

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERRY FELDMAN,

Plaintiff

CIVIL ACTION

v.

KAY & SONS, INC.; and
BARRY KAHN,

Defendants

NO. 01-CV-1519

v.

JENNIFER MARTIN,
d/b/a JLM DESIGN,

Third Party

Defendants

ORDER

AND NOW, this 1st day of November, 2001, upon consideration of the Motion by Barry Kahan to Dismiss Pursuant to 12(b)(6) (Docket No. 13), and plaintiff's opposition thereto, IT IS HEREBY ORDERED that the motion is GRANTED for the reasons discussed below.

Barry Kahan, as president and sole shareholder of Kay & Sons, Inc., is liable for the actions alleged in the complaint only if the corporate veil is pierced. However, the complaint does not make allegations sufficient to pierce the corporate veil. Rather, Feldman only alleges that Kahan is the "sole owner, shareholder, director and/or officer of Defendant Kay & Sons, Inc." Complaint ¶ 5. He thereafter alleges that Defendant

Kay & Sons "and/or" Barry Kahn wrongfully terminated him, improperly withheld his income, refused to pay him other due compensation, and instituted an action to recover overpayments.' See *id.* ¶¶ 12-13, 15, 27.

In his opposition to the motion, plaintiff primarily cites three cases to justify piercing the veil. First, Feldman cites Ashley v. Ashley, 482 Pa. 228, 237 (1973) for the proposition that one controlling a corporation may be held personally liable where he uses that control to further his personal interests. That case, however, relies on evidence in the record which "clearly reveal[ed]" that the sole shareholder acted improperly in disregarding the corporate form by personally authorizing the transfer of corporate money for personal purchases of stock and his residence, and testifying that he and his company were "one and the same." *Id.* There are no similar allegations here.

1. Even in his opposition brief, Feldman states only that Kahan made all decisions for the company; as sole shareholder, benefited from each sale of the plaintiff; and was "solely responsible for running the Company and making its decisions". Plaintiff's Opposition Brief at 2-3. He further states that because Kahan "is the sole shareholder and president of the Company[, it] therefore...must follow that the Company is a mere facade for his operations." *Id.* at 6.

Plaintiff next cites S.T. Hudson Engineers, Inc. v. Camden Hotel Dev., 747 A.2d 931, 935 (Pa. Super. 2000) as an example of a Pennsylvania case recognizing the alter ego theory of liability for corporate actors. In that case, however, the court points out that "[t]here is a strong presumption in Pennsylvania against piercing the corporate veil," and that courts will only pierce the veil where "specific, unusual circumstances call for an exception." *Id.* (citations omitted). There, the fact that corporate payments were made on personal checks from a personal account supported piercing the veil. There are no comparable allegations here.

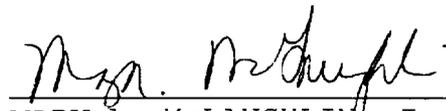
Finally, the third case relied on by plaintiff, United States v. Pisani, 646 F.2d 83 (3d Cir. 1981), is inapposite. In that case, federal, and not state law, controlled **the** issue of piercing the corporate veil, which concerned medicare benefits.² Accordingly, its holding has **no** binding authority in this context, where the decision is governed by Pennsylvania law. Furthermore, even on the facts the case is unhelpful; the court there noted **that** Pisani followed no corporate formalities, operated the corporation with personal funds, loaned large **sums**

2. There was not even a suggestion that Pennsylvania law applied; the question was whether federal or New Jersey state law controlled.

to the corporation, and then repaid the loans to himself with corporate funds while the corporation **was** failing. Id. at 88.

Plaintiff may amend his complaint, if he is able to allege with greater particularity facts on which to found a veil piercing theory. The plaintiff has twenty (20) days from the date **of** this order **to** file an amended complaint.

BY THE COURT:



MARY A. McLAUGHLIN, J.

filed 11/10/10 to:
D. Smith, Esq.
L. Resner, Esq.