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Order on Defendant Elkik's Motion for Summary Judgment (PAYLESS CAR RENTAL SYSTEMS, INC.)

Alice D. Bonner
Superior Court of Fulton County

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Bonner, Alice D., "Order on Defendant Elkik's Motion for Summary Judgment (PAYLESS CAR RENTAL SYSTEMS, INC.)" (2010). *Georgia Business Court Opinions*. Paper 51.
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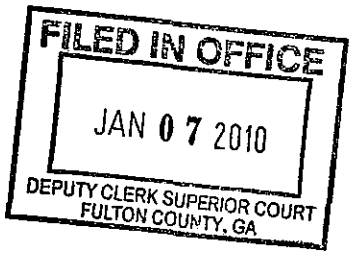
IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAYLESS CAR RENTAL SYSTEMS, INC. and L & S VEHICLE LEASING, INC.,	)(	
Plaintiffs,	)(	
v.	)(	Civil Action File No. 2007CV129218
PRG GROUP, LLC and ANTHONY ELKIK,	)(	
Defendants.	)(	
PRG GROUP, LLC,	)(	
Third-Party Plaintiff,	)(	
v.	)(	
ORLIN, INC. and ATLIN, INC.,	)(	
Third-Party Defendants.	)(	



ORDER ON DEFENDANT ELKIK'S MOTION FOR SUMMARY JUDGMENT

On November 18, 2009, counsel appeared before the Court to present argument on Defendant Elkik's Motion for Summary Judgment. After hearing the arguments made by counsel, reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

Defendant PRG Group, LLC ("PRG") was a franchisee of Plaintiff Payless Car Rental Systems, Inc. ("Payless"). PRG operated a Payless car rental store at the Atlanta airport from November 2005 to February 1, 2007. To facilitate the franchise relationship, PRG and Payless entered into two contracts: (1) an asset purchase agreement whereby PRG purchased the assets of Payless's Atlanta airport store from

Payless and two of Payless's affiliated companies (Orlin and Atlin) and (2) a franchise agreement. Part of the franchise agreement called for Payless to lease cars to PRG. Disputes over these "fleet charges" ensued from the very beginning of the franchise relationship. Defendant Elkik had been a management consultant for Payless for several years and then formed PRG to purchase and run the Atlanta airport store. Elkik is the sole managing member of PRG.

Payless's primary claim is for money it believes it is owed by PRG. Payless alleges that Elkik should be held personally liable for the money allegedly due to Payless by PRG, relying on the theory of piercing the corporate veil, and alleging fraudulent conveyances. Payless also seeks an award of punitive damages and an award of attorneys' fees pursuant to O.C.G.A. 13-6-11.

It is undisputed that PRG is a Georgia limited liability company. Georgia Courts exercise "great caution" when asked to disregard a company's structure so as to hold a member or shareholder individually liable for the acts of the company. Milk v. Total Pay and HR Solutions, Inc., 280 Ga. App. 449 (2006) (noting that the "longstanding principle that officers and shareholders are not personally liable for corporate acts" is "equally applicable in the LLC context"). Under the Georgia Limited Liability Company Act, an LLC member is not liable for an LLC's obligations or liabilities "whether arising in contract, tort or otherwise." O.C.G.A. § 14-11-303.

In order to pierce the corporate veil of an LLC and hold one or more of its members personally liable for the acts of the LLC, there must be evidence that its members "abused the forms by which the LLC was maintained as a separate legal entity apart from the personal business of its members." Bonner v. Brunson, 262 Ga.

App. 521, 522 (2003). "A court may disregard the separate LLC entity and the protective veil it provides to an individual member of the LLC when that member, in order to defeat justice or perpetrate fraud, conducts his personal and LLC business as if they were one by commingling the two on an interchangeable or joint basis or confusing otherwise separate properties, records, or control." Id.

Plaintiffs have presented no evidence to support piercing the corporate veil in this case. There is no evidence before the Court that Elkik disregarded the LLC form or that he conducted his personal and LLC business on an interchangeable basis. There is also no evidence presented in this case that would justify further discovery into whether such activities by Elkik occurred.

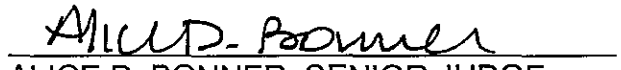
Plaintiffs also argue that Elkik should be held personally liable because of alleged fraudulent conveyances. The Court finds that any transfers alleged by Plaintiffs as fraudulent were made by PRG, not Elkik individually. Thus there is no basis for finding Elkik liable in this case on a fraudulent conveyance theory.

With no substantive claims remaining against Elkik, Plaintiffs claim for punitive damages is now moot.

As to the claim for attorneys' fees under O.C.G.A. § 13-6-11, only fees attributable to prevailing claims are recoverable. R. T. Patterson Funeral Home v. Head, 215 Ga. App. 578 (1994). Accordingly, having prevailed on all on substantive claims against him, Elkik must also be granted summary judgment on Plaintiffs' claim for attorneys' fees.

Elkik's Motion for Summary Judgment is hereby **GRANTED**.

SO ORDERED this 7 day of January, 2010.



ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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