IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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GUINING LI,

Plaintiff,

v.

CITIGROUP, INC.,

Defendant.

OPINION AND ORDER

99-C-635-C

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This is a civil action for monetary relief in which pro se plaintiff Guining Li brings claims of negligence and fraud against defendant Citigroup, Inc. Subject matter jurisdiction is present. See 28 U.S.C. § 1332. Presently before the court is defendant's motion for summary judgment. In support of its motion, defendant contends that (1) defendant Citigroup, Inc. is not liable for the acts of its subsidiary; (2) plaintiff lacks standing to bring this suit; (3) he did not follow the proper procedure for resolution of billing disputes; and (4) his claims of negligence and fraud fail on their merits. Because I find that defendant is not liable for the acts of Travelers Bank, I will grant defendant's motion for summary judgment.

For purposes of summary judgment, I find the following facts submitted by the parties to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Guining Li is a resident of Wisconsin. Defendant Citigroup, Inc. is a Delaware corporation with its principal place of business in New York. Travelers Bank (now Citibank USA) is a member of the Travelers Group, Inc., (now defendant Citigroup, Inc). Defendant filed a consolidated financial report for itself and its subsidiaries with the United States Securities and Exchange Commission.

In January 1999, Travelers Bank opened Travelers Group Visa Platinum account number 4432 8220 4701 7147. On or about November 14, 1999, the account was closed and the balance transferred to account number 4432 8220 4790 2744. According to the account statement dated July 20, 1999, the amount due was $2,061.47. Leyuan Shi (plaintiff's wife) made a payment of $2,061.47 in August 1999. Through an inadvertent data inputting error, that payment was reflected as $2,061.41 in Travelers Bank's computerized records. Under the terms of Travelers Bank's Revolving Loan Agreement and Disclosure Statement, a finance charge is imposed on the entire outstanding bill if payment is not made in full by the due date. The account statement dated August 18, 1999, included a finance charge of $26.01.

On or about August 25, 1999, Shi telephoned Travelers Bank to complain about the finance charge of $26.01, contending that the charge was an error. Defendant's service representative told Shi that she could make a once in a lifetime exception and waive the finance

charge. On or about August 26, 1999, a supervisor at Travelers Bank approved waiver of the $26.01 finance charge. Travelers Bank did not require a copy of Shi's check before crediting the account.

According to the account statement dated September 20, 1999, there was a $1.00 minimum finance charge on the account. Shi telephoned Travelers Bank to contest the $1.00 finance charge. On September 26, 1999, the bank credited her account $1.00 because the charge was an error. All finance charges which Shi complained of have been waived.

OPINION

A. Summary Judgment Standard

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex v. Catrett, 477 U.S. 317, 324 (1986). All evidence and inferences must be viewed in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

B. Piercing the Corporate Veil

Defendant contends that as a holding company, it cannot be held liable for the acts of

Travelers Bank, a separate legal entity. Plaintiff contends that defendant is liable for Travelers Bank's tortious acts because defendant included Travelers Bank's revenue and income in its total operation revenue and operation income in a report filed recently with the United States Securities and Exchange Commission.

"It is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries." United States v. Bestfoods, 524 U.S. 51, 61 (1998) ("'Neither does the mere fact that there exists a parent-subsidiary relationship between two corporations make the one liable for the torts of the its affiliate.'") (quoting 1 W. Fletcher, Cyclopedia of Law of Private Corporations § 33, at 568 (rev. 1990)). As a result, "[c]ourts begin with the presumption of corporate separateness." Insolia v. Philip Morris, Inc., 31 F. Supp.2d 660, 669 (W.D. Wis. 1998). "Parents of wholly owned subsidiaries necessarily control, direct and supervise the subsidiaries to some extent but unless there is a basis for piercing the corporate veil and thus attributing the subsidiaries' torts to the parent, the parent is not liable for those torts." IDS Life Insurance Company v. SunAmerica Life Insurance Co., 136 F.3d 537, 540 (7th Cir. 1998)).

"[T]he corporate veil may be pierced where 'applying the corporate fiction would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong

equitable claim." R & L Transfer, Inc. v. Bickford, No. 00-0441-FT, 2000 WL 730361 (Wis. Ct. App. June 8, 2000) "The 'instrumentality' or 'alter ego' doctrine is applied to determine when equity requires piercing the corporate veil." Lunke v. Village of Bangor, No. 99-1883, 2000 WL 959498 (Wis. Ct. App. July 6, 2000). The Supreme Court of Wisconsin has set forth "three elements to be proved in invoking the rule that where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere instrumentality or adjunct of the other, the fiction of the corporate entity of the instrumentality may be disregarded." Poulos v. Naas Foods, Inc., 132 F.R.D. 513, 518 (E.D. Wis. 1990) (applying Wisconsin law). However, the elements "are to be examined in a flexible manner to determine whether, in combination with an element of injustice, they show a corporation that has 'no separate mind, will, or existence of its own.'" R & L Transfer, Inc., 2000 WL 730361 (internal citations omitted).

> (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; and
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> (2) 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 dishonest and unjust act in contravention of plaintiff's legal rights; and
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> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Consumer's Co-op v. Olsen, 142 Wis. 2d 465, 484-85, 419 N.W.2d 211, 217-18 (1988) ("[F]ailure to follow corporate formalities is a factor relevant to the first element, whereas inadequate capitalization is primarily significant with respect to [the third factor]"). If none of these three elements is present, the plaintiff is prevented from piercing the corporate veil. Id. at 485, 419 N.W. at 218.

Plaintiff has failed to provide a sufficient basis for rebutting the presumption against holding a corporation liable for the torts of its affiliate, such as a fraudulent purpose or complete domination by defendant. That defendant included Travelers Bank's revenue and income in its total operation revenue and operation income in a recent report is not grounds for piercing the corporate veil; plaintiff needs to establish more than defendant's ownership of Travelers Bank. See, e.g., Aubert v. American General Finance, 137 F.3d 976, 979 (7th Cir. 1998) ("[The plaintiff] has presented no evidence, such as inadequate capitalization or a failure to observe the legal requirement of separate corporate existences, to justify the unusual remedy of piercing the corporate veil."); Esmark, Inc. v. N.L.R.B., 887 F.2d 739, 756 (7th Cir. 1989) ("a parent corporation may be held liable for the wrongdoing of a subsidiary where the parent directly participated in the subsidiary's unlawful conduct").

On summary judgment, plaintiff has an obligation to show the existence of facts sufficient to raise a question for the jury on all of the essential elements of his claims. See

Celotex, 477 U.S. at 322. Summary judgment is appropriate if the court concludes that "if the record at trial were identical to the record compiled in the summary judgment proceedings, the movant would be entitled to a directed verdict because no reasonable jury would bring in a verdict for the opposing party." Russell v. Acme-Evans Co., 51 F.3d 64, 69 (7th Cir. 1995). On the basis of this record, a reasonable trier of fact could not conclude that there is a reason to pierce the corporate veil, thereby holding defendant liable for the acts of Travelers Bank. See Posyniak v. School Sisters of St. Francis of St. Joseph's Convent, 180 Wis. 2d 619, 637, 511 N.W. 300, 308 (Ct. App. 1993) ("[The plaintiff] has offered no reason why we should depart from this general rule, and we can find no reason for doing so.").

ORDER

IT IS ORDERED that defendant Citigroup, Inc.'s motion for summary judgment is GRANTED. The clerk of court is ordered to enter judgment for defendant and close this case.

Entered this 26th day of July, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge