

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

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<b>PIONEER ENTERPRISES, INC.</b>	:	
	:	
<b>v.</b>	:	<b>March Term, 2011</b>
	:	
<b>RAZAD, LLC, ET AL</b>	:	<b>NO. 01491</b>
	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>PIONEER ENTERPRISES, INC., and DEEPAK VERMA</b>	:	

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**ORDER**

**AND NOW**, this 6<sup>th</sup> day of December, 2012, it is hereby

**ORDERED**

that a finding is entered in favor of the plaintiff, Pioneer Enterprises, Inc., and against defendants, Razad, LLC and Harh Enterprises, Inc., in the amount of \$320,834.84 and against defendants Alam Khan and Mehboob Khan in the amount of \$106,891.70. A finding is entered in favor of counterclaim defendants and against counterclaim plaintiffs.

**BY THE COURT:**

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**GLAZER, J.**

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<b>PIONEER ENTERPRISES, INC., and DEEPAK VERMA</b>	:	

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**FINDINGS OF FACT**

**AND NOW**, this 6<sup>th</sup> day of December, 2012, it is hereby

**ORDERED**

that this court finds as follows:

1. Deepak Verma was the owner of Pioneer Enterprises, Inc. (“Pioneer”), which was wholesale supplier of gasoline. [N.T., pp. 15].<sup>1</sup>
2. Pioneer supplied gasoline to stations in New Jersey and Pennsylvania. [N.T., pp. 15].
3. Alam Khan is the Senior Vice president of Razad, LLC. [P-3].
4. In or around February of 2010 Alam Khan and Mehboob Khan met with Deepak Verma in his Cherry Hill, NJ office. [N.T., pp. 16, 87].
5. Alam Khan and Mehboob Khan wanted to set up an account with Deepak Verma to supply gasoline to three different gas stations located on Allegheny Avenue, Fox Street, and Wissahickon Avenue in the city of Philadelphia. [P-1; N.T., pp. 16].

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<sup>1</sup> All testimony occurred on November 14, 2012.

6. Defendant Nushin Khan is the owner of real property located at Fox Street and Allegheny Avenue. [N.T., pp. 26].

7. At the February 2010 meeting, after Alam Kahn and Mehboob Kahn gave Deepak Verma \$50,000.00, Pioneer started to supply them with gasoline. [N.T., pp. 16, 87].

8. Further, a written contract between the parties was not entered into at the February 2010 meeting. [N.T., pp. 18].

9. In the normal course of business, a request for gasoline would be made to Pioneer and an invoice would then be sent to Alam Khan and Mehboob Khan in return. [N.T., pp. 17].

10. Invoices were addressed, depending on the station that was in need of gasoline, to Allegheny Avenue – Khan, Fox Street – Khan, or Wissahickon Avenue – Kahn. [P-1].

11. At the end of February, Alam Kahn and Mehboob Khan fell behind on payments for gasoline that Pioneer had already delivered to them. [N.T. pp. 22]

12. Initially, when Pioneer, Alam Khan and Mehboob Khan were working together, Alam Khan and Mehboob Khan had a bookkeeper/office manger named Saeed Mohammad. [N.T., pp. 83].

13. In or around the end of March 2010, Saeed Mohammad left the Khans to work with Deepak Verma. [N.T., pp. 83].

14. After Saeed Mohammad left the Khans, Alam Khan testified that their books were in disarray. [N.T., pp. 85].

15. On April 30, 2010 Pioneer entered into a formal written letter agreement (the “Agreement”) with Razad, LLC wherein Pioneer agreed to supply and deliver 12-15 loads of fuel per week. [P-3; N.T., pp. 96].

16. Alam Khan signed the Agreement as Senior Vice President of Razad, LLC. [P-3].

17. Moreover, the Agreement stated that Razad, LLC will be required to secure, “for the expense of \$400,000.000 ... a letter of credit from the Bank or lien on your properties.” [P-3].

18. Liens were placed on the Fox Street property for \$200,000.00 and the Allegheny Avenue property for \$200,000.00 to secure the gasoline expenses which were signed and dated by Nushin Khan on February 13, 2010. [P-8; P-9].

19. The liens were notarized by Maratib Kazmi and were recorded in the Office of the Recorder of Deeds in Philadelphia County on June 7, 2010. [P-10].

20. As of April 30, 2012, the Khans owed Pioneer \$106,891.70. [P-2].

21. On July 10, 2012, Alam Khan, Mehboob Khan, and Deepak Verma had a meeting to address the balance on the account, which had now risen to almost \$320,000.00. [N.T., pp. 68].

22. At the July 10, 2010 meeting, Mehboob Khan agreed in writing that Pioneer was owed \$314,000.00. [P-4].

23. Moreover, in that July 10<sup>th</sup>, 2012 meeting, Mehboob Khan gave Pioneer fourteen (14) checks in the amount of \$5,000.00 each. [P-5; P-6; N.T., pp. 102].

24. These checks were issued from Razad, LLC and Harh Enterprises, Inc. [P-5; P-6].

25. Deepak Verma testified, “it was instructed to us that we can deposit \$5,000.000 every Friday. And we are able to deposit one check on the –whatever the next Friday that was on that day was. And that one check cashed.” [N.T., pp. 70-71].

26. However, the next check deposited bounced. [N.T., pp. 71].

27. Moreover, one of the banks notified Pioneer in August of 2010 that the Wachovia checks, in the name of Harh Enterprises, Inc., that Pioneer had been given were from an account that had been closed for the past few months. [P-7].

28. Pioneer delivered their last load of fuel, for which payment was never received, on August 4, 2010. [N.T., pp. 38-40].

29. Pioneer is currently owed \$427,076.54 for unpaid gasoline deliveries. [P-2].

30. Pioneer now brings an action for: (1) breach of contract; (2) unjust enrichment; (3) intentional misrepresentation; (4) negligent misrepresentation; (5) common law fraud; (6) piercing the corporate veil; and (7) conspiracy.

31. Defendants filed a countersuit for: (1) abuse of civil process; (2) tortious interference; and (3) breach of contract. Preliminary Objections were sustained to defendants' claims for abuse of civil process and tortious interference.

### **CONCLUSIONS OF LAW**

32. In Pennsylvania, three elements are necessary for a breach of contract: “(1) the existence of a contract, including its essential terms, (2) a breach of duty imposed by the contract, and (3) resultant damages.” CoreStates Bank, Nat’l Assn. v. Cutillo, A.2d 1053, 1058 (Pa. Super. 1999).

33. Pursuant to § 2-201(c)(3) of the Uniform Commercial Code, a contract is valid “with respect to goods for which payment has been made and accepted or which have been received and accepted.”

34. The Pennsylvania Supreme Court stated, “[i]n order that a contract may be enforceable the promise or the agreement of the parties to it must be certain and explicit, so that

their full intention may be ascertained to a reasonable degree of certainty.” Seiss v. McClintic-Marshall Corp., 324 Pa. 201, 188 A. 109 (1936).

35. Further, there is a strong presumption against piercing the corporate veil. Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 669 A.2d 893, 895 (1995).

36. Pursuant to Pa.R.C.P., plaintiffs are permitted to plead causes of action in the alternative. See Pa.R.C.P. 1020(c).

37. In order to recover for unjust enrichment, there must be both: (1) an enrichment and (2) an injustice resulting if recovery for the enrichment is denied. Meehan v. Cheltenham Township, 189 A.2d 593 (1963); see also Restatement, Restitution § 1, comment a (1936).

38. However, it is true that plaintiffs cannot recover on a claim for unjust enrichment if such a claim is based on a breach of written contract. See Birchwood Lakes Community Ass’n v. Comis, 296 Pa.Super. 77, 442 A.2d 304, 308 (1982).

39. The court finds that there were two separate agreements in the present case, the first being an oral agreement between Pioneer and Alam Khan and Mehboob Khan and the second being the written letter agreement occurring on April 30, 2010 between Pioneer and Razad, LLC.

40. Prior to the April 30, 2010 contract, plaintiff dealt directly with Alam Khan and Mehboob Khan.

41. Further, on the invoices, although the name Khan is referenced, neither Razad, LLC nor Harh Enterprises, Inc is mentioned. [P-1].

42. Defendants routinely accepted gasoline deliveries from plaintiff without paying the full amount owed.

43. Therefore, defendants Alam Khan and Mehboob Khan were unjustly enriched in the amount of \$106,891.70 by receiving gasoline deliveries and an injustice would result if recovery for this enrichment is denied.

44. The April 30, 2010 Agreement created a new arrangement between Pioneer and Razad, LLC.

45. Plaintiff failed to prove by clear and convincing evidence that Razad, LLC was undercapitalized and therefore the court cannot pierce the corporate veil.

46. Plaintiff's argument to pierce the corporate veil was simply that there was no evidence presented of an existing corporation. [N.T., pp. 114-117].

47. The complete lack of evidence by the party bearing the burden of proof on an issue is insufficient to support a finding in favor of such party.

48. Further, Alam Khan signed the Agreement as the Vice President of Razad, LLC and the checks were issued from both Razad, LLC and Harh Enterprises, Inc. [P-5; P-6].

49. In light of the evidence presented at trial, Pioneer is entitled to \$320,834.84 from Razad, LLC and Harh Enterprises, Inc. for unpaid gasoline deliveries following the April 30, 2010 Agreement. [P-2].

50. Therefore, a finding is entered in favor of the plaintiff, Pioneer Enterprises, Inc., and against defendants Alam Khan and Mehboob Khan in the amount of \$106,891.70 on the theory of unjust enrichment and against defendant Razad, LLC and Harh Enterprises, Inc. for \$320,834.84 on the theory of breach of contract.<sup>2</sup> Moreover, all remaining claims are dismissed.

51. A finding is entered in favor of counterclaim defendants and against counterclaim plaintiffs.

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<sup>2</sup> Pursuant to Plaintiff's Exhibit 2, the court found the evidence insufficient to support the interest amount of \$1,279,080.00

**BY THE COURT:**

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**GLAZER, J.**