personally, rendering the principle of limited liability largely illusory. Thus, the party seeking to pierce the corporate veil must also establish "that the owners, through their domination, abused the privilege of doing business in the corporate form" (*Matter of Morris v New York State Dept. of Taxation Fin.*,
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82 NY2d at 142; *see Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141; *Lawlor v Hoffman*, 59 AD3d 499; *Love v Rebecca Dev., Inc.*, 56 AD3d at 733). Factors to be considered in determining whether the owner has "abused the privilege of doing business in the corporate form" include whether there was a "failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds

for personal use" (*Millennium Constr., LLC v Loupolover*, 44 AD3d at 1016-1017; *see Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141; *AHA Sales, Inc. v Creative Bath Prods., Inc.*, 58 AD3d 6, 24).

Notably, even under the liberal "notice pleading" requirements of CPLR 3013, a complaint still must allege, inter alia, "the material elements of each cause of action" asserted. Conduct constituting an abuse of the privilege of doing business in the corporate form is a material element of any cause of action seeking to hold an owner personally liable for the actions of his or her corporation under the doctrine of piercing the corporate veil. Here, nothing in the complaint asserts or suggests that Canseco, in his dealings with the district, acted other than in his capacity as president and principal owner of Sandpebble, or that he failed to respect the separate legal existence of the corporation, or that he treated its corporate assets as his own, or that he undercapitalized the corporation, or that he did not respect corporate formalities, or that he, in any other way, abused the privilege of doing business in the corporate form (*see AHA Sales, Inc. v Creative Bath Prods., Inc.*, 58 AD3d at 24; *cf. Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141). Without any allegation that Canseco's conduct constituted an abuse of the privilege of doing business in the corporate form, the complaint fails to allege a material element of a cause of action against Canseco under the theory of piercing the corporate veil (*see Lawlor v Hoffman*, 59 AD3d 499).

We respectfully disagree with our dissenting colleagues that the complaint's use of the words "bad faith" sufficiently spells out the element of abusing the privilege of doing business in the corporate form. The requirement of bad faith generally applies not to the doctrine of piercing the corporate veil, but to a cause of action against a corporate officer for inducing the breach of a contract. Thus, in the principal case cited by the dissent in support of its view, the Court of Appeals held that

> "[a] corporate officer who is charged with inducing the breach of a contract between the corporation 128 *128 and a third party is immune from liability if it appears that he is acting in good faith as an officer . . . [and did not commit] independent torts or predatory acts directed at another" (*Murtha v Yonkers Child Care Assn.*, 45 NY2d at 915; *see Buckley v 112 Cent. Park S., Inc.*, 285 App Div 331, 334 [1954]).

Here, the complaint does not assert a cause of action against Canseco for inducing the breach of a contract between Sandpebble and the district, nor does it allege that, independent of his actions on behalf of the corporation, he committed "torts or predatory acts" directed at the district. Thus, we cannot join the dissenters in affording talismanic effect to the words "bad faith."

It is true that, in opposition to the motion to dismiss, the district offered the affidavits of its counsel and of its Superintendent of Schools. Where a party offers evidentiary proof on a CPLR 3211 (a) (7) motion, the focus of the inquiry turns from whether the complaint states a cause of action to whether the plaintiff actually has one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Steve Elliot, LLC v Teplitsky*, 59 AD3d 523, 524; *Fishberger v Voss*, 51 AD3d 627, 628). Here, however, the affidavits submitted by the district do little more than restate the alleged unfair and bad faith negotiating tactics described in the complaint, and then aver that Canseco was Sandpebble's "sole officer, sole director and sole shareholder" who "dominated and controlled Sandpebble for his own benefit." The affidavits allege further that "Canseco was the School District's sole point of contact" who was the only one who dealt with the district on behalf of Sandpebble and who "was the only individual at Sandpebble that made any executive decisions

regarding any actual or contemplated construction projects for the School District." Again, these allegations, although clearly sufficient to demonstrate Canseco's domination over the corporation in its dealings with the district, do not assert or suggest that he abused the privilege of doing business in the corporate form so as to implicate the equitable doctrine of piercing the corporate veil.

Finally, we reject the district's argument that dismissal of the complaint against Canseco is inappropriate at this stage inasmuch as evidence may eventually be discovered that would justify piercing the corporate veil. The policy inherent in allowing individuals to conduct business in the corporate form so as to shield themselves from
129 personal liability would be seriously *129 threatened were we to allow an insufficient cause of action to survive, at least to the summary judgment stage, merely on the plaintiffs hope that something will turn up. We note that, in an appropriate case, a plaintiff may seek pre-action discovery in order to obtain information relevant to determining who should be named as a defendant (*see* CPLR 3102 [c]; *Matter of Toal v Staten Is. Univ. Hosp.*, 300 AD2d 592, 593 [2002, McGinity, J., dissenting]; *Bonanni v Straight Arrow Publs.*, 133 AD2d 585, 586-587; *Matter of Delgado v Lader*, 23 Misc 3d 1114[A], 2009 NY Slip Op 50749[U] [Sup Ct, Nassau County, Feb. 19, 2009, Austin, J.]; Siegel, NY Prac § 352, at 573; Weinstein-Korn-Miller, NY Civ Prac ¶ 3102.12 [2d ed]).

Accordingly, because the complaint fails to state a cause of action as against Canseco personally under the doctrine of piercing the corporate veil, and because the district has not offered any evidence to establish or suggest that it actually has such a cause of action against him, the order is modified, on the law, by deleting the provision thereof denying that branch of the defendants' motion which was pursuant to CPLR 3211 (a) (7) to dismiss the complaint insofar as asserted against the defendant Victor Canseco individually, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed.

DILLON, J. (concurring in part and dissenting in part).

We disagree with the conclusion of the majority that the complaint fails to state a cause of action against the defendant Victor Canseco for the alleged wrong committed by the defendant Sandpebble Builders, Inc., under a "piercing the corporate veil theory" as to the 2006 construction services contract. For reasons set forth below, we agree with the Supreme Court's denial of that branch of the defendants' motion which was to dismiss as to that cause of action, but disagree with the Supreme Court's denial of that branch of the defendants' motion which was to dismiss the cause of action against the defendant Victor Canseco for the alleged wrong committed by the defendant Sandpebble Builders, Inc., under a "piercing the corporate veil theory" as to the 2005 estimating services contract.

This appeal illustrates the tension that sometimes exists between the requirement of CPLR 3013 that pleadings provide sufficient detail of the plaintiffs grievances to enable the defendant to prepare a defense, and the liberal "notice pleading"
130 requirements of CPLR 3026. *130

The sole criterion in considering a motion to dismiss pursuant to CPLR 3211 (a) (7) is whether "from [the complaint's] four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Gershon v Goldberg*, 30 AD3d 372, 373, quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *see* CPLR 3211 [a] [7]). A party seeking to pierce the corporate veil must establish that "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiffs injury" (*Matter of Morris v New York*

State Dept. of Taxation Fin., 82 NY2d 135, 141; *see also AHA Sales, Inc. v Creative Bath Prods., Inc.*, 58 AD3d 6; *Millennium Constr., LLC v Loupolover*, 44 AD3d 1016, 1016; *Matter of Goldman v Chapman*, 44 AD3d 938, 939). "The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene" (*Matter of Morris v New York State Dept. of Taxation Fin.*, 82 NY2d at 142; *see Millennium Constr., LLC v Loupolover*, 44 AD3d at 1016; *Weinstein v Willow Lake Corp.*, 262 AD2d 634, 635; *Hyland Meat Co. v Tsagarakis*, 202 AD2d 552, 553).

Complaints, including those which seek to pierce corporate veils, are subject to the "notice pleading" requirements of CPLR 3013, which are to be liberally construed (*see* CPLR 104, 3026; *Severino v Salisbury Point Co-ops.*, 21 AD2d 813; *Foley v D'Agostino*, 21 AD2d 60, 63). Notice pleading is satisfied so long as the pleading provides notice to an adversary of the transactions or occurrences giving rise to a claim (*see* CPLR 3013; *Rapoport v Schneider*, 29 NY2d 396, 403; *Foley v D'Agostino*, 21 AD2d at 68; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3013:2) and the material elements of each cause of action or defense (*see* CPLR 3013; *see generally Leitner v Jasa Hous. Mgt. Servs. for Aged*, 6 AD3d 667). Pleadings are deemed to allege whatever can be implied from their statements by fair and reasonable intendment (*see Cohn v Lionel Corp.*, 21 NY2d 559, 562; *Kober v Kober*, 16 NY2d 191, 193; *Components Direct v European Am. Bank Trust Co.*, 175 AD2d 227, 232).

We agree with the majority that each of the three requirements for piercing the corporate veil — domination and control, *131 resultant damages, and abuse of the privilege of doing business in corporate form — must be pleaded for a complaint to be deemed adequate under CPLR 3013. Indeed, for a plaintiff to satisfy the requirements of CPLR 3013, the plaintiff cannot rely upon mere "buzz words" or vague or conclusory allegations, but must instead set forth facts that truly address the underlying transactions and occurrences and the material elements of the claim (*see* CPLR 3013; *Walkovszky v Carlton*, 18 NY2d 414, 420; *Sheinberg v 177 E. 77*, 248 AD2d 176, 177; *Cooperstein v Patrician Estates*, 97 AD2d 426, 427; *accord EED Holdings v Palmer Johnson Acquisition Corp.*, 387 F Supp 2d 265, 274 [applying analogous Federal Rules of Civil Procedure rule 8 (a) and New York substantive law]).

In actions where a piercing of the corporate veil is at issue, the required element of "domination and control" must be alleged (*see* CPLR 3013). A determination as to domination and control necessarily depends upon the attendant facts and equities of an action (*see Matter of Morris v New York State Dept. of Taxation Fin.*, 82 NY2d at 141). Factors that help determine a party's domination and control of a corporate entity include the absence of corporate formalities, inadequate capitalization of the corporation, the personal use of corporate funds, the commingling of personal and corporate accounts, the overlap of officers, directors and personnel, and, when applicable in an action, the use of common office space, addresses, and phone numbers with other commonly-owned corporate entities (*see Wm. Passalacqua Bldrs., Inc. v Resnick Devs. S., Inc.*, 933 F2d 131 139 [2d Cir 1991]; *Millennium Constr., LLC v Loupolover*, 44 AD3d at 1016-1017). Almost by definition, these factors are fact-laden and often do not lend themselves to resolution by means of a prediscovery motion to dismiss (*see* CPLR 3211 [d]; *Kralic v Helmsley*, 294 AD2d 234, 236; *see also Ledy v Wilson*, 38 AD3d 214; *Berry Packing Corp. v Atlantic Veal Corp.*, 302 AD2d 417, 418; *First Bank of Ams. v Motor Car Funding*, 257 AD2d 287, 294). Accordingly, given the liberal notice pleading standards of CPLR 104 and 3026 and the

discovery-intensive nature of evidence relating to the element of "domination and control," a plaintiffs complaint should be deemed sufficient, as to that element, by the allegation of domination and control that rests upon at least some facts that are tied to defined transactions and occurrences underlying the plaintiffs claim (*see* CPLR 3013).

However, an allegation of domination and control is not, standing alone, sufficient to state a cause of
132 action for personal *132 liability against a corporate owner. Were that so, then, as the majority correctly notes, virtually every cause of action brought against a corporation that is wholly or principally owned by an individual conducting corporate affairs could be extended ipso facto to the owner personally (*see Matter of Morris v New York State Dept. of Taxation Fin.*, 82 NY2d at 141-142). Such a result would render the principle of limited liability illusory (*see generally Bartle v Home Owners Coop.*, 309 NY 103, 106 [1955]; *Seuter v Lieberman*, 229 AD2d 386, 387). For this logical reason, a sufficient complaint for piercing the corporate veil must also contain allegations "that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice . . . such that a court in equity will intervene" (*Matter of Morris v New York State Dept. of Taxation Fin.*, 82 NY2d at 142; *see also TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339; *Lawlor v Hoffman*, 59 AD3d 499; *Love v Rebecca Dev., Inc.*, 56 AD3d at 733; *Millennium Constr., LLC v Loupolover*, 44 AD3d at 1016). Allegations involving an abuse of the corporate form may be less discovery-intensive than that of "domination and control," particularly as such conduct ordinarily speaks to the very transactions or occurrences that underlie the action and for which plaintiffs must give notice under CPLR 3013. Accordingly, for a complaint to state a cause of action for piercing the corporate veil, the plaintiff cannot rely upon vague or conclusory allegations that the individual defendant abused the corporate form, but must instead articulate actual conduct by the individual that creates a nexus between it and the "transactions or occurrences" of the complaint.

I. The 2006 Construction Services Contract

With the foregoing as backdrop, the Supreme Court properly found that the complaint adequately pleaded a cause of action against Canseco for the alleged wrong committed by the corporate defendant under a "piercing of the corporate veil" theory as to the 2006 construction services contract (*see Ventresca Realty Corp. v Houlihan*, 28 AD3d 537, 538; *Board of Mgrs. of Regal Walk Condominium I v Community Mgt. Servs. of Staten Is.*, 226 AD2d 414, 415). The complaint alleges in paragraphs 89 and 90, as to the first requirement for piercing the corporate veil, that Canseco exercised complete dominion and control over the corporate defendant. Indeed, the complaint alleges that Canseco was the
133 principal owner of the *133 corporate defendant and that Canseco directed all of its acts and omissions.

The complaint alleges in paragraph 91, as to the second requirement, that Canseco's dominion and control was used to commit a wrong against the plaintiff which resulted in injury.

The complaint further alleges in paragraph 92, relative to the third requirement for piercing the corporate veil, that the individual defendant exercised his dominion and control over the corporate defendant to engage in acts of bad faith and unfair negotiating tactics. Specifically, the "exercise" of dominion and control as alleged in paragraph 90 of the complaint, and the affirmative "use" of dominion and control as alleged in paragraphs 91 and 92 to commit wrongs and engage in bad faith and unfair negotiating tactics, reasonably speak, within the broader context of corporate veil allegations, to the perpetration of alleged wrongs through the corporate form. In

other words, the reasonable intendment of paragraphs 91 and 92 is the abuse of the privilege of doing business in corporate form.

Additionally, while corporate officers cannot be held personally liable for the corporation's breach of contract simply because the officer undertook the challenged actions on the corporation's behalf (see *Murtha v Yonkers Child Care Assn.*, 45 NY2d 913, 915; *Lawlor v Hoffman*, 59 AD3d 499, 500), the limit on personal liability only exists when the corporate officer acts in good faith (see *Murtha v Yonkers Child Care Assn.*, 45 NY2d at 915; *First Bank of Ams. v Motor Car Funding*, 257 AD2d 287, 294). Here, the plaintiff's complaint alleges, in paragraph 92, that Canseco's conduct was undertaken in "bad faith" toward the school district. Canseco's alleged bad faith is the predicate by which the plaintiff seeks to pierce the corporate veil. The bad faith conduct is specifically alleged in the complaint as consisting of his repeated negotiation of contract terms with the school district, to which he would orally agree on multiple occasions while never intending to execute written contract documents, all in a deliberate effort to delay the construction project as a means of leveraging a greater percentage of compensation from the school district. Whether the plaintiffs theory for piercing the corporate veil proves to be successful or unsuccessful is beside the point. We part company with our colleagues in the majority to the extent that their opinion fails to qualify the complaint's alleged "bad faith" conduct as an abuse of corporate form, and which provides the plaintiff with a procedural and alleged
134 predicate for piercing the *134 corporate veil. Should the defendants desire more detail as to the plaintiffs allegations, they can demand a bill of particulars (see CPLR 3041, 3042) or obtain other discovery such as depositions (see CPLR 3107).

Our conclusion that the plaintiffs complaint adequately states a cause of action against Canseco to recover for the alleged wrong committed by the corporate defendant under a "piercing the corporate veil theory" as to the 2006 construction services contract is bolstered by the fact that this action falls outside the scope of CPLR 3015 and 3016. Particularity is required under CPLR 3015 in any matter involving a condition precedent, the state of a party's incorporation, a judgment, decision or determination, the denial of negotiable instrument signatures, and licensure to do business in certain consumer actions. Similarly, CPLR 3016 requires the pleading of factual particulars in actions sounding in defamation, fraud, separation or divorce, enforcement of a judgment, foreign law, the sale or delivery of goods, automobile-related personal injury involving Insurance Law § 5104, and certain corporate actions not relevant here. None of the particularity requirements as set forth in CPLR 3015 or 3016 apply to the corporate veil allegations of this contract action and, accordingly, we reject the defendants' arguments which, in effect, impose upon the plaintiff heightened pleading expectations not contemplated by the CPLR.[1] The complaint, given a liberal construction, meets the requirement of CPLR 3013 as it provides the defendants with notice of the transactions or occurrences on which the claim is based and addresses all three of the material elements established by relevant decisional authorities for piercing the corporate veil (see *Love v Rebecca Dev., Inc.*, 56 AD3d 733, 733-734; *Ventresca Realty Corp. v Houlihan*, 28 AD3d at 538; *Meachum v Outdoor World Corp.*, 235 AD2d 462, 463; *Long Is. Diagnostic Imaging v Stony Brook Diagnostic Assoc.*, 215 AD2d 450, 452).[2]

[1] Were the plaintiff seeking to pierce the corporate veil on the basis of fraud, as distinguished from bad faith, the particularity of the pleading would be required under CPLR 3016 (b) (see *e.g. Sheridan Broadcasting Corp. v Small*, 19 AD3d 331, 332 [2005]).

[2] Our result here does not reach or address circumstances where the piercing of the corporate veil is directed at an individual

> shareholder whose acts or omissions are directed by a corporate board or governing body.

The defendants' corporate veil remedy, if any, resides within the summary judgment provisions
135 of CPLR 3212 after relevant *135 discovery, and is not found here under the dismissal provisions of CPLR 3211.

II. The 2005 Estimating Services Contract

Whereas the plaintiffs complaint alleged that Canseco used his dominion and control over Sandpebble to engage in bad faith and unfair negotiating tactics relative to the 2006 construction services contract, and thereby to commit a wrong against the school district, no such allegations of personal wrongdoing are present in the cause of action that seeks damages for the alleged breach of the parties' 2005 estimating services contract. Instead, the complaint's allegations regarding the 2005 estimating services contract read as a standard corporate breach of contract, with no reference to bad faith, unfair negotiating tactics, fraud, or other behavior that could arguably expand liability beyond the corporate veil. The affidavit of Dr. Raymond D. Gualtieri, submitted in opposition to the defendants' motion to dismiss, focuses upon the circumstances of a 2006 construction management services contract, but makes no reference to the 2005 estimating services contract and thereby fails to cure the corporate veil inadequacies regarding the earlier contract (see *generally Leon v Martinez*, 84 NY2d 83, 88). Dismissal of the cause of action against Canseco to recover damages for the alleged wrong committed by the corporate defendant under a "piercing the corporate veil theory" as to the 2005 estimating services contract therefore should have been granted under CPLR 3211 (a) (7).

III. The Defendants' Motion Based On Documentary Evidence

With respect to the branch of the defendants' motion which was for dismissal of the plaintiffs complaint pursuant to CPLR 3211 (a) (1), the court properly determined that the documentary evidence which the defendants submitted in support of their motion failed to resolve all factual issues as a matter of law and failed to disprove the school district's allegations (see *Fleming v Kamden Props., LLC*, 41 AD3d 781, 781, citing *Berger v Temple Beth-El of Great Neck*, 303 AD2d 346, 347).

In our view, the remaining contentions are without
136 merit or have been rendered academic. *136

Ordered that the order is modified, on the law, by deleting the provision thereof denying that branch of the defendants' motion which was pursuant to CPLR 3211 (a) (7) to dismiss the complaint insofar as asserted against the defendant Victor Canseco individually, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed, with costs to the defendants.

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