# IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY COURT NO. 16

COURT ADDRESS: 480 BANK LN DOVER DE 19904 CIVIL ACTION NO: JP16-12-004990

# S & C ENTERPRISES INC VS COLLEEN MARSHALL ET AL

SYSTEM ID: @2331171 S&C ENTERPRISES INC 1430 PROGRESS WAY ELDERSBURG MD 21784

# TRIAL DE NOVO

Submitted: November 30, 2012 Decided: November 30, 2012

S&C Enterprises, Inc., Plaintiff/Appellee, was represented by its Form 50 agent, Brittany Reuter. Colleen Marshall and Leslie Thompson, Defendants/Appellants, were represented by William Brady, Esq.

### **ORDER**

Hutchison, J. Dillard, J. Warga, J.

On November 30, 2012, this Court, comprised of the Honorable Cathleen M. Hutchison, the Honorable Dwight D. Dillard, and the Honorable Tracy L. Warga, acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by S&C Enterprises, Inc. ("S&C" or "Plaintiff") against Colleen Marshall and Leslie Thompson ("Defendants"). For the following reasons, the Court grants Defendants' Motion to Dismiss.

# FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession. This action was based on Defendants' failure to pay rent. At trial, judgment was entered in favor of Plaintiff. Thereafter, Defendants filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). The trial *de novo* was thereafter scheduled. Prior to the start of trial, Defendants motioned the Court to dismiss the action based on Plaintiff's failure to file suit against Defendants' corporation, Battery Warehouse, Inc. ("Battery Warehouse"), the proper party in interest.

# PARTIES' ARGUMENTS

Defendants argued that Plaintiff failed to name the proper party, Battery Warehouse, in its complaint, and erroneously filed suit against Defendants, Battery Warehouse's corporate officers. Plaintiff argued that Defendants traded under several names, and S&C was unaware of the Defendants' corporate name.

## **DISCUSSION**

The "corporate veil" is a legal term of art that stands for the proposition "that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions." To pierce the corporate veil is to disregard that legal assumption and to go directly after a corporation's shareholders rather than the corporation itself. Piercing the corporate veil is a difficult task, and Plaintiff has not shown that Defendants were acting as individuals when they entered into the lease agreement with S&C. In fact, the lease, prepared by Plaintiff, lists "The Battery Warehouse, Inc." as the tenant. Therefore, Plaintiff's argument that S&C was unaware that Defendants were acting as Battery Warehouse is without merit. The corporate veil shields Defendants from personal liability for Battery Warehouse's alleged failure to pay rent, and as a result, they may not be named parties to this action.

# **CONCLUSION**

For the foregoing reasons, Defendants' Motion to Dismiss is *granted*. **IT IS SO ORDERED** this 30<sup>th</sup> day of November, 2012.

Judge Cathleen M. Hutchison

Judge Dwight D. Dillard

Judge Tracy L Warga

<sup>&</sup>lt;sup>1</sup> Defendant Leslie Thompson identified himself as the President of Battery Warehouse, and Colleen Marshall (nee Thompson) is listed as Battery Warehouse's registered agent. Mr. Thompson's signature appears on the lease.

Hospitalists of Delaware, LLC v. Lutz, 2012 WL 3679219, at \*16 (Del.Ch.) (internal citation omitted).

<sup>3 11</sup> 

Plaintiff argued that signatures were forged on the lease and that language had been added to the lease, but admitted that it prepared the portion of the lease listing Battery Warehouse as the tenant.
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