

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

THE SECRETARY UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

v.

CAMEEL HALIM, ET AL.,

RESPONDENTS.

HUDALJ 11-F-075-LBP-1

February 15, 2012

**ORDER GRANTING RESPONDENT CAMEEL HALIM'S MOTION TO
DISMISS FOR WANT OF SUBJECT MATTER JURISDICTION**

Currently before the Court are Respondent Cameel Halim's *Motion to Dismiss Respondent Cameel Halim For Want of Subject Matter Jurisdiction* ("Motion") dated January 10, 2012, the United States Department of Housing and Urban Development's ("HUD") *Response to Respondent Cameel Halim's Motion to Dismiss for Want of Subject Matter Jurisdiction* ("Response") dated, January 20, 2012, and Respondent-Halim's *Reply in Support of Motion to Dismiss Respondent Cameel Halim For Want of Subject Matter Jurisdiction* ("Reply") dated, January 31, 2012.

Halim moves to dismiss claiming that this Court lacks subject matter jurisdiction over HUD's Lead Disclosure Rule (24 C.F.R. § 35.92(b)) ("LDR") claim against Halim because HUD has failed to allege that Halim is an "owner," "lessor," or an "agent" as required by that regulation. HUD argues that the Court should postpone the adjudication of this issue until trial because the requisite jurisdictional facts are inextricably "intertwined with the factual merits of the case." Alternatively, HUD argues that this Court has subject matter jurisdiction over 23 co-respondents and over Halim because he is the *alter ego* of those co-respondents.¹ In the *Reply*, Halim contends that HUD's argument to postpone adjudication of Halim's motion is "perfunctory" and so undeveloped that it should be waived, and that the *alter ego* allegation should be disregarded because it was not pled in the Complaint.

¹ HUD argues that a federal district court's findings in CenterPoint Energy Service, Inc. v. WR Property Management, LLC, No. 10-cv-2121, 2011 WL 5507378 (N.D. Ill. Nov. 10, 2011), further support its claim that the "[c]ourt can draw a reasonable inference in favor of HUD that the 23 LLCs [co-respondents] serve as shell companies [for Halim] with little or no assets." and that "it can be concluded that assets are commingled among the Respondents and therefore must be considered as a whole."

DISCUSSION

Pursuant to 24 C.F.R. § 180.430 and § 26.13, this Court is authorized to “rule on motions and other procedural matters[.]” Section 26.13 requires that “the complaint . . . state the legal and factual grounds upon which the administrative action is based.” Because this section does not provide specific instructions on how to plead jurisdiction, the Court will look to the Federal Rules of Civil Procedure for guidance.

The Supreme Court has indicated that the purpose of notice pleading is to promote fairness in the pleading process by requiring the moving party to provide its adversary with enough information so that the adversary can determine the evidence that it wants to uncover during pretrial discovery and then adequately prepare for trial. Conley v. Gibson, 355 U.S. 41, 47, 78 (1957); accord Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) (only as to the policy issue of fair notice). More specifically, the Complaint should contain “either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory,” Allard v. Weitzman, 991 F.2d 1236, 1240 (6th Cir. 1993). The Court’s concerns are embodied in Federal Rule of Civil Procedure 8.

Rule 8(a)(1) states that a complaint must contain, “a short and plain statement of the grounds for the court's jurisdiction.” This “short and plain statement,” “must allege *all* facts necessary to give the court jurisdiction of the subject matter.” Stewart v. U.S., 199 F.2d 517, 520 (7th Cir. 1952) (emphasis added); e.g., Carroll v. Gen. Med. Co., 53 F.R.D. 349, 351 (D. Neb. 1971) (same); e.g., Fishman v. Clemons, No. CIV 07-587, 2007 WL 1713313, at *1 (D. Ariz. Jun. 12, 2007) (same). This comprehensive requirement applies to pleading jurisdiction in complex cases where jurisdiction is founded upon the consolidation of multiple entities or through “piercing the corporate veil.”

When jurisdiction relies on an *alter ego* theory, a party must allege an attempt to pierce the corporate veil along with allegations supporting an underlying cause of action, such as tort or breach of contract in the complaint. Capital Parks, Inc. v. Southeastern Adver. & Sales Sys., Inc., 30 F.3d 627 (5th Cir. 1994); e.g., Radaszewski by Radaszewski v. Telecom Corp., 981 F.2d 305 (8th Cir. 1992); e.g., Phoenix Energy Sales Co. v. Goodman, 960 F. Supp. 1253, 1256 (E.D. Mich. 1997) (holding that the complaint failed to allege the improper use of the corporate form, stating, “a review of the entire complaint reveals not even so much as one fact hinting at such impropriety [factual basis for alter ego theory] on the part of these two defendants”). Additionally, all necessary jurisdictional facts must be “pleaded in the complaint, [and] subsequent oral or written reference to the claimed sources of jurisdiction do not suffice,” Matherly v. Lamb, 414 F. Supp. 364, 366 n. 1. (E. D. Pa. 1976); e.g., Arena v. Graybar Elec. Co., Inc., No. 2:05-CV-919, 2008 WL 4186868 (W.D. La. Sept. 5, 2008) (citing Matherly); e.g., McGee v. Cont'l Tire N. Am., Inc., No. 06-6234, 2007 WL 2462624, at *1 (D.N.J. Aug. 27, 2007) (same).

An analysis of the Complaint reveals that HUD has failed to allege that Halim is an “owner,” “lessor,” or “agent” within the meaning of the LDR. The LDR imposes disclosure requirements on “owners,” “lessors,” and “agents” see, e.g. 24 C.F.R.

§35.92(b) and (c), and liability is limited to those individuals who are “owners,” “lessors,” or “agents.”

In the Complaint, HUD defines all of the LLC co-respondents, (including, for example, BCHDAVIS, LLC, BCHGRANVILLE, LLC, and BCHLASALLE) as “Respondent Owner[s],” and alleges that “Respondent Owner” is an “owner” or “lessor,” as defined in 24 C.F.R. § 35.86. Notably, Halim, is not defined as a “Respondent Owner,” but is instead defined as an “agent” of each “Respondent Owner.” Nowhere does HUD allege that Halim is an “owner,” “lessor,” or “agent,” and accordingly HUD has not established that this Court has subject matter jurisdiction over Halim as an “owner,” “lessor,” or “agent” under the LDR.

Additionally, a review of the complaint indicates that HUD has failed to allege any sufficiently factual allegations to support an *alter ego* theory *vis-à-vis* Halim. HUD first alleges the *alter ego* theory in the *Response* stating,

[d]ue to the interrelated structures of the companies involved, interrelated assets, lack of business formalities, and Mr. Cameel Halim’s role with each company, the Department contends that, in addition to each of the LLCs named in the complaint, Mr. Cameel Halim is an “owner”, “lessor”, and/or “agent” and therefore should not be dismissed from this case.

HUD’s attempt to allege an *alter ego* theory subsequent to the Complaint contravenes the Supreme Court’s dictates on notice pleading under *Conley*.² Without any allegations involving improper use of the corporate form *in the Complaint*, it cannot be said that Halim was on notice that HUD was attempting to utilize the doctrine of “piercing the corporate veil” as a basis of liability against him. Therefore, this Court finds that HUD’s Complaint sets forth no claims against Halim on the basis of any improper use of the corporate form which would permit HUD to “pierce the corporate veil.”³

For the foregoing reasons, Halim’s *Motion to Dismiss for Want of Subject Matter Jurisdiction* is **GRANTED**. The Complaint is **DISMISSED** *without prejudice* as to claims against Halim.

/s/

Alexander Fernández
Administrative Law Judge

² See e.g. *Matherly v. Lamb*, 414 F. Supp. 364, 366 n. 1. (E.D. Pa. 1976); e.g. *Arena v. Graybar Elec. Co., Inc.*, No. 2:05-CV-919, 2008 WL 4186868 (W.D. La. Sept. 5, 2008) (citing *Matherly*); e.g. *McGee v. Cont'l Tire N. Am., Inc.*, No. 06-6234, 2007 WL 2462624, at *1 (D.N.J. Aug. 27, 2007) (same).

³ HUD’s *Centerpoint* argument is misplaced because a party cannot cure a deficient complaint by making subsequent written allegations, regardless of their source. See *Matherly v. Lamb*.