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Order on Motions for Summary Judgment (SATISH S. LATHI)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SATISH S. LATHI, Plaintiff, v. JAY T. CLARK, Individually, PATRICIA L. CLARK, Individually, & SOUTHEAST CAPITAL PARTNERS, INC., Defendants/Counterclaim Plaintiffs, v. JAY T. CLARK, Individually, PATRICIA L. CLARK, Individually, & SOUTHEAST CAPITAL PARTNERS, INC., Counterclaim Plaintiffs, v. SATHIS S. LATHI, SUBHASH LATHI, and SUNTRUST MORTGAGE, INC. Counterclaim Defendants.	Civil Action No.: 2006CV114892

FILED IN OFFICE
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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON MOTIONS FOR SUMMARYJUDGMENT

On March 26, 2008, counsel appeared before the Court to present oral argument on the following motions: (1) Counterclaim Defendant Subhash Lathi Motion for Partial Summary Judgment; (2) Plaintiff Satish Lathi's Motion for Partial Summary Judgment; (3) the Motion for Summary Judgment of Counterclaim Defendant SunTrust Mortgage Inc.; and (4) Defendant Jay T. Clark's Motion for Partial Summary Judgment. After having reviewed the record of the case, the briefs filed in conjunction with these motions, and counsels' arguments, the Court finds as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

This case involves a dispute between business partners in a real estate development company over rights in and to the proceeds of certain development projects.

Beginning in 1998, Jay Clark ("Clark") and Satish Lathi ("Lathi") worked together developing real estate projects. South East Capital Partners, LLC ("SECP"), owned 50/50 by Clark and Lathi, was a development entity and expense vehicle for the parties' real estate projects. Both Clark and Lathi were employees of SECP, which was in the business of identifying new properties/projects and creating new development entities to facilitate a project. In addition to SECP, Lathi was a 10% owner in SECP Investments, LLC ("SECP Investments"), a company in which Clark and SECP were also owners. Some of the SECP development sub-entities were created under SECP Investment and others were sub-entities directly under SECP. At the time of the Assignment and Collateral Agreement ("ACA"), under SECP Investments had 6 sub-entities formed under its organization: Creekside, Northside, Lake Spivey, Brentwood, Block Lofts, and Stratford. Imagining the business as a flow chart, SECP is the first tier, SECP Investment along with other SECP sub-entities are the second tier, and SECP Investments' sub-entities form the third tier. All of the sub-entities (whether SECP or SECP Investments) were owned by some combination of SECP, Clark, Lathi and/or a third party investor.

Lathi was significantly in debt to SECP, Clark, and Patricia Clark ("P. Clark"). Lathi borrowed from her his initial buy-in into SECP. Thereafter, when SECP, through its development entities, developed a new property, Lathi would invest in those projects with a loan from Clark, P. Clark, or SECP. In addition, Lathi took salary draws or advances (i.e., loans) against anticipated project profits. These loans, plus accrued interest at 12-18%,

constituted Lathi's debt. Lathi consolidated/reorganized his debt twice: first, through a second mortgage on his home from Chattahoochee National Bank ("CNB"), and second, through the ACA.

In 2004, Lathi and Clark entered into the ACA, which was intended to govern the cash flow between the parties, including: (1) loans to Lathi, (2) development proceeds to Clark and Lathi, and (3) repayments by Lathi to SECP, Clark, or P. Clark. Specifically, the ACA (1) outlined Lathi's current debt, (2) described the terms under which Lathi could acquire future debt, (3) assigned to Clark and SECP an interest in Lathi's future development proceeds, (4) established the "waterfall" structure governing proceeds distributions and repayment priorities and percentages, and (5) established the terms under which P. Clark would assume the CNB loan.

II. STANDARD

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991). The moving party need only eliminate one essential element of a party's claim to prevail on summary judgment. Real Estate Int'l Inc. v. Buggah, 220 Ga. App. 449, 451 (1996).

III. ISSUES RELATING TO THE ACA

The parties seek summary judgment on three issues under the ACA: (1) the scope of the "waterfall" structure, (2) the definition of "new" SECP Entities, and (3) the parties' rights and obligations with respect to guaranty fees.

Contract interpretation is a matter of law for the courts. First, the Court must decide if the contract is clear or ambiguous. Where the language is clear, the contract shall be so enforced. Where the language is ambiguous, however, the Court must turn to the rules of contract construction, found at O.C.G.A. §§13-2 *et seq.* White v. Kaminsky, 271 Ga. App. 719 (2004). If, after application of the construction rules, the ambiguity remains, then a jury shall decide the intent of the parties.

A. Waterfall Projects

Lathi argues that Section 5 of the ACA, which establishes the waterfall, governs proceeds distribution on **all** SECP projects (including the profitable Block Lofts). Clark, on the other hand, argues that Section 5 only covers "New SECP Entities" (as defined in the ACA) and the "Existing SECP Entities" specifically referenced in the section's final paragraph (Lake Spivey, Northside, and Cavalier Creekside).

At the time that the parties entered into the ACA, SECP Investments had 6 sub-entities with ongoing projects: three with an outside investor whose profits and losses were to be aggregated (Block Lofts, Brentwood, Stratford, hereinafter, collectively, the "Disputed Projects") and three additional projects (Lake Spivey, Northside, and Cavalier Creekside, hereinafter, collectively, the "Included Projects"). The parties disagree as to how the proceeds from these projects were to be distributed based upon the language at the end of Section 5, which specifically addresses ownership interests and operating agreement amendments to the Included Projects. Clark argues that the profits on the Disputed Projects should be distributed according to Lathi's 10% ownership interest SECP Investments; on the other hand, Lathi argues that he is entitled to a 50% share of the proceeds remaining after the waterfall priority distributions.

The scope of Section 5 in the ACA is ambiguous. Recital "A" of the ACA states that "the entities listed on Schedule I attached hereto (such entities are listed on Schedule I are referred to collectively as the "Existing SECP Entities")...". Schedule I, titled "Existing SECP Entities" lists 15 entities, each formed in conjunction with SECP to develop a particular project. Section 5, titled "Distribution Priority for **New** SECP Entities" states that "Lathi and Clark hereby agree that distributions from **any and all** SECP Entities shall be governed by the following terms..." and that "[d]istributions from **each** SECP Entity shall be made in the following order... ." (emphasis added). Section 5 goes on to describe the proceed priority distributions schedule (the waterfall) and includes specific references to "Existing SECP Entities".

Having found the language to be ambiguous, the Court now turns to the rules of contract construction to interpret the provision. Such construction rules include the "cardinal" construction rule of ascertaining the intent of the parties as well as interpreting the agreement as a whole document. Hiers v. ChoicePoint Services, 270 Ga. App. 128 (2004); Snipes v. Marcene P. Powell and Assoc., Inc., 273 Ga. App. 814 (2005). In addition, the Court may consider how the parties acted under the contract and/or demonstrated their intent through outside documents or negotiations in interpreting ambiguous contract language. See, Transkey, Inc., v. Adkinson, 225 Ga. App. 457 (1997); Salvatori Corp. v. Rubin, 159 Ga. App. 369 (1981).

Clark argues that Section 5 specifically addresses and includes the proceeds from the Included Projects. Clark argues that the specific inclusion of the Included Projects is evidence of the parties' intent to exclude the Disputed Projects. See George L. Smith II Georgia World Congress Center Authority v. Soft Comdex, Inc., 250 Ga. App. 461, 464

(2001) ("[U]nder the maxim "expressio unius est exclusio alterius," the list of "Facilities Licensed" in the contract is presumed to exclude any facility not specifically listed."). Additionally, Clark argues that Schedule I was only intended to list Lathi assets to be used to secure Lathi's debts, not to list all projects applicable to the waterfall established in Section 5.

Finally, Clark directs the Court to the prior drafts of the ACA which show that (1) the October 27th draft included only "New SECP Entities" within the waterfall, (2) the October 28th draft covered "Existing" and "New SECP Entities", but included language to address profit/loss aggregation issues for the Disputed Projects, and (3) the October 30th draft deleted the aggregation language and added language to the last paragraph to amend the operating agreements of the Included Projects. Clark argues that the evolution of Section 5 comports with his interpretation of the scope of the waterfall: that the Disputed Projects were excluded from the waterfall.

Lathi argues that the ACA represents the parties' cash flow plans moving forward and encompassed all proceeds explaining why the provision reads "any and all SECP Entities". Lathi also argues that Schedule I defines the list of "Existing SECP Entities" and includes the Disputed Projects. Therefore, Lathi argues, without a specific carve out excluding the proceeds of the Disputed Projects, such proceeds should be distributed according to the waterfall. Lathi counters Clark's argument that without naming the Disputed Projects in Section 5, they were excluded because, Lathi argues, they were specifically <u>included</u> in Schedule I and the language of Section 5 ("any and all" and "each SECP Entity").

Finally, Lathi points to the parties' prior conduct to demonstrate their intent to include the Disputed Projects in the waterfall. Lathi testified that in December 2005, he gave Clark a draft distribution of Block Loft profits that followed the waterfall in Section 5. Clark made no

objections to the draft distribution, and did not change the distribution schedule to reflect a 10% distribution, as he claims is required under his interpretation of Section 5.

The ACA, read as a whole, addresses the parties' entire existing and future relationship. The Court finds that the language in Section 5 supports Lathi's interpretation, which reflects the intent of the parties. The failure to mention the Disputed Projects in the final portion of Section 5 makes sense if they were assumed to be included in the waterfall per Schedule I. Clark's testimony disagrees, but there is no evidence that Schedule I was intended only to list collateral to secure Lathi's debts. Additionally, the plain language of the contract states otherwise. To adopt Clark's interpretation would ignore the combined effect of the language in Recital "A", Schedule I, and Section 5. Additionally, the parties' prior conduct comports with the Court's finding as to the intent of the parties with regard to this issue. Thus, the Court finds that Section 5 should be read to apply to all SECP Entities, as listed on Schedule I, including the Disputed Projects. Plaintiff's Motion for Summary Judgment on the this issue is **GRANTED,** and Defendants' Motion for Summary Judgment is **DENIED.**

B. Definition of "New SECP Entities"

The parties also seek the Court's interpretation of the defined term "New SECP Entities." Defendants argue Lathi's ownership in a sub-entity is required for it to be considered a New SECP Entity subject to the waterfall distribution provision in the ACA. Lathi, on the other hand, argues that his ownership in a sub-entity was not required, only his involvement in the project, for the sub-entity to be a New SECP Entity subject to the waterfall. The parties' disagreement involves the word "may" and what it modifies.

Recital "C", states, "It is contemplated that Lathi ... **and** Clark [including SECP] ...**may** become shareholders, members or partners in one or more entities hereafter engaged in real

estate ownership, development, management or leasing (collectively, the "New SECP Entities" and individually, a "New SECP Entity")." (emphasis added).

The Court finds this language to be ambiguous. The communications leading up to the ACA and the testimony of the parties after the ACA demonstrate that there is a distinction between ownership interests in a sub-entity, which provide for the ability to deduct for losses among other things, and profit participation. For example, the disputed language in Section 5, discussed above, states that the ownership interests of Lake Spivey, Creekside and Northside would reflect a 99.99% ownership interest in Clark and a .01% ownership interest by Lathi, but that the profits would be distributed according to the waterfall (50% share of profits after the waterfall priority payments). Additionally, in a July 20, 2004 email, Clark discussed his willingness to grant Lathi profit interests, but not ownership interests, in new projects until Lathi's personal financial situation was rectified.

While the parties disagree about many points of their working relationship, it is clear that the parties worked together on these projects for a moderate salary ($50,000) with the intent to earn additional compensation from project proceeds. This is the only way that Lathi could ever repay Clark/SECP/PC under the terms of the ACA. The waterfall provision was structured to reapportion the risk between Clark and Lathi because Clark was fronting all of the capital for these projects; thus, under the waterfall Clark was entitled to priority payments, returns, and reimbursed guaranty fees ***before*** Lathi would ever receive his 50% share of the remaining proceeds. In fact, subsection (viii) of Section 5, which provides for the 50/50 split of remaining proceeds, states that "Lathi will have no ownership interests in the new transactions, but such transactions will be set up as a contractual relationship." The Court

finds that this language, read together with Recital "C", and the waterfall provisions comports with Lathi's interpretation of the meaning of "New SECP Entities."

Finally, SECP was creating the sub-entities to develop the projects and rolling expenses back into its account. Lathi was a 50% owner in SECP, but had limited ownership interests, if any, in the development sub-entities. The arrangement for Lathi to participate in the profits of "New" entities because of his ownership in SECP and his construction and management work on the projects, is consistent with this Court's understanding of the parties' complicated deal structures. Plaintiff's Motion for Summary Judgment on this issue is **GRANTED**, and Defendants' Motion for Summary Judgment is **DENIED.**

C. Guaranty Fee Provisions

Defendants seek payment of certain guaranty fees from Lathi pursuant to the ACA. Lahti concedes that the ACA provides a mechanism to compensate Clark for guaranty fees. He argues, however, that the reimbursement mechanisms are paid solely through the waterfall priority established therein and out of proceeds from the projects, not from Lathi personally.

Recital "G" of the ACA reads that "Clark is a personal guarantor of various debts owed by one or more of the Existing SECP Entities and the parties wish to make provision for the payment **by Lathi to Clark** of guaranty fees in connection therewith and to provide security for the payment thereof." (emphasis added). Additionally, Section 3 of the ACA states, "[f]rom and after the date of this Agreement, Lathi shall pay a **one-time** guaranty fee (the "Guaranty Fees") equal to the percentage of the amount of the Guaranty Liability incurred by Clark that is attributable to the indebtedness set forth on Schedule III attached hereto...Guaranty Fees shall be paid in accordance with the provisions of Section 5...." (emphasis added). Section 3

addresses guaranty fees paid for existing SECP project loans and provides a mechanism for calculating guaranty fees on future projects. Section 5, the waterfall provision discussed above, describes the order in which Clark would be reimbursed for such guaranty fees.

In Recital "G", the ACA creates an obligation for Lathi to share in "Guaranty Liability" by paying a guaranty fee to Clark. The language "one-time" must be read to limit Lathi's liability for the fee itself to Clark, but not for any additional guarantor liability on the project thereafter. The ACA is also clear that Lathi will not provide a personal guaranty for any new deals in the future (see §§ 3, 5(v)), and Section 3 is a mechanism to redistribute the guaranty risks between Clark and Lathi. Under Section 5 of the ACA, however, if the guaranty fees were to be paid solely by Lathi, then the guaranty fee should come out of his share **after** the proceeds were split between Clark and Lathi. Instead, Section 5 provides that the guaranty fee would come out of the proceeds **before** they were split by Clark and Lathi.

Because the Court cannot reconcile the inclusion of the guaranty fee within the waterfall structure with the language acknowledging Lathi's liability to Clark for the fees (as evidenced in Recital "G"), the Court reserves this question for the jury. Both Plaintiff's and Defendants' Motions for Summary Judgment are, therefore, **DENIED** on this issue.

IV. ISSUES RELATING TO THE ASA CANDLER MANSION

Section 1 of the ACA states "Lathi and Clark each hereby acknowledge and agree that the Existing Lathi Indebtedness is due and owing by Lathi to Clark in the amount set forth on Schedule II." Schedule II lists Lathi's debt under the CNB loan as $325,000 in principal and $183,033 in interest (total of $508,033). Schedule II lists an additional amount of $502,095 as principal and $57,541 in interest under the heading "Loans by Southeast Capital Partners, Inc.". Section 6(A)(vi) and Section 2 of the ACA modify the debt which the Asa Candler

Mansion (the CNB loan security) secures to cover both the CNB loan and future SECP Indebtedness.[1]

The ACA clearly identifies the CNB loan amount as $325,000 plus interest (the "CNB Loan Amount"), and lists the additional $502,000 amount as an SECP loan. Thus, the security interest in the Asa Candler Mansion relates to the CNB Loan Amount and any debt owed by Lathi to SECP pursuant to Section 2 of the ACA. The additional $502,000 SECP loan amount was not secured by the Asa Candler Mansion according to the ASA.

Pursuant to Section 4(C) of the ACA, distributions owed to Lathi (but assigned under the ACA) were to be made in the following priority: first to the CNB loan, second to Secured Indebtedness owed to Clark, and third to Secured Indebtedness owed to SECP. Thus, Lathi's Secured Indebtedness to SECP, which, according to the priority payment provisions was the last debt to be paid, was secured by the Asa Candler Mansion. Section 6(B), however, provides that "[i]n the event the Lake Toxaway house is sold by Lathi, ... then all proceeds thereof, up to the amount of the balance of the CNB Loan plus the current outstanding balance of the Secured Indebtedness due Employer [SECP] under Section 2, shall be applied against the Secured Indebtedness." Thus, Section 6(B) alters the payment priority scheme outlined in Section 4(C) and allows the Section 2 SECP Indebtedness to be repaid out of turn if the Lake Toxaway house was sold.

Plaintiffs relied upon the statements and documents of Mr. Hughes, SECP's accountant, to establish that Lathi paid in full the CNB Loan Amount. This evidence has not been contradicted by Defendants. Additionally, Lahti presented evidence that he sold the

[1] Section 6(A)(vi) of the ACA, which discusses the CNB loan, requires that the CNB security documentation "shall be amended to ...modify the indebtedness evidenced and secured thereby to include the portion of the Secured Indebtedness due and owning under Section 2 of this Agreement..." Section 2 of the ACA lists a $22,000 payment to Regions Bank on Lathi's behalf and any future salary draws by Lathi from SECP as debt owed to SECP.

Lake Toxaway house and applied the proceeds to the Existing Indebtedness. Thus, the debt to which the CNB security (the Asa Candler Mansion) attached has been extinguished. Accordingly, the Court finds that Defendants' claims regarding the transfer, priority, and security interests regarding Counterclaim Defendants Subhash Lathi and SunTrust are moot. For this reason the Motion for Summary Judgment of Defendant SunTrust Mortgage, Inc. and the Motion for Partial Summary Judgment of Counterclaim Defendant Subhash Lathi are hereby **GRANTED.**

V. MISCELLANEOUS ISSUES

A. Due Diligence Costs

Lathi seeks summary judgment on Count 6 of Defendants' counterclaim to recoup the costs of certain investigative and due diligence work, the cost of which was incurred by SEC Development Inc. ("SEC Development") allegedly after Lathi's termination and at his direction. Clark testified that Lathi orally agreed to reimburse SEC Development for such costs. Defendants seek recovery of these costs under a theory of unjust enrichment.

Lathi seeks summary judgment on the grounds that such a promise is an oral promise to "answer for the debt...of another" in violation of the statute of frauds. See O.C.G.A. § 13-5-30(2). The statute of frauds, however, does not require that an original undertaking be in writing. See Lindsey v. Heard Oil Co., 170 Ga. App. 572, 574 (1984) (affirming recovery against a shareholder who promised its creditor to pay any bills incurred by his lumber company because it was an original undertaking not barred by the statute of frauds). Here, Clark testified that SEC Development incurred the expenses in reliance upon Lathi's promise to pay the expenses. As such, it may constitute an original undertaking not

barred by the statute of frauds. Lathi's Motion for Summary Judgment on this issue is therefore **DENIED**.

B. Quantum Meruit

Defendants seek summary judgment on Plaintiff's claims in quantum merit to recover for unpaid work performed on the disputed projects. Defendants argue that the specific agreements (independent contractor's agreement, ACA, etc.) entered into between Clark/P. Clark/SECP and Lathi governed the parties' conduct and relationships, thus preventing recovery in quantum meruit. See Choate Constr. Co., Inc. v. Ideal Electric. Contractors, Inc., 246 Ga. App. 626 (2000). In light of the Court's earlier ruling on the scope of the ACA and the evidence in the record of the parties existing contracts covering ownership interests and employment rights, Defendants' Motion for Summary Judgment on this issue is **GRANTED**.

C. Stock Redemption

Defendants seek summary judgment on their claims relating to Plaintiff's refusal to honor SECP's stock redemption rights as found in § 2(a)(ii) and (iii) of the SECP Shareholder Agreement ("SECP SH Agreement"). Under the SECP SH Agreement, SECP has the right to redeem stock upon the occurrence of a terminating event, which includes the termination of employment for any reason. On January 16, 2006, Clark and Lathi discussed Lathi's termination with SECP. Lathi claims that he was terminated on that day. Clark, however, provided affidavit testimony that Lathi was not terminated until he received the January 24th letter, which cited Lathi's solicitation of SECP employees. The letter, however, references the January 16th "termination" and includes the phrase "effective immediately." On February 27, 2006, SECP sent Lathi a letter notifying him of its election to redeem its stock.

Defendants seek the equitable remedy of specific performance to enforce the stock redemption rights. Lathi, however, argues that his employment termination was effective on January 16, 2006, not on January 24th. Thus, Lathi argues, the February 27th letter was untimely and ineffective to redeem the stock.

Second, Lathi contends that Clark, as SECP's President and his co-owner, did not have the unilateral authority to fire an SECP officer. Under O.C.G.A. § 9-14-841, a corporation's president has the authority to "conduct all ordinary business on behalf of such corporation." Under most circumstances the decision to terminate an at-will employee would fall under the broad reach of "ordinary business." Here, the decision to terminate Lathi's employment with SECP resulted in his automatic withdrawal from SECP as an owner. In light of Lathi's 50% ownership interest in and position as co-director of SECP, the Court finds that whether the decision to terminate Lathi was in SECP "ordinary business" raises a question of fact and should be determined by a jury. If the termination decision is within the "ordinary business" of SECP, then the jury must determine if the redemption notice was timely based upon Lathi's date of termination, which is another question of fact for the jury.

Because the determination of this issue involves jury questions, the Court hereby **DENIES** Defendants' Motion for Summary Judgment on this count.

D. Co-Guarantor Contributions

Defendants seek contribution from Lathi, who signed as a co-guarantor on the Lake Spivey and Northside guarantees, pursuant to O.C.G.A. § 10-7-50. Lathi objects to summary judgment at this stage on the grounds that Clark has failed to prove that his payments thereunder were compulsory. Additionally, Lathi argues that some of the guaranty expenses were paid by P. Clark, who was not a party to the guaranty, and are not recoverable against

him. See Carter v. Parrish, 274 Ga. App. 97 (2005) (holding that two shareholders were not entitled to contribution pursuant to O.C.G.A. § 23-2-71 from their other shareholders for their respective share of a settlement where the settlement was paid by a third party).

Defendants submitted the affidavits of Clark and SECP accountant Hugh Nelson to support their claim for contribution on the guaranty obligation for approximately $1.6M (Lathi's share) paid on the Lake Spivey and Northside guarantees. While Lathi requests that Defendants prove these contribution payments through cancelled checks or other evidence, Defendants contend that the best evidence rule does not apply to this situation. See Brewer v. Brewer, 249 Ga. 517 (1982) ("Here, it is ...the fact of payment of an obligation or other disbursement of funds...may be proved by oral testimony.").

Relying upon discovery documents, Plaintiff also argues that the guaranty payments by Clark were actually "loans" that Clark made to the developments and not guaranty payments. Because questions of fact remain regarding the amount and terms of payments made by Clark for which Lathi could be held liable for contribution, the Court **DENIES** Defendants' Motion for Summary Judgment on this issue.

E. MTB Account

Defendants seek summary judgment on Plaintiff's claims relating to funds held in a MTB account pursuant to the ACA. The record is clear that the funds were used in a manner agreed to by Lathi in order to satisfy his federal tax obligations and an outstanding balance with the escrow agent.

The Court **GRANTS** Defendants' Motion for Summary Judgment with regard to the MTB account.

F. Service Intensive Distributions

Defendants seek summary judgment on Plaintiff's claims regarding Service-Intensive Distributions per paragraph 5.5 of the Operating Agreements for Brookwood, Borghese and Museum Towers. The Service-Intensive Distributions are to be given at the "sole discretion" of the members. Service-Intensive Distributions are defined as amounts "determined by the managers acting reasonably and in good faith, as being extraordinarily attributable to services provided by the Members." While Lathi may have received such bonuses in the past or anticipated receiving them on these other projects, the contracts in question do not provide him with a positive right or entitlement to these fees. Additionally, Lahti failed to produce sufficient facts, with regard to these distributions, to raise a factual question on Clark's alleged breach of the implied covenant of good faith. Thus, the Court **GRANTS** Defendants' Motion for Summary Judgment on these claims.

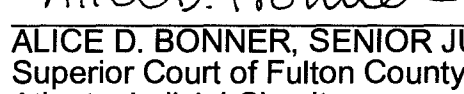
G. Alter Ego Liability

Defendants seek summary judgment on Plaintiff's claims relating to alter ego liability (piercing SECP and/or holding that Clark and P. Clark acted as one and same). Defendants have submitted uncontroverted evidence that SECP's corporate form (and that of its entities) is respected and that funds are not comingled between Clark, SECP, the SECP entities, and P. Clark. Plaintiff has failed to produce evidence supporting his allegations of alter ego liability. See Amason v. Whitehead, 186 Ga. App. 320, 320 (1988) (affirming trial court's grant of summary judgment on veil piercing claims where there was no evidence of ignoring the corporate form, commingling assets, or fraud). The Court **GRANTS** Defendants' Motion for Summary Judgment on this claim.

H. C-Corp Relief

Defendants seek summary judgment on Plaintiff's claims seeking recovery under Georgia's C-Corp codes on the grounds that SECP is not a C-Corporation and thus ineligible for any rights or remedies provided under the relevant statutes. Qualifying as a C-Corp requires a specific statutory election, which SECP did not make. Equitable remedies sought by Lathi, however, are not extinguished. Defendants' Motion for Summary Judgment is **GRANTED in part** and **DENIED in part**.

SO ORDERED this 16 day of April, 2008.



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