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

RYDER TRUCK RENTAL, INC.	:	**FEBRUARY TERM, 2012**
	:	**NO. 02766**
v.	:	**COMMERCE PROGRAM**
SAND-MAN EXPRESS, INC. AND SANDMAN EXPRESS, LLC	:	**Control No. 13052588**

ORDER

AND NOW, this 8th day of July, 2013, upon consideration of the motion for summary judgment of defendant, Sandman Express, LLC, and any response thereto, it is hereby

ORDERED

that the said motion is **GRANTED IN PART AND DENIED IN PART**.

BY THE COURT:

GLAZER, J.

Ryder Truck Rental Inc -ORDOP

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	:	**NO. 02766**
v.	:	
	:	**COMMERCE PROGRAM**
SAND-MAN EXPRESS, INC. AND SANDMAN EXPRESS, LLC	:	**Control No. 13052588**

OPINION

GLAZER, J. July 8, 2013

Before the court is the motion for summary judgment of defendant, Sandman Express, LLC. For the reasons set forth below, defendant's motion is granted in part and denied in part.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff, Ryder Truck Rental, Inc. (hereinafter "Ryder") commenced the present action against defendants Sand-Man Express, Inc. (hereinafter "SEI") and Sandman Express, LLC (hereinafter "SEL") alleging: (1) breach of contract; (2) account stated; (3) quantum meruit; and (3) alter ego. Defendant, SEL, now brings the instant motion for summary judgment. On or about June 15, 1999, (hereinafter "1999 lease") Ryder and SEI entered into a truck lease and service agreement in which Ryder agreed to lease trucks to SEI. The 1999 lease was signed by Thomas Sanders as operation manager of SEI. See plaintiff's motion in opposition to summary judgment, Exhibit 2. On or about July 9, 2006 (hereinafter "2006 lease"), Ryder and SEI added more vehicles to the truck lease under schedule A. Subsequently, on or about December 4, 2009 (hereinafter "2009 lease") and on or about March 3, 2010 (hereinafter "2010 lease"), SEI and

Ryder again added more vehicles to the truck lease under schedule A. However, each of the 2006, 2009, and 2010 leases was signed by Cory Sanders as president of simply Sandman Express instead of Sand-Man Express, Inc. SEL is not a party to any contract with Ryder.

Plaintiff alleges in its complaint that SEI and SEL are believed to be related entities and have the same principal because the 2006 lease and the 2010 lease were both signed by Corey Sanders, an alleged principal in both entities. Plaintiff further alleges that defendants were required to make payments pursuant to the lease and that defendants failed to make those required payments, thereby causing a breach of contract. Defendant, SEL, now brings the instant motion for summary judgment claiming that plaintiff has failed to produce any evidence that SEI and SEL ever had common ownership or that SEL ever had any ownership in SEI.

DISCUSSION

Once the relevant pleadings have closed, any party may move for summary judgment. Pa. R.C.P 1035.2. "Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law." Rausch v. Mike-Meyer, 783 A.2d 815, 821 (Pa. Super. 2001). Further, granting summary judgment is appropriate when the evidentiary record shows the material facts are undisputed. McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938, 940 (Pa. Super. 1998). The trial court must view the record in the light most favorable to the non-moving party. Rausch, 783 A.2d at 821. Rule 1035.2 provides that a party may move for summary judgment "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury." Moreover, "[u]nder

subparagraph (2), the record contains insufficient evidence of facts to make out a prima facie cause of action or defense and, therefore, there is no issue to be submitted to the jury.... To defeat this motion, the adverse party must come forth with evidence showing the existence of the facts essential to the cause of action or defense." Id.

Plaintiff has the burden of proof at trial. However, plaintiff has failed to produce evidence of facts essential to prove a claim for breach of contract and piercing the corporate veil under the alter ego theory against SEL. There is a strong presumption in Pennsylvania against piercing the corporate veil. Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 41-43, 669 A.2d 893, 895 (1995) (citing Wedner v. Unemployment Bd., 449 Pa. 460, 464, 296 A.2d 792, 794 (1972). Moreover, when making a determination of whether to pierce the corporate veil, the court "must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual, circumstances call for an exception." Id. "The factors to be considered in disregarding corporate form are as follows: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetuate a fraud." Advanced Tel. Sys. V. Com-Net Prof's Mobile Radio, LLC, 846 A.2d 1264, 1277-1278 (Pa. Super. 2004). "The alter ego theory is applicable only where the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable." Miners, Inc. v. Alpine Equip. Corp., 722 A.2d 691, 695 (Pa. Super. Ct. 1998).

Plaintiff has failed to produce any evidence to support piercing the corporate veil under an alter ego theory against SEL. In opposition to defendant SEL's motion for summary judgment, plaintiff relies on the allegation in its complaint that the same individual, Corey Sanders, who signed the leases for SEI, is believed to be a principal in SEL. However, mere conclusory allegations are not sufficient evidence to overcome summary judgment. Further,

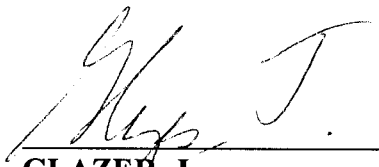
plaintiff does not provide any evidence that SEI and SEL had common ownership or that SEL had ownership in SEI.

Moreover, to prevail on an unjust enrichment/quantum meruit claim in Pennsylvania, plaintiff must prove: (1) a benefit conferred upon one party by another, (2) appreciation of such benefit by the recipient, and (3) that acceptance and retention of the benefit would be inequitable. MetroClub Condo. Ass'n v. 201-59 N. Eighth St. Assocs. L.P., 2012 PA Super 122 (Pa. Super. Ct. 2012) (citations omitted). Defendant SEL admitted to using plaintiff's trucks and therefore the court finds that there is sufficient evidence to support a claim for unjust enrichment/quantum meruit. See plaintiff's motion in opposition to summary judgment, Exhibit 3.

CONCLUSION

Based on the foregoing, the motion for summary judgment as to claims for breach of contract, accounting, and alter ego of defendant, Sandman Express, LLC are granted. Conversely, because defendant Sandman Express, LLC has admitted to using plaintiff's trucks, defendant's motion for summary judgment in regards to the claim for quantum meruit is denied.

BY THE COURT:



GLAZER, J.