

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-22047-CIV-LENARD/GOODMAN

PRAMS WATER SHIPPING, CO., INC.,

Plaintiff/Petitioner,

v.

BATCA GLOBAL, A.S., et al.,

Defendants/Respondents.

**REPORT AND RECOMMENDATIONS CONCERNING
PLAINTIFF'S CORRECTED MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Plaintiff Prams Water Shipping Co, Inc. ("Plaintiff") filed a Corrected Motion for Entry of Final Default Judgment ("Motion"). [ECF 17]. United States District Judge Joan A. Lenard referred the motion to the Undersigned. [ECF No. 18]. For the reasons outlined below, the Undersigned **respectfully recommends** that the District Court **grant** the motion, confirm the arbitrators' Final Award entered on November 13, 2015, and hold Defendants Ibrahim Batca, Yusuf Erol Batca, Batca Group, Inc., and Batca Brothers LLC, jointly and severally liable for the payment of the Final Award Amount of \$783,885.99 (plus interest at a prime rate of 3.25% from December 13, 2015 until the payment has been made in full or the award is reduced to judgment).

I. PROCEDURAL HISTORY

On September 10, 2014, Defendant Batca Global, A.S. filed a demand for arbitration against Plaintiff seeking the return of the \$600,000.00, that had been wired to Plaintiff for pre-voyage freight payments. On November 13, 2015, an arbitration panel entered a Final Award in favor of Plaintiff for its counterclaim and awarded Plaintiff \$783,885.99 in damages. On June 6, 2016, Plaintiff filed a Petition/Complaint with this Court to confirm the Final Award and motioned the Court to include Ibrahim Batca, individually, Yusuf Erol Batca a/k/a Yousuf Batca a/k/a Yusuf Batca (“Yusuf Erol Batca”), individually, Batca Group, Inc., Batca Brothers LLC, and Batca Betel Agro Group in the Final Judgment, and for award of costs.

A complaint and summons was served on each of the named Defendants on July 9, 2016. Defendants, Batca Global, AS, Yusuf Erol Batca, Batca Group, Inc., and Batca Brothers, LLC did not appear or respond to the complaint. On September 1, 2016, the Clerk of Court entered a default against Defendants Batca Global, A.S., Yusuf Erol Batca, Batca Group, Inc., and Batca Brothers, LLC for failure to respond to the Complaint or otherwise appear in this action. [ECF No. 12].

On August 2, 2016, Defendant Ibrahim Batca filed an Answer to Complaint. [ECF No. 6]. On August 26, 2016, the District Court entered an endorsed Order striking Defendant Ibrahim Batca’s Answer to Complaint due to the fact that *pro se* Defendant’s answer did not comply with Federal Rule of Civil Procedure 8(b). [ECF No. 8]. The

District Court gave Ibrahim Batca fourteen days from the date of the order to file an amended answer that complied with the Federal Rules of Civil Procedure. However, Defendant Ibrahim Batca has not filed any amended pleadings as of the date of this Report and Recommendations and Defendant's deadline has expired.

Additionally, on September 6, 2016, an endorsed Order was entered dismissing Defendant Batca Betel Agro Group as a party in this action, pursuant to a notice filed by Plaintiff. [ECF No. 13].

Plaintiff now seeks entry of a default final judgment against all defendants. [ECF No. 17]. The Motion has been referred to me for issuance of a report and recommendations. [ECF No. 18].

II. APPLICABLE LAW.

In general, a court may enter a default judgment when the factual allegations of the complaint, which are assumed to be true, provide a sufficient legal basis for such entry. *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). Thus "[a] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (internal quotations omitted).

A. CONFIRMATION OF ARBITRATION AWARD

Pursuant to Florida Statute § 682.12, this Court must confirm the final arbitration award, unless the award is vacated, modified, or corrected. In the present case, there is

no basis for vacatur, modification, or correction of the award. Upon confirming the arbitration award, the Florida Arbitration Code requires that the Court enter judgment in conformity therewith and provides that the Court may award costs of the application. *See* Fla. Stat. § 682.15 (“Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.”).

B. PIERCING THE CORPORATE VEIL -- INDIVIDUAL LIABILITY OF DEFENDANTS IBRAHIM BATCA AND YUSUF EROL BATCA

A corporation and its shareholders and officers are separate, even if one person owns all the shares and controls its actions. The corporation is not bound by the acts of the owner as an individual, and the owner is not bound by corporate acts, even though the individual may dictate every corporate decision. When the person who owns or controls the corporation has abused this privilege, however, by using the corporate form to defeat justice, perpetuate fraud, promote crime, **evade contractual or tort responsibility**, or for any other reason which in equity or good conscience would justify the disregard of the corporate entity, the court may pierce the corporate veil in order to correct the abuse. *See United States v. Fidelity Capital Corp.*, 920 F.2d 827, 829 (11th Cir. 1991).

The Eleventh Circuit Court of Appeals has adopted a two-pronged test for determining whether owners or operators of a corporation are personally liable for the unfair practices of a corporation. Under this test, the corporate veil may be pierced when:

- (1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct, and
- (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

See NLRB v. West Dixie Enters., 190 F.3d 1191, 1194 (11th Cir. 1999).

Under the first prong, courts should consider "(a) the degree to which the corporate legal formalities have been maintained, and (b) **the degree to which individual and corporate funds, other assets, and affairs have been commingled.**" *Id.* (emphasis supplied). In *NLRB*, there was substantial evidence of commingling of funds and assets and of a failure to maintain corporate formalities. The respondents in that case often used personal checks or credit cards to pay for the company's supplies and payroll. The respondents did not produce any records indicating that any of these payments were bona fide loans or repayments, or that the individual and corporate identities were kept separate and the failure to keep adequate records itself evidences a lack of arm's-length dealing between the individuals and the corporation. *See id.*

III. ANALYSIS

A. CONFIRMATION OF ARBITRATION AWARD

Pursuant to the Final Award, the arbitration panel: (a) unanimously denied Defendant Batca Global's claim of the return of the \$600,000.00 it paid to Plaintiff; (b) ordered that Plaintiff recover \$783,885.99 ("Final Award Amount") from Defendant Batca Global under Plaintiff's Counter-Claim for the losses it has suffered and lost profits due to Batca Global's breach of the charter party; (c) and required that the Final Award Amount be paid to Plaintiff by Batca Global within thirty (30) days from the date of the award and that failure to do so would result in the assessment of interest on the Final Award Amount at the prime rate of 3.25% from December 13, 2015 until the payment has been made in full or the award is reduced to judgment, whichever first occurs.

As of the date of filing this Petition, it is evident that none of the defendants have paid any of the damages awarded to Plaintiff. Pursuant to Florida Statute § 682.12, this Court must confirm the final arbitration award, unless the award is vacated, modified, or corrected. In the present case, there is no basis for vacatur, modification, or correction of the award. Upon confirming the arbitration award, the Florida Arbitration Code requires that the Court enter judgment and provides that the Court may award costs for the application.

As of the date of this Report and Recommendations, Defendants have not raised any objections even though the record clearly reflects that each Defendant has been properly served and has had ample time to respond. Furthermore, nothing in the record reflects that the subject arbitration award has been vacated, modified, or corrected.

B. PIERCING THE CORPORATE VEIL -- INDIVIDUAL LIABILITY OF DEFENDANTS IBRAHIM BATCA AND YUSUF EROL BATCA

Mr. Ibrahim Batca and Mr. Yusuf Erol Batca are partner owners of corporate Defendant Batca Global, A.S. The Final Award cites that one of the main reasons that the award was made in favor of Plaintiff was "Batca's plainly misleading and wrongful conduct in failing to meet its obligation to provide cargo for the Vessel, as it had contracted to do when it entered the charter party with Prams."

When the person who owns or controls the corporation has abused his ownership/control privileges by using the corporate form to defeat justice, perpetuate fraud, promote crime, evade contractual or tort responsibility, or for any other reason which in equity or good conscience would justify the disregard of the corporate entity, the court may pierce the corporate veil in order to correct the abuse. *United States v. Fidelity Capital Corp.*, 920 F.2d 827, 829 (11th Cir. 1991).

It is apparent from the uncontroverted facts presented by Plaintiff that Batca Global has evaded its contractual responsibilities. According to the arbitration panel's findings, the misleading and wrongful conduct of Defendant Batca Global and its officers, Ibrahim Batca and Yusuf Erol Batca, has caused damages to Plaintiff.

The record and uncontroverted facts further indicate that Defendant Batca Global intentionally became insolvent during the pendency of the arbitration proceedings. Defendant Batca Global has acted in bad faith and its conduct of shutting down its operations during the pendency of the arbitration proceeding further evidences its disregard of the corporate entity.

As previously explained, the Eleventh Circuit has adopted a two-pronged test for determining whether owners or operators of a corporation are personally liable for the unfair practices of a corporation. *See NLRB*, 190 F.3d at 1194. Under the first prong, courts should consider "(a) the degree to which the corporate legal formalities have been maintained, and (b) the degree to which individual and corporate funds, other assets, and affairs have been commingled." *Id.*

The email communication referenced in Plaintiff's Complaint, sent by Defendant Ibrahim Batca stating that payments towards the \$600,000.00 deposit amount were being sent from his "own pocket," evidences the practice of the corporation's officers commingling/utilizing their *personal* funds for fulfilling contractual obligations entered into by the corporation.

Based on the wrongful and misleading conduct of Defendants Ibrahim Batca and Yusuf Erol Batca, it appears that each Defendant should be held jointly and severally liable for the payment of the Final Award Amount of \$783,885.99 to Plaintiff.

Furthermore, there exist circumstances where piercing the corporate veil *between a corporation and its subsidiaries* becomes necessary, and a number of factors have been considered by courts in determining whether to pierce the corporate veil, including: (1) are the formal legal requirements observed; (2) is the corporation adequately financed; (3) by who are salaries and expenses paid; and (4) are the two operations so integrated through the commingling of funds, interactivities and common direction and supervision that they should be considered as one enterprise. *See In re Fantome, S.A.*, 99-961-civ, 2005 U.S. Dist. LEXIS 47593, at *40-41 (S.D. Fla. Mar. 25, 2005) (citing *Markow v. Alcock*, 356 F.2d 194, 196-97 (5th Cir. 1966)).

Other typical factors include: (1) common stock ownership; (2) common directors or officers; (3) the cause of the incorporation of the subsidiary; (4) the source of finances to the subsidiary and whether the subsidiary only receives business from the principal; (5) whether there is shared property; and (6) whether the officers of the subsidiary act independently and in the interest of that company or whether they take their orders from the principal and act in the principal's interest. *Id.* at 42. (citing *Bay Sound Transp. Co. v. United States*, 474 F.2d 1397 (5th Cir. 1973) (per curiam), cert denied, 94 S. Ct. 1413 (1974)).

In the instant case, Defendants Batca Global and Yusuf Erol Batca executed the Charter Party. Defendant Batca Global is the subsidiary of Defendant Batca Group, Inc. Defendant Batca Group, based on the facts presented, is the entity that negotiated the

terms of the Charter Party. Defendant Batca Brothers LLC, another subsidiary of Defendant Batca Group, was involved in the subject transaction in that it transferred/wired \$60,000.00 towards the initial \$600,000.00 deposit and the transfer was initiated at the request of Defendant Yusuf Batca, who is one of its officers.

It appears that Defendants Batca Global, A.S., Batca Group, Inc., and Batca Brothers LLC are so integrated through the commingling of funds, interactivities and common direction and supervision, as evidenced above, that it is difficult to distinguish one from the other and they should therefore be considered one entity and held jointly and severally liable for the payment of the Final Award Amount of \$783,885.99 to Plaintiff.

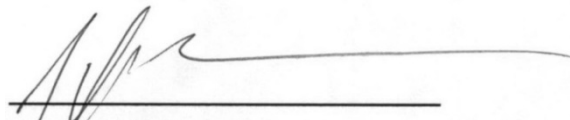
IV. CONCLUSION

I respectfully recommend that the Court grant Plaintiff's Motion, confirm the arbitrators' Final Award entered on November 13, 2015, and hold Defendants Ibrahim Batca, Yusuf Erol Batca, Batca Group, Inc., and Batca Brothers LLC, jointly and severally liable for the payment of the Final Award Amount of \$783,885.99 (plus interest at a prime rate of 3.25% from December 13, 2015 until the payment has been made in full or the award is reduced to judgment). After entry of judgment, I further recommend that the Court direct the Clerk to close the file.

V. **OBJECTIONS**

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with United States District Judge Joan A. Lenard. Each party may file a response to the other party's objection within fourteen (14) days of the objection. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, on December 16, 2016.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Joan A. Lenard
All counsel of record