

RECEIVED
2-24-11

State of New York
Court of Appeals

Remittitur

HON. JONATHAN LIPPMAN, *Chief Judge, presiding.*

No. 22
East Hampton Union Free School
District,
Appellant,
v.
Sandpebble Builders, Inc.,
Defendant,
Victor Canseco,
Respondent.

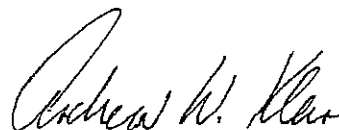
COPY

Appellant in the above entitled appeal appeared by Morgan Lewis & Bockius, LLP; respondent appeared by Esseks Hefter & Angel, LLP.

The Court, after due deliberation, orders and adjudges that the order is affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

The Court further orders that this record of the proceedings in this Court be remitted to Supreme Court, Suffolk County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.



Andrew W. Klein, Clerk of the Court

State of New York

Court of Appeals

No. 22
East Hampton Union Free School
District,
Appellant,
v.
Sandpebble Builders, Inc.,
Defendant,
Victor Canseco,
Respondent.

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

Bernard J. Garbutt, III, for appellant.
Theodore D. Sklar, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed, with costs.

In this litigation brought by a school district against a corporation it had hired to perform construction management

services, the school district sought to pierce the corporate veil to hold Victor Canseco, the president and sole shareholder of the corporation, personally liable for alleged breaches of certain corporate obligations. In order for a plaintiff to state a viable claim against a shareholder of a corporation in his or her individual capacity for actions purportedly taken on behalf of the corporation, plaintiff must allege facts that, if proved, indicate that the shareholder exercised complete domination and control over the corporation and "abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice" (Morris v New York State Dept. of Taxation and Fin., 82 NY2d 135, 141-142 [1993]). Since, by definition, a corporation acts through its officers and directors, to hold a shareholder/officer such as Canseco personally liable, a plaintiff must do more than merely allege that the individual engaged in improper acts or acted in "bad faith" while representing the corporation. In this case, plaintiff failed to allege any facts indicating that Canseco engaged in acts amounting to an abuse or perversion of the corporate form, much less that the school district was harmed as a result of such actions. Under the circumstances, the Appellate Division did not err in failing to direct that plaintiff be permitted to file an amended complaint as the record affords no basis to conclude that the deficiency could have been cured by repleading.

* * * * *

Order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 22, 2011



*State of New York
Court of Appeals*

*Andrew W. Klein
Clerk of the Court*

*Clerk's Office
Albany, New York 12207-1095*

Decided February 22, 2011

No. 22
East Hampton Union Free School
District,
Appellant,
v.
Sandpebble Builders, Inc.,
Defendant,
Victor Canseco,
Respondent.

Order affirmed, with costs, in a
memorandum.
Chief Judge Lippman and Judges Ciparick,
Graffeo, Read, Smith, Pigott and Jones
concur.