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SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT

: SUPERIOR COURT

NORWALK PRESERVATION
TRUST, INC. OAG TRANSPORTATION

2009 JAN 23 P 4:47

: JUDICIAL DISTRICT OF
STAMFORD/NORWALK

V.

: AT STAMFORD

NORWALK INN &
CONFERENCE CENTER, INC. et al.

: JANUARY 23, 2009

FST CV 07 4010628 S

: SUPERIOR COURT

CONNECTICUT COMMISSION
ON CULTURE & TOURISM

: JUDICIAL DISTRICT OF
STAMFORD/NORWALK

V.

: AT STAMFORD

NORWALK INN &
CONFERENCE CENTER, INC., et al

: JANUARY 23, 2009

MEMORANDUM OF DECISION
RE: MOTION FOR CONTEMPT #137 AND
MOTION FOR RESTORATIVE ACTS # 139

On June 13, 2008, State of Connecticut, Commission on Culture & Tourism, moved the court to enter a judgment of contempt and levy fines against the defendants, Norwalk Inn & Conference Center, Inc. (Norwalk Inn) and 93 East Avenue, LLC (the LLC), for violating a court ordered temporary injunction preventing the demolition of 93 East Avenue, Norwalk, CT (subject property). Further, the plaintiff asks that this court order the defendants to complete "restorative acts" to the subject property. Specifically, the plaintiff asks this court to order the defendants to

“fully restore the porch, board up all windows, and stop any and all water infiltration into the building whether from the roof or from any point therein on the property.” (Plaintiff’s Motion To Order Restorative Acts, p. 1).

On February 6, 2008, the court (Nadeau, J.) granted the plaintiff’s motion for a temporary injunction to halt the demolition of the subject property. The plaintiff alleges that since the time of the court order, “the defendants have caused and allowed the building to be unreasonabl[y] exposed to the weather and have taken steps to advance its deterioration.” (Plaintiff’s Memorandum in Support, p. 3). The plaintiff further alleges that significant deterioration occurred. Specifically, that two porch columns were knocked from their bases, allowing the porch to sag to one side, and that doors were left open and windows were broken.

In response, the defendants argue that the plaintiff has not met its burden of proving any violation of the court’s February 6, 2008 order. Specifically, the defendants argue that the plaintiff fails to meet the requirements of civil contempt, as it does not show a wilful violation of specific and definite language contained in the February 6, 2008 order. The defendants further argue that the plaintiff’s motion for contempt is conclusory, in that the “plaintiffs assert, without real factual basis, that the defendants willfully violated the court’s order” by failing to act. (Defendants’ Reply Brief, p. 4). Additionally, the defendants argue that they did not violate any court order, as they did not engage in any act which resulted in the “demolishing, removing, and destroying of the subject property.” (Defendant’s Post-Hearing Memorandum, p. 10-11). Lastly, the defendants also maintain that the LLC has no funds available to comply with any court order, as it is “property rich and cash poor.” (Defendant’s Post-Hearing Memorandum, p. 15). The LLC claims that under an agreement with the Norwalk Inn, the LLC is not entitled to borrow money for repairs or

improvements to the building since the Norwalk Inn has absolutely no interest in the building. (Defendant's Post-Hearing Memorandum, p. 15).

“Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense.” (Internal quotation marks omitted.) *Wilson v. Cohen*, 222 Conn. 591, 596 n. 5, 610 A.2d 1177 (1992). “Civil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . Whether an order is sufficiently clear and unambiguous is a necessary prerequisite for a finding of contempt because [t]he contempt remedy is particularly harsh . . . and may be founded solely upon some clear and express direction of the court. . . . One cannot be placed in contempt for failure to read the court’s mind. . . . It is also logically sound that a person must not be found in contempt of a court order when ambiguity either renders compliance with the order impossible, because it is not clear enough to put a reasonable person on notice of what is required for compliance, or makes the order susceptible to a court’s arbitrary interpretation of whether a party is in compliance with the order.” (Citations omitted; internal quotation marks omitted.) *In re Leah*, 284 Conn. 685, 695, 953 A.2d 1021 (2007); see *Blaydes v. Blaydes*, 187 Conn. 464, 467, 446 A.2d 825 (1982) (civil contempt may be founded only upon clear and unambiguous court order); *Baldwin v. Miles*, 58 Conn. 496, 501-02, 20 A. 618 (1890) (conducting, but not specifying, de novo review of whether injunction’s language was too vague and indefinite so as to support judgment of contempt).

The court, however, also acknowledges the relevant law of indirect civil contempt. See *Keeney v. Buccino*, 92 Conn. App. 496, 510, 885 A.2d 1239 (2005). In *Keeney*, the Appellate Court upheld the trial court’s finding of contempt when “the defendants wilfully violated the

stipulated judgment by failing and refusing to make all repairs to the dam” Id. The trial court found that the defendants’ intent “was to spend as little money as possible” to satisfy any demands, and the court went on to state that “any decision to act on one’s personal beliefs instead of complying with a clear court order is a textbook example of wilful conduct. Proof that a person who failed or refused to comply with a court order believed that the terms of that order were unwise, unjust or unfounded establishes a clear motive for his noncompliance, and thus, supports a finding that he acted intentionally or wilfully when he violated the agreement.” Id.

In the present case, the court finds that the temporary injunction order dated February 6, 2008, is not ‘clear and unambiguous,’ and thus, a finding of contempt is unwarranted.¹ The February 6, 2008 order is ambiguous as to what is required by the defendants for compliance with said order. As Judge Sheldon did in *Keeney*², this court will clarify the order dated February 6, 2008, in order to provide the parties with specific and definite language as to their obligations. The court finds that, under the terms of the temporary injunction, the defendants are obligated to maintain and repair the building until the final hearing. This includes, but is not limited to, any

¹ It should be noted that, although the plaintiff claim that evidence shows an “extraordinary decline in the condition of the property,” there is no evidence that any of the damage was caused by the defendants.

² In *Keeney v. Buccino*, supra, 92 Conn. App. 500, the parties entered into a stipulated judgment which required the defendants to submit an application to remove a dam and perform certain maintenance. The defendants application was not in compliance with the stipulated judgment and the plaintiff filed a motion for contempt. The court held a hearing on the first motion for contempt and found that, although the defendants application was not in compliance with the stipulated judgment, they were not in contempt because their noncompliance was not wilful because the obligations of the parties were not clear. Id. The court, however, did clarify the obligations of the parties and establish a time line for the plaintiff to communicate objections to the application and for the defendants to respond by submitting a suitably modified application to repair and remove the dam. Id.

damage caused by acts of vandalism. Further, the building is to be secured and any use is to be discontinued.

It is within the court's power, under *Stamford v. Kovac*, 228 Conn. 95, 634 A.2d 897 (1993), to mandate affirmative actions on the part of the property owner to prevent further impairments of the subject property. In *Stamford v. Kovac*, supra, 228 Conn. 95, the plaintiff sought temporary and permanent injunctive relief. "The trial court issued a temporary order requiring the defendants to remove fill from the property and to replace native plants in order to stabilize the wetlands pending the disposition of the action for a permanent injunction." *Id.* The court held that a trial court, sitting as a court of equity, has the authority to issue a preliminary mandatory injunction to maintain the status quo in advance of a final adjudication of rights. *Id.*, 100. The court stated that the "office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict irreparable injury In such a case courts of equity issue mandatory writs before the case is heard on its merits. . . ." (Citation omitted; internal quotation marks omitted.) *Id.*, 101. The court went on to state that should the defendants ultimately prevail, "they could be fully compensated by way of monetary relief for any expenses incurred by them in complying with the court's order." *Id.*, 102.

Accordingly, this court orders the defendants to perform emergency temporary acts that will accomplish the following: (1) lift and stabilize the porch roof at 93 East Avenue, Norwalk, CT; (2) repair or board up all windows, doors, and other points of entry in the building; and (3) lock all entries to the building. The defendants shall complete the acts within 60 days of the date of this

order. If the defendants fail to comply with this order, penalties of \$500 per day shall be assessed against the defendants until the acts are completed.

Further, the defendants shall allow the plaintiffs reasonable opportunities for inspections of the building at 93 East Avenue, Norwalk, CT. The dates and times of inspection will be determined by agreement of the parties. Agreement shall not be unreasonably withheld. If the parties fail to agree, then the plaintiffs shall apply to the court and the court shall determine the dates and times for inspection. Failure by the defendants to allow these inspections and comply with this order shall result in penalties of \$500 per day until the inspections are permitted by the defendants.

The defendants maintain that the LLC has no meaningful assets, outside of the subject property, and any order would be impossible to effectuate, as the LLC does not have the funds for any repairs. (Defendants' Memorandum of Law, p.11). Additionally, the defendants claim that "there is no evidence that the LLC has any ability to comply with the court's order. It has no money, and even is behind on the payment of taxes." (Defendants' Reply Brief, p. 3). The defendants, Norwalk Inn and the LLC, however, are related entities, with similar ownership interests, governing members and intertwined finances, and thus, the Norwalk Inn cannot escape financial liability by claiming that it is a separate legal entity without an interest in the subject premises. The Norwalk Inn stipulated that it has the financial ability to comply with any order.

"The concept of piercing the corporate veil is equitable in nature and courts should pierce the corporate veil only under exceptional circumstances." *Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 556, 447 A.2d 406 (1982). "It is clear that the key factor in any decision to disregard the separate corporate entity is the element of control or

influence exercised by the individual sought to be held liable over corporate affairs. . . . The court must avoid an over-rigid preoccupation with questions of structure . . . and apply the preexisting and overarching principle that liability is imposed to reach an equitable result. . . . The party seeking to pierce the corporate veil bears the burden of proof. . . .

“Connecticut recognizes two theories under which it will permit the corporate veil to be pierced and the protection of the corporate structure to be set aside. Those theories also apply to the protection afforded by a limited liability company. . . . The first theory is the instrumentality rule. The instrumentality rule requires, in any case but an express agency, proof of three elements: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of plaintiff’s legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. . . .

“The second theory is the identity rule. The identity rule is typically used to reach beyond the corporate veil to another corporation but may also be used to reach an individual. . . . If plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise. . . . The identity rule primarily applies to prevent injustice in the situation where two

corporate entities are, in reality, controlled as one enterprise because of the existence of common owners, officers, directors or shareholders and because of the lack of observance of corporate formalities between the two entities. . . . There must be such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will, or existence of its own and is but a business conduit for its principal.” (Citations omitted; internal quotation marks omitted.) *Tzvolos v. Wiseman*, Superior Court, judicial district of New Haven, Docket No. CV 04 0488839 (May 3, 2007, *Cosgrove, J.*).

“The identity rule has been stated as follows:[I]f a plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of corporate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise” (Citations omitted; internal quotation marks omitted.) *Cadle Co. v. Zubretsky*, Superior Court, judicial district of Hartford, Docket No. CV 04 0832477 (January 30, 2008, *Hale, J.T.R.*).

“We note additionally that of the many factors underlying a finding that the instrumentality or identity rule has been satisfied, no one factor or group of factors is necessarily dispositive of the inquiry. However, when the statutory privilege of doing business in the corporate form . . . is employed as a cloak for the evasion of obligations, as a mask behind which to do injustice, or invoked to subvert equity, the separate personality of the corporation will be disregarded.” (Internal quotation marks omitted.) *Id.*, quoting from *Toshiba America Medical Systems, Inc. v. Mobile Medical Systems, Inc.*, 53 Conn. App. 484, 492, 730 A.2d 1219, cert. denied, 249 Conn. 930, 733 A.2d 851 (1999).

In *Davenport v. Quinn*, 53 Conn. App. 282, 301-02, 730 A.2d 1184 (1999), the court stated that: "Utilizing the identity rule, [the court] concludes that the evidence compels the conclusion that [Quinn] was, at all relevant times, the 'alter ego' of all of his enterprises. The relative lack of formalities observed, the failure to completely document various transactions, the free use by the entities and [Quinn] to make 'officer's loans,' loans and pay various debts, and the payments to himself of large salaries after the claim arose, as well as other evidence make it clear that there was such a unity of interest and ownership that the independence of the corporation, if it indeed ever existed, ceased to exist."

Although the analysis in *Davenport* involved the relationships between an individual and his enterprises, the court's reasoning is applicable to the present case. Here, like in *Davenport*, the testimony and evidence show a complete lack of formality between the defendants, the Norwalk Inn and the LLC, and such a unity of interest and ownership that the independence of the corporations ceased to exist. The LLC consists of two members, Chris Handrinos and George Katsaros. (Transcript [Tr.], 10/30/08, p. 172). Chris Handrinos manages the subject property. *Id.* The Norwalk Inn consists of two members, George Katsaros and Mrs. Handrinos (Chris Handrinos's wife). Further, Chris Handrinos is not only a member of the LLC, but also is president and manager of the Norwalk Inn. (Tr., 10/30/08, p. 171-72).

Additionally, the Norwalk Inn has lent money to the LLC for various reasons, most notably for the payment of taxes and to fix the boiler. The LLC was never asked to sign a promissory note and the transactions went undocumented. As a result of the parties failure to document any financial transactions between the parties, neither the LLC nor the Norwalk Inn is able to provide the amount of outstanding loans between the parties. Further, the LLC purchased the subject

property in agreement with the Norwalk Inn that any and all demolition costs would be paid by the Norwalk Inn. The LLC also allowed the Norwalk Inn to use the subject property as a storage facility without paying rent. (Tr., 10/30/08, p. 181). Moreover, there is evidence that Norwalk Inn employees contacted Chris Handrinos regarding issues with the subject property. (Tr., 10/30/08, p. 175-76).

Furthermore, the Norwalk Inn issued a letter to neighboring property owners, dated July 6, 2001, and signed by Chris Handrinos, stating that “the Norwalk Inn has purchased the East Avenue property immediately adjacent to us. . . . We feel that the purchase of this property presents us with an exceptional opportunity if not responsibility to upgrade and enhance the beauty and character of East Avenue. . . . The opportunity before us now to expand on what we have while at the same time upgrading our . . . immediate environs is something we are anxious to discuss with you.” (Plaintiff’s Exhibit [Exh.] 20). Further, the Norwalk Inn, holding itself as owner of the subject property, entered into an agreement with the owners of a neighboring property to extinguish the owners’ easement to use the shared driveway on the subject property. (Plaintiff’s Exh. 21.) This was necessary for the expansion of the Norwalk Inn’s facilities. *Id.* The agreement was signed by Chris Handrinos in his capacity as president of the Norwalk Inn. *Id.*

It is clear that the evidence presented supports a finding that the Norwalk Inn was, at all relevant times, the alter ego of the LLC. The adherence to the fiction of separate entities, in the present case, would only serve to defeat justice and equity. Therefore, it is appropriate that the corporate entity, 93 East Avenue, LLC, be pierced and that its responsibilities in this matter be placed jointly on the Norwalk Inn & Conference Center, Inc.

In summary, the court orders the defendants, 93 East Avenue, LLC and/or the Norwalk Inn

& Conference Center, Inc., to maintain and repair the building until the final hearing. This includes, but is not limited to, any damage caused by acts of vandalism. Further, the building is to be secured and any use is to be discontinued. The Court further orders the defendants, 93 East Avenue, LLC and/or the Norwalk Inn & Conference Center, Inc., to complete the following acts: (1) lift and stabilize the porch roof at 93 East Avenue, Norwalk, CT; (2) repair or board up all windows, doors, and other points of entry in the building; and (3) lock all entries to the building. The defendants shall complete the acts within 60 days of the date of this order. If the defendants fail to comply with this order, penalties of \$500 per day shall be assessed against the defendants until the acts are completed.

Additionally, the defendants shall allow the plaintiffs reasonable opportunities for inspections of the building at 93 East Avenue, Norwalk, CT. The dates and times of inspection will be determined by agreement of the parties. Agreement shall not be unreasonably withheld. If the parties fail to agree, then the plaintiffs shall apply to the court and the court shall determine the date for inspection. Failure by the defendants to allow these inspections and comply with this order shall result in penalties of \$500 per day until the inspections are permitted by the defendants.

The court declines to award attorneys fees.

Decision extended
in accordance
with the
foregoing 11/23/09
Amy Aurilio
Assistant Clerk
All counsel and
pro se parties notified


MINTZ, J.