

**IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO**

CITY OF MANSFIELD) **CASE NO. 2024-CV-0206**
)
 Plaintiff,) **JUDGE CHRISTOPHER COLLIER**
) **(VISITING JUDGE)**
 vs.)
)
 PAGE EXCAVATING LLC, et al.) **PLAINTIFF’S BRIEF**
) **OPPOSING DEFENDANTS’**
 Defendants.) **MOTION TO DISMISS**
)
)
)
)

NOW COMES Plaintiff, City of Mansfield, Ohio, and hereby opposes the Motion to Dismiss filed by Defendants, Page Excavating, LLC, Jeff Page, and Landa Page. Plaintiff asserts that the Complaint was properly pled with respect to all of the allegations set forth therein and granting a dismissal consistent with the relief requested in Defendants’ Motion would be premature, as discovery has only now commenced.

Respectfully submitted,

s/Mel L. Lute, Jr.
Gregory A. Beck - #0018260
Mel L. Lute, Jr. - #0046752
BAKER | DUBLIKAR
400 South Main Street
North Canton, Ohio 44720
Telephone: (330) 499-6000
Facsimile: (330) 499-6423
E-mail: beck@bakerfirm.com
lute@bakerfirm.com
Counsel for Plaintiff, City of Mansfield

I. PLEADING STANDARD

A complaint need not contain every factual allegation that the complaint intends to prove, as such facts may not be available until after discovery. *Landskroner v. Landskroner*, (2002) 154 Ohio App. 3d 471, 490. Ohio Civil Rule 8(E)(1) states that: “Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motion are required.” “Ohio is a noticed pleading state. Pursuant to notice pleading a party is required to allege sufficient facts to give the opposing party notice of his claim.” *Schaffer v. Ohio State Univ.*, 2024-Ohio-2185, at 62.

Under the Ohio Rules of Civil Procedure, a complaint need only contain a short and plain statement of the claim showing that the party is entitled to relief. *See*, Civil Rule 8(A)(1); *Kingston Mound Manor I v. Keeton*, 2019-Ohio-3260, p. 1. Accordingly, “Ohio law does not ordinarily require a plaintiff to plead operative facts with particularity.” *Cincinnati v. Beretta USA Corp.*, 95 Ohio St.3d 416.

Generally, a plaintiff is not required to plead the legal theory of the case at the pleading stage and need only give reasonable notice of the claim. *State, ex Rel. Harris v. Toledo*, 74 Ohio St.3d 36 (1995). Thus, “a plaintiff is not required to prove his or her case at the pleading stage.” *Landskroner, supra*.

Against the backdrop of the requirements set forth above with respect to Ohio’s notice pleading, the Complaint at issue more than adequately states the appropriate causes of action to survive Defendants’ Motion to Dismiss, at this early stage in the litigation. Discovery has not yet commenced, therefore the parties have not had an opportunity to flesh out the breadth of the claims and the facts which may support the assertions alleged in the Complaint.

II. PLAINTIFF'S FOURTH AND FIFTH CAUSES OF ACTION (THE FRAUDULENT MISREPRESENTATION/CONCEALMENT AND NEGLIGENT MISREPRESENTATION/NEGLIGENCE, RESPECTIVELY) RELATE TO THE INTENTIONAL ACTS OF DEFENDANTS WITH RESPECT TO GRAVE MISREPRESENTATIONS UPON WHICH PLAINTIFF RELIED TO ITS DETRIMENT.

The misrepresentation, as it relates to the work performed by Defendants, the misrepresentations go to the scope of Defendants' experience, acumen, and resources, separate and apart from the actual work contained within the contracts themselves. The contract speaks to specific excavation/demolition work that was to be performed consistent with the bid that was accepted by the City of Mansfield and submitted by Defendants. Causes of Action Four and Five of the Complaint relate to misrepresentations that go to the core of the business, made on behalf of the business, and the individuals themselves that relate to capacity and capability which exist separate and apart from the contractual duties themselves. Defendants assert that the economic loss doctrine prevents these causes of action from going forward because they are not separate from the contractual duties to which Defendants were bound. Of course, there has been no significant discovery between the parties for purposes of further developing the width and depth of the misrepresentations as they relate to capacity, competence, experience, professional credentials, etc., that exist separate and apart from the contractual duty itself.

Additionally, allegations set forth in Plaintiff's Complaint relate to specific and direct misrepresentations by Defendants that they have properly removed debris from the scene and that all appropriate subsurface structures had been removed, and these representations were necessarily made after the contract was formed. The claims of negligent misrepresentation and fraudulent misrepresentation/concealment are therefore independent of the contractual claim as the representations arose after the contract was formed. Moreover, it is too soon to seek dismissal of Plaintiff's negligent misrepresentation claim based on the pleadings above, as referenced in

the Pleading Standard portion of this Brief. Whether Plaintiff's claim in tort is merely based on the sole interpretation of existing contractual duties, will depend largely on what the parties agreed to in the contract. This will involve discovery, interpretation of the terms and conditions of the contract between the parties, and testimonial evidence that are not yet before the Court at the pleading stage. Accordingly, seeking dismissal of Plaintiff's claim based on the conclusion that the duties Defendants owed were solely contractual is inconsistent with what is presently before the Court at this stage in the pleading. Dismissal would therefore be premature.

III. PLAINTIFF'S FRAUDULENT MISREPRESENTATION CONCEALMENT CLAIM, AT THIS STAGE IN THE LITIGATION, ADEQUATELY MEETS THE REQUISITE STANDARD.

A plaintiff is not required to plead the legal theory of the case at the pleading stage and need only give reasonable notice of the claim. *State, ex Rel. Harris v. Toledo*, 74 Ohio St.3d 36.

In this case, Plaintiff has asserted that material misrepresentations were made by Defendants regarding their experience, understanding of debris removal, and demolition/excavation which proved ultimately to be completely false. Consistent with the elements of fraudulent misrepresentation, Plaintiff has asserted that a representation was made:

- (I) where there was a duty to disclose and/or concealment of a fact;
- (II) which was material to the transaction at hand;
- (III) it was made falsely with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred;
- (IV) with the intent of misleading another into relying upon it;
- (V) followed by justifiable reliance upon the representation or concealment by the other party; and
- (VI) resulting injury proximately caused by the reliance.

See Hoague v. Cottrill Services, LLC, 2024-Ohio-531, ¶58. (Citing, *Funk v. Durant*, 155 Ohio App.3d 99, 2003-Ohio-5591.)

In this case, Defendants fraudulently and/or negligently represented their experience and expertise with respect to excavation/demolition/debris removal and then further directly and consistently concealed information about structural subsurface members that were buried by Defendants at the worksite resulting in a direct injury to the City of Mansfield. While Plaintiff will likely further flesh out the details with respect to these matters, at the pleading stage these allegations in the Complaint at Count IV and V are more than enough to meet the appropriate standard. This Court should not indulge Defendants by dismissing claims at the outset of the case before there has even been an opportunity to conduct responsible discovery. Accordingly, the Fourth and Fifth Causes of Action in the Complaint should stand at this stage in the pleading process and Defendants' Motion to Dismiss should be denied.

IV. PERSONAL ACTIONS TAKEN BY JEFF AND LANDA PAGE MAY BE SUFFICIENT TO PERMIT PIERCING THE CORPORATE VEIL.

Defendants are asserting the corporate shield as a means of preventing discovery regarding the conduct of Jeff and Landa Page with respect to communications with the City of Mansfield in this matter. Rather than permit the inquiry under the Civil Rules by Plaintiff regarding suspicious actions taken by Jeff and Landa Page that meet the appropriate standard to pierce the corporate veil, Defendants want the Court to shut down that inquiry before it ever begins. Plaintiff has adequately asserted in the Complaint (consistent with Ohio's notice pleading requirement) that Jeff and Landa Page have acted in a manner that may compromise the protective shield of a corporate entity they purported to represent in their dealings with the City of Mansfield. It is premature, to say the least, to deny Plaintiff an opportunity to engage in appropriate discovery under the Civil Rules relating to the suspicious conduct of Defendants.

As evidenced elsewhere in this Brief, the protections of the corporate structure are not absolute and may be penetrated if it is determined that the corporate structure was misused by its

principals. In this instance, Plaintiff has reason to believe that Jeff and Landa Page have misused the corporate structure or otherwise operated vis-à-vis the City of Mansfield in a way that justifies the penetration of the corporation shield. Accordingly, Plaintiff requests that the Court deny Defendants' Motion to Dismiss the personal claims at this stage in order to allow discovery to go forward.

V. DEFENDANTS' MOTION TO DISMISS THE PERSONAL CLAIMS AGAINST JEFF AND LANDA PAGE UNDER THE THEORY THAT PIERCING THE CORPORATE VEIL IS NOT AN INDEPENDENT CAUSE OF ACTION SHOULD NOT BE GRANTED.

The principle that shareholders of a corporation are generally not held for the debts of the corporation is well known. *See, Dombroski v. Wellpoint, Inc.*, 119 Ohio St.3d 506, 2008-Ohio-4827, at ¶16. Nevertheless, “in certain circumstances, the corporate form may be disregarded, and the corporate veil pierced for the purpose of reaching the assets of the corporation’s individual shareholders.” *Minno v. Pro-Fab, Inc.*, 2009-Ohio-1247. “Where a shareholder misuses the corporate form as a shield from liability for their own misdeeds, Ohio law will permit piercing of the corporate veil as a rare exception to the guiding principles of limited shareholder liability.” *United States Bank Nat’l. Ass’n. v. MMCO, LLC*, 2021-Ohio-4605 at ¶58.

Generally speaking the pleading guidelines set forth in *Belvedere Condominium Unit Owners Ass’n. v. R.E. Roark Construction*, 67 Ohio St.3d 274, 1993-Ohio-119, are understood, as modified by *Dombroski, supra*, at ¶29. The plaintiff seeking to recover damages under the doctrine of piercing the corporate veil is not required to demonstrate fraud in order to meet the second prong of the *Belvedere/Dombroski* test; a plaintiff can also demonstrate that the defendant committed “an illegal act or a similar unlawful act.” *Dombroski, supra*, at syllabus.

In *Kurtz Bros. v. Ace Demo, Inc.*, 2014-Ohio-5184, a plaintiff alleged the three elements of the *Belvedere/Dombroski* test against the defendant seeking to pierce the corporate veil and the

court found that since the piercing the corporate veil claim was not also alleging facts involving dishonestly and an illegal act, the claim did not have to be alleged with particularity under Civil Rule 9(B). In this case, it is not important to discuss each element of the *Belvedere/Dombroski* test as applied in *Kurtz Bros.*, as the Page Defendants are seeking dismissal of the City of Mansfield's cause of action asserting that "Plaintiff's Sixth Cause of Action fails as a matter of law because piercing the corporate veil is a remedy and not a cause of action." (See Defendants' Motion to Dismiss, p. 19.) This is an incorrect assertion as illustrated by the Court's decision in *Kurtz Bros.* above. Defendants' argument that Plaintiff's cause of action for piercing the corporate veil fails as a matter of law is flawed and, as referenced above, unsupported by Ohio law.

VI. CONCLUSION

In order to succeed in having claims dismissed for failure to state a claim under Rule 12(B)(6), the arguments of the moving party must be made with particularity in order to justify such an extreme and unusual remedy. Obviously, we are at the beginning stages of this case where the parties have not had the benefit of engaging in detailed documentary or testimonial discovery. In large part, the notice pleading favored under Ohio law provides the space and opportunity for the parties to further develop their claims through the course of discovery within the Civil Rules. Based on the arguments set forth in Defendants' Motion, there is no valid reason to dismiss any of Plaintiff's claims set forth in the Complaint as they meet the appropriate Rule 8 pleading standard and are sufficient to initiate the case in which discovery is likely to yield significant additional details to round out the allegations that have been asserted in the Complaint.

For the reasons set forth herein and consistent with the law cited above, Plaintiff requests that the Court deny Defendants' Motion to Dismiss.

Respectfully submitted,

s/Mel L. Lute, Jr.

Gregory A. Beck - #0018260

Mel L. Lute, Jr. - #0046752

BAKER | DUBLIKAR

400 South Main Street

North Canton, Ohio 44720

Telephone: (330) 499-6000

Facsimile: (330) 499-6423

E-mail: beck@bakerfirm.com

lute@bakerfirm.com

Counsel for Plaintiff, City of Mansfield

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **PLAINTIFF'S BRIEF OPPOSING DEFENDANTS' MOTION TO DISMISS** was served on the following individuals this 2nd day of October, 2024, via electronic transmission and/or regular US Mail.

John A. Gambill

Joseph Guenther

Taft Law

41 South High St., Ste. 1800

Columbus, Ohio 43215-6106

Email: JGambill@taftlaw.com

JGuenther@taftlaw.com

Attorneys for Defendants,

Page Excavating, LLC,

Jeff Page, and Landa Page

s/ Mel L. Lute, Jr.

Gregory A. Beck - #0018260

Mel L. Lute, Jr. - #0046752

BAKER | DUBLIKAR