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

EDWIN R. GOLDENBERG,	:	SEPTEMBER TERM, 2003
	:	
Plaintiff,	:	No. 004168
	:	
v.	:	COMMERCE PROGRAM
	:	
ROYAL PETROLEUM CORP.,	:	Control No. 081653
ACME OIL CORP., DON WENGER,	:	
RUTH LEVENTHAL NATHANSON, and	:	
HOWARD BOCK,	:	
	:	
Defendants.	:	

O R D E R

AND NOW, this 16th day of December 2004, upon consideration of the Preliminary Objections of defendants, plaintiff's response in opposition, the respective briefs, all other matters of record, and in accord with the court's contemporaneous Opinion, it is

ORDERED that said Preliminary Objections are **SUSTAINED, in part**, and Counts IV and V of the Complaint, and plaintiff's request in the Complaint for attorneys' fees are **DISMISSED.** It is further **ORDERED** that the remaining Preliminary Objections are **OVERRULED**.

BY THE COURT,

_____
C. DARNELL JONES, II, J.

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OPINION

Defendants Royal Petroleum Corp. ("Royal"), Acme Oil Corp. ("Acme"), Don Wenger ("Wenger"), Ruth Leventhal Nathanson ("Nathanson"), and Howard Bock ("Bock") have filed Preliminary Objections to plaintiff Edwin R. Goldenberg's Complaint.

Plaintiff claims to be the minority shareholder of Royal and Acme, of which Wenger and Nathanson together own a majority interest. Bock is apparently an employee of Acme and Royal. Plaintiff claims to have been oppressed and mistreated in various ways as a result of the individual defendants' improper actions. Specifically, plaintiff has brought claims against the defendants for breach of fiduciary duty, usurpation of corporate opportunity, piercing the corporate veil, unjust enrichment, and dissolution and winding up.

I. Defendants' Preliminary Objection to Venue Is Overruled.

Defendants object to the laying of venue in Philadelphia County, but they admit that Royal conducts business in Philadelphia. *See* Preliminary Objections ¶ 11. Therefore, venue is appropriate as to Royal here. *See* Pa. R. Civ. P. 2179(a)(2). "[A]n action to enforce a joint or joint and several liability against two or more defendants . . . may be brought against all

defendants in any county in which venue may be laid against any one of the defendants . . ." Pa. R. Civ. P. 1006(c)(1). Since venue is appropriate here as to Royal, and since plaintiff alleges that the other defendants are jointly and severally liable with Royal, venue may be laid against all of the defendants in Philadelphia County.[1]

II. Defendants' Preliminary Objection to Count VI for Involuntary Dissolution of a New Jersey Corporation Is Overruled.

Defendants object that a Pennsylvania court cannot dissolve a New Jersey corporation, which plaintiff admits defendant Acme is. *See* Complaint, ¶ 4. However, this court is empowered to dissolve a foreign domiciliary corporation.

> The courts of this Commonwealth shall not dismiss or stay any action or proceeding brought by a shareholder or representative of a foreign domiciliary corporation, as such, against the corporation or any one or more of the shareholders or representatives thereof, as such, on the ground that the corporation is a foreign corporation for profit or that the cause of action relates to the internal affairs thereof, but every such action shall proceed with like effect as if the corporation were a domestic corporation. . . [T]he court having jurisdiction of the action or proceeding shall apply the law of the jurisdiction under which the foreign domiciliary corporation was incorporated.

15 Pa. C.S. § 4145(a). "A foreign business corporation is a foreign domiciliary corporation if it has as record holders of its shares persons having addresses in this Commonwealth who in the aggregate hold [60 % of the outstanding] shares." *Id*. at § 4102. Since plaintiff, Wenger and Nathanson all have addresses in Pennsylvania, Acme qualifies as a foreign business corporation. *See* Complaint, ¶¶ 2, 5, 6; Preliminary Objections, ¶¶ 3, 4. Therefore, this court may entertain a cause of action to dissolve Acme under applicable New Jersey law.

[1] Defendants argue that if the court does not dismiss the action for improper venue, then it should transfer the action to Montgomery County for the convenience of the parties and the court. However, "[o]f the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by [Pa. R. Civ. P.] 1006(e). Forum non conveniens . . . [is] raised by petition as provided by [Pa. R. Civ P.] 1006(d)." Pa. R. Civ. P. 1028(a)(1), *Note*. If appropriate, defendants may file such a petition or a motion to coordinate this action with the allegedly related ones already pending in Montgomery County. *See* Pa. R. Civ. P. 213.1.

III. Defendants' Preliminary Objection to Count III for Piercing the Corporate Veil Is Overruled.

Defendants argue that plaintiff has not made out a claim to pierce the corporate veil of Royal and Acme to reach Wenger and Nathanson.

> In Pennsylvania, a corporation is to be treated as a separate and independent entity even if its stock is owned entirely by one person. This creates a strong presumption against piercing the corporate veil. Indeed a Pennsylvania court will pierce the corporate veil only in limited circumstances [such as] when [the corporate form is] used to defeat public convenience, justify wrong, protect fraud or defend crime, and only after considering such factors as undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetrate a fraud.

First Union National Bank v. Quality Carriers, Inc., 48 Pa. D.&C.4th 1, 50 (Phila. Co. 2000).

"The alter-ego theory [of piercing the corporate veil] is applicable 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 Equipment Corp., 722 A.2d 691, 695 (Pa. Super. 1998). In this case, plaintiff alleges that Wenger and Nathanson dominated and controlled Royal and Acme, so that the individual defendants are liable for certain losses of the corporate defendants that they caused. *See* Complaint, ¶¶36-40. In addition, plaintiff's allegations of self-dealing against the individual defendants are sufficiently specific to satisfy the strict pleading requirements for a veil piercing claim. *See* Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 669 A.2d 893 (1995) (claim for piercing the corporate veil will be dismissed if it is not supported by specific factual averments, rather than mere legal conclusions.) Therefore, plaintiff has pled a claim to pierce the corporate veil of Acme and Royal.

IV. Defendants' Preliminary Objection to Counts IV and V for Unjust Enrichment Is Sustained.

Defendants object that plaintiff has not alleged facts sufficient to support his claims for unjust enrichment. A claim for unjust enrichment requires that plaintiff plead the following elements:

> benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. . . . Where unjust enrichment is found, the law implies a contract, . . . which requires that the defendant pay to plaintiff the value of the benefit conferred. In short, the defendant makes restitution to the plaintiff in *quantum meruit.*

Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 97-8, 666 A.2d 327, 328-9 (1995). Plaintiffs allege that the individual defendants, Wenger, Bock and Nathanson, "provided no consideration and have not earned the excessive compensation and benefits [and other funds] they took from Acme and Royal," so that their retention of those amounts is unjust. Complaint, ¶¶ 42-8. However, plaintiff was not the one who conveyed these benefits on the individual defendants, so he does not have standing to recoup them; instead, the claim should be brought, if at all, by the corporate defendants. Therefore, plaintiff's claims for unjust enrichment must be dismissed.

V. Defendants' Preliminary Objection to Plaintiff's Request For Attorneys' Fees Is Sustained.

Under the "American Rule," a party may not recover attorneys' fees from its adversary absent an express statutory or contractual provision allowing for such a recovery. *See* Mosaica Academy Charter School v. Commonwealth Dept. of Education, 572 Pa.191, 206-7, 813 A.2d 813, 822 (2002). The only statute to which plaintiff cites in support of its claim for attorneys' fees is inapplicable to his claims in this action. *See* 42 Pa. C.S. § 2503(1) (holder of bonds in

private corporation who claims due and unpaid interest.") Therefore, plaintiff's requests for attorneys' fees will be dismissed.[2]

VI. Defendants' Preliminary Objection to Plaintiff's Request For a Jury Trial Is Overruled.

Defendants argue that plaintiff is not entitled to a jury trial on his legal claims because he also filed equitable claims against defendants. The court is quite capable of instructing a jury on the legal claims only and rendering a decision on the equitable claims itself. Therefore, defendants' request to strike the jury demand is denied.

CONCLUSION

For these reasons, defendants' Preliminary Objections to plaintiff's Complaint are sustained in part and overruled in part. The court will issue an Order consistent with this Opinion.

BY THE COURT,

_____

C. DARNELL JONES, II, J.

[2] Plaintiff has withdrawn his request for punitive damages as well, so the preliminary objection based on that claim is moot. Furthermore, the court finds no merit in any of defendants' other preliminary objections, which are for the most part overly technical and based upon the wording of the Complaint.