

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

ALOIA CONSTRUCTION CO, INC., : OCTOBER TERM 2011
: :
Plaintiff, : :
: :
v. : No. 08130
: :
FRED BERG and : :
: :
STEPHEN FOX, : Commerce Program
: :
: Control Number 12031909
Defendants. : :
: :
_____ :

DOCKETED
11/25/11
CIVIL TRIAL DIVISION

ORDER

AND NOW, this ^{24th} day of *April*, 2012, it is **ORDERED**:

1. Defendants' Preliminary Objections to Aloia's Complaint are hereby **SUSTAINED IN PART**. This matter is stayed pending the outcome of the arbitration.
2. Defendants' Preliminary Objections based upon insufficient specificity of the pleading are **OVERRULED**.

BY THE COURT:

Aloia Construction Comp-ORDOP



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ARNOLD L. NEW, J.

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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	:	
	:	Control Number 12031909
Defendants.	:	
	:	

OPINION

I. Factual and Procedural History

This dispute arises from a construction contract. Defendants Fred Berg and Stephen Fox (“Defendants”) are the owners of Condo Associates, LLC, which contracted with Plaintiff Aloia Construction (“Aloia”) to build a condominium project. Aloia alleges that, after completing the work to specifications, Defendants failed to compensate Aloia according to the contract, and ultimately terminated the contract wrongfully.

The contract that is the basis of this complaint contains a provision mandating arbitration for any disagreements which arise out of it. Arbitration is currently pending in this matter between Aloia and Condo Associates, LLC. Individual Defendants were originally parties to the arbitration but were dismissed from it by Aloia before this Complaint was filed. Aloia filed this Complaint with a single claim, to pierce the corporate veil, and Defendants filed preliminary objections thereto.

II. Defendants' Preliminary Objections to Aloia's Complaint are hereby SUSTAINED IN PART. This matter is stayed pending the outcome of the arbitration.

Aloia's sole request in its Complaint is for piercing the corporate veil to hold Defendants individually liable. All parties agree an arbitration proceeding is currently pending regarding the conflict in this matter. Aloia argues because the individual Defendants were let out of the arbitration, this action against them is not duplicative. However, even though the parties are not identical, the issues appear to be so.

42 Pa.C.S. § 7304 (d) states “[a]n action or proceeding, allegedly involving an issue subject to arbitration, **shall** be stayed if a court order to proceed with arbitration has been made or an application for such an order has been made under this section.”¹

The contract between the parties contains §4.6.1, which provides that any claim “arising out of or relating to the contract”, along with certain other claims which are irrelevant to this matter, shall be subject to arbitration. It is clear Aloia's claim arises out of the contract; accordingly, this court must stay the proceeding until the arbitration is completed.

Aloia argues that the statute should not apply because the Defendants are not parties to the arbitration proceeding; rather, the corporation is, and Defendants were dismissed from that action by Aloia. However, the issues involved in both matters are the same, and may have preclusive effect; if Aloia were to lose at arbitration, there would be no basis upon which to pierce the corporate veil. That the parties here may not be exactly the same here as in the arbitration does not prohibit the court from staying this proceeding: it is clear that “a court may

¹42 Pa. C.S. §7304(d) (emphasis added).

stay later-filed action to avoid waste of judicial resources and ‘unseemly spectacle of a race to judgment’” even where the *lis pendens* test is not satisfied because the parties are not identical.²

Accordingly, this action must be stayed until the termination of the arbitration.

III. Defendants’ preliminary objections based upon insufficient specificity of the pleading are OVERRULED.

Although “there is a strong presumption in Pennsylvania against piercing the corporate veil,”³ Aloia has alleged facts which, if proven, would make out a claim for piercing the corporate veil. The factors to be considered in analyzing such a claim are “undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud.”⁴ Aloia has alleged all of these factors in its Complaint. Accordingly, the court may not dismiss it at preliminary objections.

BY THE COURT:


ARNOLD L. NEW, J.

²Thermal C/M Servs. v. Penn Maid Dairy Prods., 831 A.2d 1189, 1193 (Pa. Super. 2003) (internal citations omitted).

³ Lumax Indus. v. Aultman, 543 Pa. 38, 41; 669 A.2d 893, 895 (1995).

⁴ Id. at 42 (internal citations omitted).