IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT CHRISTIANSTED

MARY E. GUSTAFSON, Plaintiff, v. BARCO MANANA, INC., and ANITA PARASCONDOLA, Defendant.	CIVIL NO. 671/1982 ACTION FOR BREACH OF CONTRACT AND DEBT

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PETERSEN, Judge

MEMORANDUM OPINION
April 27, 1983

This action is brought to recover an amount allegedly due on a promissory note. Plaintiff has sued both the corporation which is the debtor under the note, Barco Manana, Inc. (Barco), as well as Anita Parascondola (Parascondola), who Plaintiff alleges was the President and Resident Agent of Barco. Plaintiff seeks to recover from Parascondola by disregarding the corporate entity, and claims that Parascondola is the alter ego of Barco. Defendant Parascondola has moved to dismiss the action against her individually under Rule 12(b)(6), Fed. R. Civ. P., and argues that the complaint is insufficient and fails to state a claim against her. The Plaintiff opposes this motion, stating that the allegations in the complaint allow her to pursue her claim against Parascondola.

It is clear that under particular circumstances the corporation may be disregarded as an intermediate between the ultimate person and the adverse party. Such is the case when the corporate entity serves merely as the alter ego or business conduit of the individual. Under such a circumstance, when an injustice has been perpetrated on a party who has dealt with the corporation, the alter ego doctrine will operate to impose liability on the individual who uses the corporation as an instrumentality to conduct personal business. See Bangor Punta Operations, Inc. v. Bangor & Aroostook R. Co., 417 U.S. 703, 94 S.Ct. 2578, 41 L. Ed. 2d 418 (1974). See also 1 W. Fletcher, Cyclopedia of Corporation, Sections 41-41.3 at 166-208 (Perm. Ed. Rev. 1974 & Cum. Supp. 1982).

A court must exercise caution when considering whether to disregard the corporate entity, and the high standards necessary for application of the principles of alter ego must be clearly established. Energy Reserves Group, Inc, v. Superior Oil Co., 460 F. Supp. 483, 506 (D. Kan. 1978). See also Fletcher, supra, Section 41 at 29 (Cum. Supp. 1982). The burden of proving that the alter ego doctrine should be applied is with the party seeking disregard of the corporate entity. This burden is not met by mere allegations of domination and control of the corporation by the individual entitled to all of the corporation's profits. Rather, it must be shown that the separate personalities of the corporation and the individual have ceased to exist. See In Re Christian Porter Aluminum Co., 584 F.2d 326, 338 (9th Cir. 1978).

Whether those certain facts exist which would justify application by this Court of the alter ego doctrine, however, are questions of fact which the Plaintiff must prove at trial. At this stage of the proceeding, the pleading stage, it is not the burden of the Plaintiff to prove, without a doubt, that Barco was the alter ego of Parascondola. It is the burden of Plaintiff, at this stage, to appropriately plead the need for application of the alter ego doctrine. The mere allegation that a corporation is the alter ego of an individual is insufficient absent allegations of fact which would indicate that the party seeking to pierce the corporate veil is the victim of some fraud, injustice or fundamental unfairness. "[T]he appropriate occasion for disregarding the corporate existence occurs when the court must prevent fraud, illegality, or injustice, or when recognition of the corporate entity would defeat public policy or shield someone from liability for a crime." Zubik v. Zubik, 354 F.2d 267, 272 (3d Cir. 1967). See also Labadie Coal Co. v. Black, 672 F.2d 92, 99 (D.C. Cir. 1982) (fraud not prerequisite, need only show injustice or fundamental unfairness); United States v. Pisani, 646 F.2d 83, 88 (3d Cir. 1981)(element of injustice or fundamental unfairness required); Wooddale Inc., v. Fidelity and Deposit Co. of Maryland, 378 F.2d 627, 631 (8th Cir. 1967); Henry v. General Motors Corp., 236 F. Supp. 854, 857 (N.D.N.Y. 1964); United States v. Standard Oil Co. of Calif., 155 F. Supp. 121, 152-53 (S.D.N.Y. 1957); United States Fire Ins. Co. v. National U. Fire Ins., 107 Cal. App. 3d 456, 165 Cal. Rptr. 726, 734 (Cal. Ct. App. 1980); Meyer v. Glenmoor Homes, Inc., 246 Cal. App. 2d 242, 54 Cal. Rptr. 786, 798 (Cal. Ct. App. 1966); Northwestern Nat. Bank v. Metro Ctr., 303 N.W.2d 395, 398-99 (Iowa 1981); McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98, 108 (1970); W.E. Hedger Transp. Corp. v. Ira S. Bushey Sons, 61 N.Y.S.2d 876, 880-81 (N.Y. App. Div. 1945); Tignett v. Pointer, 580 S.W.2d 375, 381-82 (Tex. Civ. App. 1978). The allegation in the complaint simply states that

Parascondola, as the alter ego of said

> corporation, is, and has been, conducting, managing and controlling the affairs of the corporation since its incorporation, as though it were her own business, and she has used the Defendant Corporation for the purpose of entering into the promissory note referred to above, commiting [sic] the contract breach referred to above.

Nowhere are there facts or allegations stated which would indicate that, if the acts complained of were to be treated as those of the corporation alone, an inequitable, unjust or fraudulent result would follow. As such, the complaint is insufficient. Therefore, Parascondola's motion to dismiss the action against her individually should be granted. However, the Court being unwilling to peremptorily foreclose Plaintiff's opportunity to have her claim determined on substantive rights rather than technicalities, and in light of the liberal policy under the Federal Rules of Civil Procedure which allows a plaintiff to cure formal defects in pleadings, see 5 C. Wright & A. Miller Federal Practice and Procedure, Civil, Section 1357 at 611-14 (1969), the Plaintiff is granted leave to amend her complaint.

Eileen R. Petersen

EILEEN R. PETERSEN
Judge