

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

Pkp Buildup Llc Vs Will-ORDOP



12040344500073

PKP BUILDUP, LLC

Plaintiff

v.

HAL WILLARD,

AVANT—GUARDE NATIONAL ABSTRACT, INC.

and

**OLD REPUBLIC NATIONAL TITLE INSURANCE
COMPANY.**

Defendants

: **April Term, 2012**

: **No. 03445**

: **Commerce Program**

: **Control Nos.**

: **13041817, 13042257**

DOCKETED

OCT 22 2013

C. HART
CIVIL ADMINISTRATION

ORDER

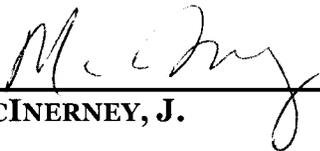
AND NOW, this 22nd day of October, 2013, upon consideration of the motions for summary judgment respectively filed by defendant Old Republic National Title Insurance Company and by defendants Avante—Guarde National Abstract, Inc. and individual defendant Hal Willard, the responses in opposition of Plaintiff, PKP BuildUp, LLC, the respective memoranda of law, the reply briefs filed by defendants respectively, and this court's **OPINION** filed simultaneously therewith, it is **ORDERED** as follows:

- I. the motion for summary judgment of Defendant Old Republic National Title Insurance Company is **DENIED** in its entirety.¹

¹ It appears that Plaintiff, PKP BuildUp, LLC may be a third party beneficiary to a contract between defendant Avant—Guarde National Abstract, Inc. and defendant Old Republic National Title Insurance Company. It also appears that Plaintiff PKP BuildUp, LLC may be a third party

II. The motion for summary judgment of defendants Avant—Guarde and Hal Willard is **GRANTED-IN-PART** and the claim of breach of contract asserted against individual defendant Hal Willard is **DISMISSED**. The remainder of the motion is **DENIED**.

BY THE COURT,



MCINERNEY, J.

beneficiary to a contract between defendant Avant—Guarde National Abstract, Inc. and Sovereign Bank, a non party in this action. *See Scarpitti v. Weborg*, 530 Pa. 366, 372-73, 609 A.2d 147, 150-51 (1992) (holding that “a party becomes a third party beneficiary only where both parties to the contract express an intention to benefit the third party in the contract itself, ...unless, the circumstances are so compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.”) Finally, it appears that defendant Old Republic National Title Insurance Company may be liable to PKP, if at all, under a *respondet superior* theory.

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

PKP BUILDUP, LLC	:	April Term, 2012
	:	
<i>Plaintiff</i>	:	No. 03445
	:	
v.	:	
	:	
HAL WILLARD,	:	
	:	
AVANT—GUARDE NATIONAL ABSTRACT, INC.	:	Commerce Program
	:	
and	:	
	:	
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY.	:	
	:	
<i>Defendants</i>	:	Control No. 13042257
	:	

OPINION

The motion for summary judgment requires this court to determine whether the claim of breach of contract may be maintained against an individual defendant in his capacity as principal, owner or officer of a corporation. For the reasons below, the claim of breach of contract may not be maintained against the individual defendant.

Background

Plaintiff, PKP BuildUp, LLC (“Plaintiff” or “PKP”), is a Pennsylvania company with a Philadelphia address. Defendant, Avant—Guarde National Abstract, Inc. (“Avant—Guarde”), is, or was at all times relevant to this action, a Pennsylvania corporation with an Abington, Pennsylvania address. Individual defendant Hal Willard (“Individual Defendant” or “Willard”), is, or was at all times relevant to this action, connected with Avant—Guarde as an agent, officer, or principal. Defendant Old

Republic National Title Insurance, (“Old Republic”), is a Minnesota corporation licensed to conduct title insurance business in Pennsylvania.

At all times relevant to this action, Old Republic and Avant—Guarde were parties to an “Agreement for Appointment of Policy Issuing Agent For Old Republic National Title Insurance Company,” whereby Old Republic appointed Avant—Guarde as its title insurance agent in Pennsylvania. In pertinent part, the agreement between Old Republic and Avant—Guarde states as follows:

This Agreement, [is] made ... this 14th day of June, 2000 by and between Old Republic ... referred to as “Insurer” and Avant—Guarde ... referred to as “Agent”;

* * *

I. Appointment of Agent

Insurer appoints Agent a policy issuing agent for Insurer for the purpose of issuing ... title insurance policies ... covering real estate located in the following ... counties: ALL in the Commonwealth of Pennsylvania.

* * *

III. Duties of Agent.

Agent Shall:

D. Assume full responsibility for the collection of all ... fees and charges attributable to the issuance of title insurance forms hereunder;

E. Keep safely in an account ... all funds received by Agent from any source in connection with transactions which the Insurer’s policy is involved, disburse said funds only for the purposes for which the same were entrusted, and reconcile such accounts not less frequently than monthly.¹

¹ Agreement for Appointment of Policy Issuing Agent For Old Republic National Title Insurance Company, attached as Exhibit 1 to the response in opposition of plaintiff PKP to the motion for summary judgment of defendant Old Republic.

In 2008, PKP refinanced two loans obtained from Sovereign Bank, a non-party in this action, in exchange for collateral in the form of properties owned by PKP. As a precondition to the deal, Sovereign Bank required that its interests in the refinancing and mortgage transactions be insured by a title insurance company. Defendant Avant—Guarde was selected to handle the transactions and to issue a title insurance policy for the sole benefit of Sovereign Bank. PKP, as mortgagor, did not obtain title insurance to protect its interests in the closing transactions.

Another precondition to the closings required PKP to satisfy two liens which the City of Philadelphia had filed against a number of properties which PKP mortgaged to Sovereign Bank. Closings for the above transactions occurred on April 29, 2008 and November 5, 2008. At the closings, Avant—Guarde prepared the required HUD—1 Settlement Sheets. The HUD—1 Settlement Sheets clearly show that sufficient funds were available at the closings to extinguish the two liens of \$60,653.50 and \$125,110.53 respectively. At the closings, Individual Defendant Willard, the agent or sole owner of Avant—Guarde, signed the HUD—1 Settlement Sheets. Under oath, Willard has admitted that it was the job of Avant—Guarde to ascertain the availability of sufficient funds to satisfy the two liens.²

Notwithstanding the certified availability of sufficient funds, the City of Philadelphia instituted collection proceedings against PKP because neither lien had been fully satisfied subsequent to the closing transactions.³ Consequently, PKP instituted the instant action against Individual Defendant Willard, Avant—Guarde and

² Deposition of Hal Willard dated November 28, 2012, attached as Exhibit 2 to the answer of PKP to the motion for summary judgment of Old Republic, pp. 18-23, 78-79.

³ Amended Complaint, ¶¶ 12.

Old Republic, asserting that each defendant had breached its contractual duties with PKP.

Discussion

The [Pennsylvania] Rules [of Civil Procedure] instruct in relevant part that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery.... Under the Rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law.... For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions, and affidavits.⁴

I. PKP may not maintain the claim of breach of contract against Individual Defendant Willard.

The motion for summary judgment of Avant—Guarde asks this court to dismiss the claim of breach-of-contract against Individual Defendant Willard for the failure by PKP to articulate any reasons why Willard should be held individually liable for the alleged breach of contract of corporate defendant Avant—Guarde.

In Pennsylvania,

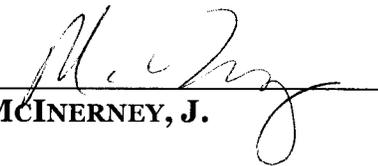
a corporation ... is normally regarded as a legal entity separate and distinct from its shareholders.... This legal fiction of a separate corporate entity was designed to serve convenience and justice ... and will be disregarded whenever justice or public policy demand and when the rights of innocent parties are not prejudiced nor the theory of the corporate entity rendered useless.... [W]henver one in control of a corporation uses that control, or uses the corporate assets, to further his or her own personal interests, the fiction of the separate corporate identity may properly be disregarded.⁵

⁴ Scalice v. Pennsylvania Employees Benefit Trust Fund, 584 Pa. 161, 171, 883 A.2d 429, 434-35 (2005).

⁵ Ashley v. Ashley, 482 Pa. 228, 237, 393 A.2d 637, 641 (1978).

In this case, PKP has produced no evidence showing that Willard, as an agent, officer or owner of Avant—Guarde, used the corporation or its assets to further his personal interests. Instead, PKP asserts in its memorandum of law that Willard signed the HUD—1 Settlement Sheets not as an officer of Avant—Guarde, but merely in his individual capacity.⁶ However, PKP offers no evidence that Willard acted in his individual capacity, other than to presumably point to Willard’s signature which lacks any explanation as to his title, position or capacity within Avant—Guarde. For these reasons, the corporate form of Avant—Guarde may not be disregarded and the claim of breach of contract asserted against Willard is dismissed.

BY THE COURT,


MCINERNEY, J.

⁶ Memorandum of law of PKP in opposition to the motion for summary judgment of Willard and Avant—Guarde, ¶ C.