

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ROBERT BANKS, SR.	:	January Term 2005
	:	
Plaintiff,	:	No. 2807
	:	
v.	:	Commerce Program
	:	
HANOVERIAN, INC., et al.	:	Control No. 041165
	:	
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 23RD day of June 2005, upon consideration of the Preliminary Objections of Defendants Hanoverian, Inc. and Donald Metzger, all responses in opposition, the respective memoranda and all matters of record, it hereby is **ORDERED** and **DECREED** as follows:

1. Defendants' Preliminary Objections to Counts I (breach of contract), III (premises liability) and IV (unjust enrichment) are **SUSTAINED** and such counts are **DISMISSED** as to Defendant Donald Metzger only.

2. Defendants' Preliminary Objection pursuant to Pa.R.C.P. 1028 (a)(4) concerning Plaintiffs Road Star Freight Corporation and Bobby Wholesale Distributors are **DISMISSED AS MOOT**, in light of this court's earlier Order of April 27, 2005, dismissing such plaintiffs.

3. The remainder of Defendants' Preliminary Objections are **OVERRULED** without prejudice.

BY THE COURT:

HOWLAND W. ABRAMSON, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ROBERT BANKS, SR.	:	January Term 2005
	:	
Plaintiff,	:	No. 2807
	:	
v.	:	Commerce Program
	:	
HANOVERIAN, INC., et al.	:	Control No. 041165
	:	
Defendants.	:	

MEMORANDUM OPINION

HOWLAND W. ABRAMSON, J.

Before the Court are the Preliminary Objections of Defendants Hanoverian, Inc. (“Hanoverian”) and Donald Metzger (“Metzger”) to Plaintiff’s Complaint. For the reasons fully set forth below, Defendants’ Preliminary Objections are **sustained in part** and **overruled in part**.

DISCUSSION

I. Plaintiff Has Failed to State A Claim For Breach of Contract Against Defendant Metzger

Count I of the Complaint purports to state a claim for breach of contract against, *inter alia*, Metzger. To set forth a valid claim for breach of contract, plaintiff must demonstrate: (1) the existence of a contract, including its essential terms; (2) breach of a duty imposed by the contract; and (3) resultant damages. CoreStates Bank, Nat’l Assn. v. Cutillo, 1999 Pa. Super. 14, 23 A.2d 1053 (1999). Here, Plaintiff has failed to demonstrate the existence of a contract between himself and Donald Metzger, individually. The contract attached to the Complaint is between Robert J. Banks, Sr. and Hanoverian, Inc.

The fact that Metzger signed the contract on behalf of Hanoverian does not mean he may be found personally liable under the contract. In fact, a strong presumption exists in Pennsylvania against disregarding the corporate form. Wedner v. Unemployment Compensation Bd. of Review, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972). “Piercing the corporate veil is the exception, and courts should start from the general rule that the corporate entity should be upheld unless specific, unusual circumstances call for [such] an exception.” First Realvest, Inc. v. Avery Builders, Inc., 410 Pa. Super. 572, 600 A.2d 601, 604 (1991). In order to withstand a demurrer, Plaintiff must set forth specific facts to warrant the disregard of the corporate form in this instance.¹ While it is not necessary to set forth the evidences by which these facts are to be proved, it is essential that the facts the pleader depends upon to show liability be averred. Id. (quoting Frey v. Dougherty, 286 Pa. 45, 48, 132 A. 717, 718 (1926)). Plaintiff has failed to please such facts here. As such, Defendant Metzger’s Preliminary Objection to Count I is sustained and Count I is dismissed as to Metzger.²

II. Plaintiff Has Failed To State A Claim for Premises Liability Against Metzger

Count III of the Complaint purports to state a cause of action for “Premises Liability.” However, this court finds the allegations of the Complaint fail to support such a claim against Metzger, individually. The property at issue was owned by Hanoverian. Compl. ¶ 10. As pled, the Complaint contains no allegations which establish that Metzger owned or was otherwise in

1 Under Pennsylvania law, the following factors are to be considered in determining whether to pierce the corporate veil: 1) undercapitalization; 2) failure to adhere to corporate formalities; 3) substantial intermingling of corporate and personal affairs; and 4) use of the corporate form to perpetrate a fraud. Lumax Indus. v. Aultman, 543 Pa. 38, 669 A.2d 893 (1995); Village at Camelback Prop. Owners Ass’n, Inc. v. Carr, 371 Pa. Super. 452, 461, 538 A.2d 528, 533 (1988), *aff’d* 524 Pa. 330, 572 A.2d 1 (1990).

2 This court is mindful of the distinction between “piercing the corporate veil” and the “participation theory” of liability. See Wicks v. Milzoco Builders, Inc., 503 Pa. 614, 470 A.2d 86 (1983). However, the court finds the participation theory inapplicable to Plaintiff’s claims for breach of contract, premises liability or unjust enrichment. However, this court does recognize that the participation theory may

control of the property in question and therefore can not be found to have owed a duty to Plaintiff under these circumstances. As such, Defendant Metzger's Preliminary Objection to Count III is sustained and Count III is dismissed as to Metzger.

III. Plaintiff Has Failed To State A Claim for Unjust Enrichment Against Metzger

Count IV of the Complaint purports to state a claim against, *inter alia*, Metzger, for unjust enrichment. A claim for unjust enrichment requires that plaintiff demonstrate the following elements: 1) benefits conferred on defendant by plaintiff; 2) appreciation of such benefits by defendant; and 3) acceptance and retention of such benefits under circumstances in which it would be inequitable for defendant to retain the benefit without payment of value. Schneck v. K.E. David Ltd., 446 Pa. Super. 94, 97-8, 666 A.2d 327, 328-9 (1995). At bar, Plaintiff has failed to demonstrate the existence of any benefit conferred by him upon Donald Metzger, individually. Here, the only party which could possibly have been unjustly enriched under the facts pled in the Complaint would have been the owner of the property, Hanoverian. As Plaintiff has failed to plead sufficient facts to overcome the strong presumption against disregarding the corporate form, his unjust enrichment claim against Metzger must be dismissed.

IV. Preliminary Objections Concerning Plaintiffs Road Star Freight Corporation and Bobby Wholesale Distributors

On April 27, 2005, this Court entered an order sustaining the Collins' Defendants' Preliminary Objection pursuant to Pa.R.C.P. 1028 (a)(4) concerning Plaintiffs Road Star Freight Corporation and Bobby Wholesale Distributors. This court found the Complaint to be devoid of any allegations entitling these plaintiffs to relief against any defendant. As such, all claims by these plaintiffs have already been dismissed. To the extent they were able to plead such facts, these plaintiffs were permitted to file an amended complaint within twenty (20) days from the

theoretically be applied to the instant fraud claim (Count II).

date of entry of the Order. However, they elected not to do so. As such, Defendants' Preliminary Objections concerning Plaintiffs Road Star Freight Corporation and Bobby Wholesale Distributors are dismissed as moot.

CONCLUSION

For the reasons fully set forth above, Defendants' Preliminary Objections are sustained in part and overruled in part, as follows:

1. Defendants' Preliminary Objections to Counts I (breach of contract), III (premises liability) and IV (unjust enrichment) are **SUSTAINED** and such counts are **DISMISSED** as to Donald Metzger.
2. Defendants' Preliminary Objection pursuant to Pa.R.C.P. 1028 (a)(4) concerning Plaintiffs Road Star Freight Corporation and Bobby Wholesale Distributors are **DISMISSED AS MOOT**, in light of this Court's earlier Order of April 27, 2005, dismissing such plaintiffs;
3. The remainder of Defendants' Preliminary Objections are **OVERRULED**
without prejudice.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

HOWLAND W. ABRAMSON, J.