IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

WILLIAM A. THOMAS, JR., M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04C-02-010 RFS
	)	
DEBRA A. HOBBS d/b/a TARA VENTURE, LLC,	)	
	)	
	)	
Defendant.	)	
	)	

Date Submitted: January 28, 2005
Date Decided: April 27, 2005

O R D E R

Upon careful review of the filings in the above captioned matter, Defendant, Debra A. Hobbs', Motion for Summary Judgment is granted. It appears to the Court that:

1) On September 17, 2002, Plaintiff William A. Thomas ("Dr. Thomas") entered a written contract ("the Contract") with Defendant Debra A. Hobbs ("Dr. Hobbs"), through her limited liability company, Tara Venture, L.L.C. ("Tara Venture")[1] to complete a "fit out" to construct the interior of Dr. Thomas' office into a physician's office. The total cost was to be $141,391.00. When Dr. Hobbs failed to substantially complete the construction in the time specified in the contract, the Plaintiff signed a contract with another company to complete the work for $172,836.00.

2) Dr. Thomas has brought a claim against Dr. Hobbs, seeking damages and costs for breach of contract. On February 18, 2005, this Court allowed the Plaintiff to amend the Complaint in order to add Tara Venture, L.L.C. as a Defendant. Dr. Thomas alleges that the Defendants breached the Contract by failing to complete the construction and by failing to install a three-phase electrical service. He also requests the return of deposits in the amounts of $14,500.00 paid under the Contract.

3) Before the Contract was entered into, Dr. Hobbs filed a Certificate of Formation on August 20, 2002 with the Secretary of State to form Tara Venture as a limited liability corporation. She is the sole member of Tara Venture.[2]

4) Defendant Dr. Hobbs has filed this Motion for Summary Judgment, pursuant to Superior Court Civil Rule 56. She claims that Dr. Thomas has no cause of action against her personally, and that he must pursue his action against Tara Venture only. She argues that if he wants to pierce the corporate veil to find her liable he must proceed in Chancery Court. In Dr. Thomas' response, he contends that he thought he was contracting with Dr. Hobbs, or with "Taraventures" or "Taraventure," and not with Tara Venture. He also claims through his unsworn responses to Defendant's Request for Admissions that Dr. Hobbs agreed to be personally responsible for the construction of the project. As proof that he contracted with Dr. Hobbs, Dr. Thomas points to a check that was made payable to "Debra Hobbs." However, a contemporaneous receipt prepared by him reflected advance payment to "Debra A. Hobbs, president of Tera Ventures LLC." Thomas admitted not only to preparing receipts but also to making other checks payable to the LLC.

5) This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the nonexistence of material issues of fact. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). Once the moving party meets its burden, the burden shifts to the nonmoving party to establish the existence of material issues of fact. *Id*. at 681. The Court views the evidence in a light most favorable to the nonmoving party. *Id*. at 680. Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the nonmoving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. *Super. Ct. Civ. R.* 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

6) Corporations protect the stockholders and officers against individual liability. An officer may not be held liable for breach of a corporate contract, unless the officer has signed the contract in her own capacity and not just as an agent for the corporation. *See Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1180 (Del. Ch. 1999) ("Delaware law clearly holds that officers of a corporation are not liable on corporate contracts as long as they do not purport to bind themselves individually." (citations omitted)). Consequently, a plaintiff who seeks to sue an officer of a corporation must pierce the corporate veil to do so. Piercing the corporate veil, however, is an argument that can be considered only in the Chancery Court. *Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973).

7) A limited liability company, a relatively new entity, was created to allow tax benefits similar to a partnership, while still providing limited liability protection, much like a corporation. *Elf Atochem North Am., Inc. v. Jaffari*, 727 A.2d 286, 287 (Del. 1999). As with a corporation, a member of a limited liability company may not be held liable for the debts,

obligations and liabilities of the company. *See* 6 *Del. C.* § 18-303.[3] It follows that this Court has no jurisdiction to pierce the corporate veil of a limited liability company, just as it would not with a corporation. *Cf. Gillen v. 397 Properties*, L.L.C., 2002 WL 259953 (Del. Ch.); *Trustees of Arden v. Unity Constr. Co.*, 2000 WL 130627 (Del. Ch.) (discussing piercing of the corporate veil in the context of limited liability companies). *See also Elf Atochem North Am., Inc.*, 727 A.2d at 292 (discussing the fact that jurisdiction is vested in the Chancery Court under the Limited Liability Company Act, but that another forum may be selected by agreement).

8) There are two exceptions, however, to the rule that a member may not be liable for breach of contract. First, Dr. Hobbs could be liable on the Contract she signed with Dr. Thomas if she signed it on her own behalf, rather than for the company. *See Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P.*, 752 A.2d at 1180. Second, the Limited Liability Company Act provides an exception, permitting a member to agree to be obligated personally for the obligations and liabilities of the company. 6 *Del. C.* § 18-303(b).

9) It is clear to the Court that Dr. Hobbs did not sign the Contract on her own behalf, and therefore she cannot be held personally liable under this theory. It is a well-accepted principle of agency law that "an agent cannot be found liable for a contract he signed on behalf of the principal as long as somewhere in the contract it is made clear that it is between the principal and a third party." *Brandt v. Rokeby Realty Co.*, 2004 WL 2050519, at *10 (Del. Super. Ct.), *citing*, The Restatement (Second) of Agency §157 (1958). The Contract unequivocally states that it is between Dr. Thomas and "Taraventures L.L.C., c/o Debra A. Hobbs," as the Contractor, which is a defined term. In this vein, it is signed with "Taraventure LLC" listed as the Contractor, by Dr. Hobbs, member. In its body, the Contract refers to "the Contractor" and never

to Dr. Hobbs. Although, at times, the pronoun "her" is used to describe the contractor, rather than "it," this is a logical clerical choice of words. It is not an indication that the Contract was meant to be between Dr. Hobbs and Dr. Thomas, rather than between Tara Venture and him. The facts simply cannot support a conclusion that Dr. Hobbs signed the contract other than for Tara Venture, LLC.

10) 6 *Del. C.* § 18-303(b) provides "[n]otwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company." No evidence has been submitted that there is a limited liability agreement that might contain a clause in which Dr. Hobbs takes personal responsibility for the obligations of Tara Venture. Dr. Thomas states in his responses to the Defendant's Request for Admissions that she did agree to be personally responsible for the obligations of the Contract. However, an unsworn statement is not sufficient to create a dispute of fact to avoid summary judgment.

Furthermore, it is presumed that such a guarantee was made orally, since no such clause can be found in the Contract itself and no evidence has been submitted of any written agreement. This raises a question of whether the Contract is fully integrated and whether the Parol Evidence Rule would allow extrinsic evidence of earlier negotiations of the terms of the contract. *See, e.g., Concord Mall v. Best Buy Stores, L.P.*, 2004 WL 1588248, at * 3-4 (Del. Super. Ct.) (noting that when the parties reduce a contract to writing, a party may not seek to introduce earlier negotiations to show that the terms are not as shown on the face of the writing). There is also a question of whether any subsequent modification must be in writing or not.

11) In this regard, the Contract provides that it is fully integrated and that any modification must be made in writing.[4] Proper interpretation of a contract is a question of law. *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992). "A contract is completely integrated if, on its face, it is clear that the parties intended the writing to be a final and total expression of their agreement." *Concord Mall*, 2004 WL 1588248, at *4 (citation omitted). The parol evidence rule bars a party from introducing extrinsic evidence to modify or contradict the written terms of a fully integrated contract. *Id.* "Only in limited circumstances will parol evidence be admissible, such as when the terms of the parties' agreement are ambiguous, or to show 'that the agreement was rendered invalid, void [or] voidable by such causes as fraud, illegality, duress, mutual mistake, lack or failure of consideration, and incapacity.'" *Id* (citation omitted).

Here, the Plaintiff has presented no evidence that any exceptions to the rule should apply. The Contract is straightforward and clear. Nowhere in it, does the Contract state that Dr. Hobbs will be held personally liable for the obligations of the company under the Contract.[5] Furthermore, the Contract unambiguously states that it is between Tara Venture and Dr. Thomas. Dr. Thomas admitted that he contracted with an LLC, of which Hobbes was a member, and that the name was "Taraventure," "Taraventures," or something similar. Dr. Thomas and Dr. Hobbs were both sophisticated persons. In this context, the Court cannot find the Contract ambiguous, such that the parol evidence rule would permit the admission of extrinsic evidence as to Dr. Hobbs' alleged personal liability.

12) Considering the foregoing, the Court finds that Dr. Hobbs may not be held personally liable for the obligations and possible breach of contract of her limited liability

company, Tara Venture. She is dismissed from this case. The case will proceed against Tara Venture, L.L.C. only in this Court. If the Plaintiff wishes to pierce the corporate veil, he must pursue such an action in the Chancery Court.

IT IS SO ORDERED.

Dated: _____ _____

Richard F. Stokes, Judge

Original to Prothonotary
cc: Dennis L. Schrader, Esquire
Robert H. Robinson, Jr., Esquire
Dean A. Campbell, Esquire

ENDNOTES

1. This law suit centers in part around a dispute over what entity Dr. Thomas signed a contract with - a company called Tara Venture, LLC (the name under which the limited liability corporation was formed) or Taraventures L.L.C. or Taraventure L.L.C. As printed, the Contract is between Dr. Thomas and "Taraventures, L.L.C.;" however, it is signed by Debra A. Hobbs as a Member of "Taraventure LLC." It is clear to this Court, however, as it was clear to the Plaintiff, given his admissions, that the mistake in the Contract was the result of clerical error, and Tara Venture, Taraventures and Taraventure are all the same company. The Court notes that Dr. Thomas gave to Dr. Hobbs a check on September 17, 2002, the date the Contract was signed, for $8000, made payable to "Tara Ventures LLC." (Reply to Def.'s resp. to S.J. Mot., D.I. 30, Ex. C.)

2. The original Certificate of Formation contained a mistake. While it stated that the name of the company was Tara Venture, LLC, it also stated that the certificate was executed for "Air Pollution Control Supplies LLC." A Certificate of Correction was filed on August 13, 2004. Pursuant to Delaware's Limited Liability Company Act, 6 *Del. C.* §§ 18-101 through 18-1109, a Certificate of Correction applies retroactively to the date the original Certificate of Formation was filed, "except as to those persons who are substantially and adversely affected by the correction." 6 *Del. C.* § 18-211.

The Plaintiff does not dispute that the Certificate of Correction in this case should apply retroactively to the date of formation of Tara Venture, August 8, 2002. More specifically, the Plaintiff "does not believe [the retroactive correction] is of any consequence since the correction

did not retroactively change the name to that of the LLC with which he contracted." (Pl.'s Resp. to Def.'s Mot. for S.J., D.I. 28, ¶ 6.) Since Dr. Thomas does not allege he was substantially and adversely affected by the correction, the Court finds that the correction is retroactive to August 8, 2002. *See Siegman v. Palomar Medical Technologies, Inc.*, 1998 WL 118201 (Del. Ch.) (discussing the meaning of "substantial and adverse affects" under 8 *Del. C.* § 103(f), a similar provision for correcting corporate instruments filed with the Secretary of State). Therefore, an analysis of whether or not Tara Venture was a *de jure* or a *de facto* company at the time of the contract is not necessary. *See, e.g., Cleary v. North Delaware A-OK Campground, Inc.*, 1987 WL 28317 (Del. Super. Ct.); *Leber Assocs., LLC. v. The Entertainment Group Fund, Inc.*, 2003 WL 21750211, at *9-10 (S.D.N.Y.).

3. (a) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

4. Section Ten of the Contract, "Entire Agreement," states:

> This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

Section Eleven of the Contract, "Modification of Agreement," states:

> Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

5. The Defendant argues that Dr. Thomas' claim that Dr. Hobbs agreed to be personally responsible for the Contract must fail because he can provide no writing to support the claim, nor has he alleged any exceptions to the statute of frauds. *See* 6 *Del. C.* § 2714(a). Since the contract in this case was reduced to writing and fully integrated, the statute of frauds is inapplicable. The Contract itself requires any modification to be reduced to writing. Moreover, the Contract required the work to commence within ten days and to be completed within 120 days thereafter. If it had been necessary to consider the defense inherent in the statute of frauds, however, it would not have applied since the contract in this case was to be performed in less than a year and it did not fall into any of the other delineated categories of contracts that must be put in writing. *See id.*