

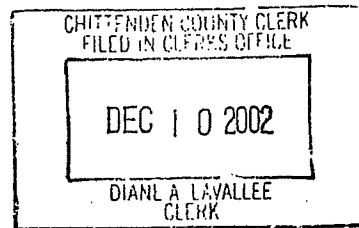
STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. 1269-01 CnC

SHELDRAKE

v.

SKYLINE CORPORATION



ENTRY

Plaintiffs bring suit against Skyline Corporation and individual defendants William Murschel and Ronald Kloska alleging that they have suffered harm as a result of purchasing a Skyline Manufactured Home. Individual defendants Murschel and Kloska move to dismiss the claims against them.

Murschel and Kloska argue that plaintiffs' consumer fraud allegations against them should be dismissed because plaintiffs cannot establish derivative liability. Vermont joins the majority of jurisdictions in imposing derivative liability on corporate officers for corporate misdeeds only if such individual directly participated in the wrongdoing—either through direct participation, direct aid to the actor, or an agency/principle relationship. State Agency of Natural Resources v. Upper Valley Regional Landfill Corp., 167 Vt. 228, 243 (1977), State v. Stedman, 149 Vt. 594

(1988); see also, 18B Am. Jur. 2d § 1877, at 723-24 (discussing general rule of no imposition of personal liability for corporate misdeeds absent direct participation). In other words, allegations that a corporation engaged in wrongdoing, even blatant wrongdoing, does not in itself state a claim for personal liability of a corporate officer. Stedman, 149 Vt. at 598-99; see, e.g., Lawlor v District of Columbia, 758 A.2d 964 (D.C. 2000) (stating that an officer's liability cannot be based on his position within the company; it is instead based on the officer's behavior and whether the behavior indicates tortious conduct done within the officer's area of responsibility and with the officer's consent); Alliegro v. Pan American Bank of Miami, 136 So.2d 656 (Fl. App. 1962) (dismissing personal claim against corporate bank president because bank's approval of a transaction it should have known to be illegal did not itself bring personal liability on its president).

Hence, to state a claim for the imposition of derivative liability, the complaint must contain allegations that Murschel and Kloska personally participated in deceptive activity. For example, that they recruited distributors to sell faulty homes and trained them to employ deceptive sales techniques or were directly involved in the financing aspects of the homes. See, e.g., Stedman, 149 Vt. at 598 (providing examples of direct aid), State v. Custom Pools, 150 Vt. 533, 536-37 (1988) (financing parties in unique position to police transactions, thus bear burden of seller misconduct under consumer fraud statutes). Plaintiffs here allege no such direct involvement. Instead, the complaint states:

“Due to their positions of power and control within Skyline, the individual Defendants had the power to prevent the harm alleged in the *Complaint*. By their intentional and/or reckless behavior, the Individual Skyline Defendants participated in the scheme and course of conduct alleged in the complaint, and, by virtue

of their positions within Skyline, the Individual Defendants are liable to Plaintiffs and the Class for the actions of Skyline.”

Pl’s Compl. ¶ 18. This is exactly the premising of personal liability merely on an officer’s position with a corporation that the majority of jurisdictions have rejected. E.g., Garfinkel v. Morristown Ob. and Gyn., 755 A.2d 626, 635 (N.J. App. Div. 2000) (finding that a director or officer does not incur liability for its torts merely by reason of his official character.) Imposing derivative liability on these allegations would be akin to holding Yugo’s chief engineer liable for producing a lemon. The essence of the allegation here is actually inactivity–failure to prevent. As shown by Plaintiffs’ complaint, it is beyond a doubt, there exist no facts or circumstances which would support imposition of derivative liability on either individual defendant. Ass’n of Haystack Property Owners, Inc. v. Sprague, 145 Vt. 443, 446 (1985).

We next turn to the individual defendants’ motion to dismiss plaintiffs’ breach of express and implied warranty claims. It is well settled that an officer is not personally liable for a corporation’s contract unless the contract is worded or signed in such a way to indicate personal liability. Costa v. Katsanos, 163 Vt. 586, 589 (1995) (citing Fletcher Cyclopedic of the Law of Private Corporations § 1118, at 219-220), 18B Am. Jur. § 1829, at 681 (“It is well settled that officers of a corporation are not personally liable on its contracts if they do not purport to bind themselves individually.”).

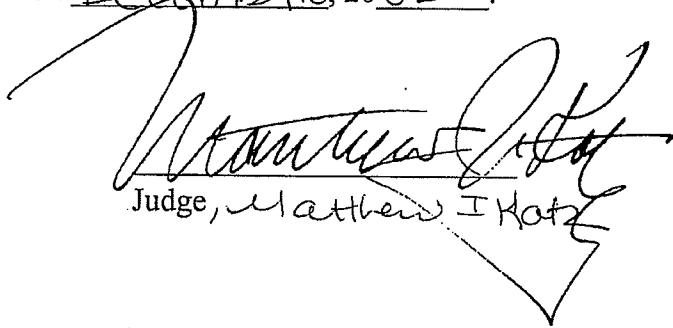
Plaintiffs have made no allegations that either Murschel or Kloska contracted with plaintiffs in their individual capacities. Indeed, there is no allegation that any plaintiffs had any personal contact with either man. As such, we can see no way that plaintiffs could show that Murschel or Kloska intended to personally bind themselves with Skyline’s contracts. Hence, it is

beyond a doubt that no facts or circumstances exist which would entitle plaintiffs to relief.

Finally, we consider defendants' contention that plaintiffs fail to state a claim against them for negligence. In their negligence claims, plaintiffs allege no personal or other property injury. Instead, they allege that they deserve compensation for Skyline's dealers misleading consumers, "not properly moving and setting up [the homes], and providing poor and inadequate service to Skyline Customers" and Skyline's negligent design and production of the homes. Pl's Compl. ¶¶ 91 and 94-95. These claims relate solely to plaintiffs "disappointed commercial expectations." Paquette v. Deere & Co., 168 Vt. 258, 263 (1998). Under Vermont's economic loss rule, such claims are properly addressed under contract law, not tort law. Id; Springfield Hydroelectric Co. v. Copp, 172 Vt. 311 (2001) Thus, plaintiffs negligence claims must be dismissed.

Motion to dismiss granted.

Dated at Burlington, Vermont December 10, 2002.



Judge, Matthew I. Katz