IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Plaintiff v. Ryco, Inc.; Ryco Fire Protection Services, LP; Ryco Fire Protection Services, LLC; Ryco Plumbing II, LLC; Ryco Plumbing II, LP; Ryco Plumbing, LLC; Ryco Plumbing, LP; Thomas Sherry Jr.; Susan E. Sherry and Richard Bosco, Defendants	:	No. 494 M.D. 2012 Argued: January 28, 2013

BEFORE: HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE COLINS **FILED: February 21, 2013**

This case is a civil enforcement action brought by the Commonwealth of Pennsylvania for alleged violations of the Pennsylvania Steel Products Act (SPPA).[1] Before the Court are Defendants' Amended Preliminary Objections to the Commonwealth's First Amended Complaint. For the reasons set forth below, the Preliminary Objections are sustained in part and overruled in part.

Defendants are Ryco, Inc. (Ryco); Ryco Fire Protection Services, LP, and Ryco Fire Protection Services, LLC (collectively, Ryco Fire Protection Entities); Ryco Plumbing, LLC, Ryco Plumbing, LP, Ryco Plumbing II, LLC,

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[1] Act No. 3 of March 3, 1978, P.L. 6, 73 P.S. §§ 1881-1887.

Ryco Plumbing II, LP (collectively, Ryco Plumbing Entities); Thomas Sherry Jr., Susan E. Sherry, and Richard Bosco (collectively, Individual Defendants).

On October 1, 2012, the Commonwealth filed its First Amended Complaint against Defendants. The Commonwealth alleges that Defendants engage in the business of designing and selling fire protection equipment, such as sprinkler systems, and that their clients include various public entities, such as public schools and state universities. (First Amended Complaint (FAC) ¶¶23-24.) The Commonwealth seeks to enforce provisions of SPPA, the Pennsylvania Corrupt Organizations Act (PCOA)[2], and the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL)[3] against Defendants for their alleged use of foreign-made steel products in two public works projects in violation of their statutory and contractual obligations to use only United States-made steel. The public works projects at issue are the construction of new student housing facilities at Indiana University of Pennsylvania (IUP), dubbed the Residential Revival Project (IUP Project), and renovations to the Saltzburg Middle-High School in the Blairsville-Saltzburg School District (Blairsville Project).

In the case of the IUP Project, the Commonwealth alleges that IUP entered into a contract with a non-profit corporation, the Foundation for the Indiana University of Pennsylvania (Foundation), to develop new student housing facilities. IUP's contract with the Foundation required the Foundation to require its contractors to include provisions in their subcontracts that mandated compliance with the SPPA. It is alleged that the Foundation and its contractors did so and that

[2] 18 Pa. C.S. § 911.

[3] Act of Nov. 24, 1976, P.L. 1166, No. 260, *as amended*, 73 P.S. §§ 201-1 to 201-9.3.

Defendants, as subcontractors, were required to comply with the SPPA, failed to do so, and submitted false certifications attesting to their compliance. (FAC ¶¶92-99.) In the case of the Blairsville Project, the contract at issue was directly between the school district and Defendants and that the contract required compliance with the SPPA. The Commonwealth alleges that Defendants failed to comply and submitted false certifications attesting to their compliance. (FAC ¶¶100-116.)

There are four Counts. Count I alleges violation of the SPPA on both projects against Ryco and the Ryco Fire Protection Entities. (FAC ¶119.) No direct violation of the SPPA is alleged against the other Defendants. Count II alleges violation of the PCOA against Richard Bosco individually and asserts that all Ryco corporate entities collectively make a criminal "Enterprise" under the PCOA that engaged in illegal racketeering activities by (1) committing theft by deception and (2) making unsworn falsifications to authorities when they submitted false certifications that the steel used on the projects was made in the United States. (FAC ¶¶131-132.) Count III alleges violation of the UTPCPL against Ryco and the Ryco Fire Protection Entities. (FAC ¶¶151-153.) And Count IV seeks to pierce the corporate veil of the alleged Ryco criminal Enterprise to attach liability to Individual Defendants Richard Bosco, Thomas Sherry, and Susan Sherry, and to the Ryco Plumbing Entities. (FAC ¶¶157-159.) The veil piercing-allegations are that the corporate entities are closely-held, that there is public confusion regarding which entity is providing which service, and that the entities were used interchangeably to violate the laws of the Commonwealth. (FAC ¶¶162-163.) Other than an allegation that Thomas Sherry and Susan Sherry are corporate

officers, there is no allegation against them, and there is no allegation of wrongdoing against them.

The Commonwealth seeks the following relief: (1) debarment against all Defendants from submitting bids and supplying materials to any public agency within the Commonwealth for five years; (2) recovery of all payments made to Ryco and the Ryco Fire Protection Entities; (3) injunction against future payments to Ryco and the Ryco Fire Protection Entities until compliance with the SPPA is established; (4) fees and court costs; (5) civil penalties under the UTPCLP of $1,000 per each violation; (6) an order against Richard Bosco individually, requiring him to divest of any interest in the companies making up the alleged Ryco criminal Enterprise and debarring him personally from engaging in public contracting. (FAC ¶164.)

On November 20, 2012, the Defendants filed the instant Amended Preliminary Objections, raising nine objections that we address below in a logical order.[4]

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[4] Defendants filed preliminary objections against the original complaint asserting, *inter alia*, that the Commonwealth impermissibly lumped together all 10 defendants and made generic allegations and sought relief against them collectively. The Commonwealth then filed the First Amended Complaint, which more specifically identifies which of the Defendants is alleged to have engaged in misconduct. Notwithstanding the amended allegations, it appears that Defendants neglected to correspondingly amend several of their preliminary objections. As a result, for several preliminary objections, the cited paragraphs of the First Amended Complaint bear no relevance to the preliminary objection raised and it is generally difficult to determine what relief Defendants seek, other than the wholesale dismissal of the claims against them.

I. Preliminary Objections I and II[5]

Preliminary Objections I and II against Count I assert a failure to state a claim and lack of capacity to sue, respectively, under the SPPA, claiming that the Foundation, the entity that developed the IUP Project, is not a "public agency" as that term is defined in the statute.[6] These objections are overruled.

In 1978, the General Assembly enacted the SPPA "to promote the general welfare and stimulate the economy of the Commonwealth by requiring that all public bodies . . . include in all contracts for construction . . . a provision that if any steel products are to be used in the performance of the contract only steel products produced in the United States shall be used, and imposing liability for violation[s]." Preamble of the Act, 73 P.S. § 1881, note 1; *see also* Section 3 of the Act, 73 P.S. § 1883 (setting forth public policy of the Commonwealth that "all public officers and agencies should, at all times, aid and promote the development of the steel industry of the United States in order to stimulate and improve the economic well-being of the Commonwealth and its people").

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[5] The rule is well settled that in ruling upon preliminary objections, courts must accept as true all well-pleaded allegations of material facts as well as all of the inferences reasonably deducible from the facts. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006), *affirmed*, 601 Pa. 429, 974 A.2d 491 (2009). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Id.* The court, however, is not required to accept as true conclusions of law, unwarranted inferences from facts, expressions of opinion, or argumentative allegations. *Christ the King Manor v. Dep't of Pub. Welfare*, 911 A.2d 624, 633 (Pa. Cmwlth. 2006), *affirmed*, 597 Pa. 217, 951 A.2d 255 (2008). The court is permitted to reach its own conclusion regarding the interpretation of laws, which is a legal issue. *Holt's Cigar Company, Inc. v. City of Philadelphia*, 608 Pa. 146, 153, 10 A.3d 902, 906 (2011); *Nutter v. Dougherty*, 595 Pa. 340, 353 n.20, 938 A.2d 401, 412 n.20 (2007).

[6] There is no dispute at this stage of the litigation that the Commonwealth sufficiently alleges the involvement of a public agency in the Blairsville Project.

Section 4 sets forth the requirements of the Act:

> Every public agency shall require that every contract document for the construction, reconstruction, alteration, repair, improvement or maintenance of public works contain a provision that, if any steel products are to be used or supplied in the performance of the contract, only steel products as herein defined shall be used or supplied in the performance of the contract or any subcontracts thereunder.

73 P.S. § 1884(a) (emphasis added).

Section 5 sets forth a remedy, providing that no payment shall be made under any contract containing the provision required in Section 4 unless the contractor provides: (1) for unidentified steel products, "documentation . . . that the steel was melted and manufactured in the United States;" and (2) for steel products identifiable on their face, "certification" that satisfies the public agency that the contractor has fully complied with the provisions of Section 4. 73 P.S. § 1885. Section 5 also empowers the Attorney General of Pennsylvania or the public agency itself to recover directly from any person or corporation any payments made that should not have been made under this section. *Id.* For willful violations of the Act, Section 5 provides for a five-year period of prohibition from submitting any bids to any public agency for any contract and from performing any work or supplying any material to a public agency. 73 P.S. § 1885(b).

Adding together the above elements, to state a cause of action for violation of the Act, the Commonwealth must plead that (1) a public agency (2) has required that a contract for the construction, reconstruction, alteration, repair, improvement, or maintenance (3) of a public work (4) contains a provision requiring compliance with the Act; (5) the contract actually requires a defendant to

comply with the Act; and (6) the defendant failed to comply with the Act, *i.e.*, failed to use or supply United States steel products, in the performance of the contract.[7,8] 73 P.S. § 1884(a).

Section 6 of the SPPA defines "public agency" as:

> (1) the Commonwealth and its departments, boards, commissions and agencies;
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> (2) counties, cities, boroughs, townships, school districts, and any other governmental unit or district;
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> (3) the State Public School Building Authority, the State Highway and Bridge Authority, and any other authority now in existence or hereafter created or organized by the Commonwealth;
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> (4) all municipal or school or other authorities now in existence or hereafter created or organized by any county, city, borough, township or school district or combination thereof; and
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> (5) any and all other public bodies, authorities, officers, agencies or instrumentalities, whether exercising a governmental or proprietary function.

73 P.S. § 1886.

"Public works" is defined, in relevant part, as: "Any structure, building . . . or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use. The term

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[7] At this stage of the litigation, there is no dispute that the products allegedly involved are "steel products" as defined at Section 6 of the Act. 73 P.S. § 1886.

[8] The only statutory exception to the SPPA's requirement of steel made in the United States is where the "head of the public agency, in writing, determines that steel products as herein defined are not produced in the United States in sufficient quantities to meet the requirements of the contract." 73 P.S. § 1884(b). There is no contention that this exception applies here.

includes, but is not limited to, any . . . elevated structures, buildings, . . . shelters and repairs to any of the foregoing." *Id.*

Defendants argue that Count I fails to state a claim because the Foundation is not a "public agency" as a matter of law, and the Commonwealth's allegations are entirely reliant on the Foundation's status as a public agency. Defendants assert that the Foundation is an independent, non-profit, charitable corporation, which cannot qualify as a "public agency". They also argue that the IUP Project was not funded with public money, the projects were not bid as public contracts, and the Commonwealth has no obligation whatsoever under the contracts.

Defendants misconstrue the Act. The Act does not require the owner of the project to be a public agency. Rather, the language of the Act is clear and unambiguous that a public agency is required to mandate compliance with the Act in any contract for the construction of a public work. 73 P.S. § 1884(a). That is precisely what is alleged to have happened here. The fact that no Defendant contracted directly with a public agency on the IUP Project is immaterial to the SPPA claim.

The Commonwealth alleges that Defendants were required to comply with the SPPA through a series of contracts, each requiring the respective parties to comply with the SPPA: IUP's Ground Lease Agreements with the Foundation; the Foundation's Development Agreements with Allen & O'Hara Development Company, LLC, to oversee all aspects of the design and construction of the Project; Allen & O'Hara's Prime Construction Contracts with Massaro Corporation as the general contractor; and Massaro's subcontracts with Ryco Fire Protection Services (with no designation as to "LLC" or "LP"), which were

subcontractors responsible for constructing and supplying fire protection services to the IUP Project.

IUP is an institution under the Pennsylvania State System of Higher Education (PSSHE). Section 20-2002-A of the Public School Code of 1949, Act of March 10, 1949, P.L. 563, added by Act 188 of 1982, *as amended*, 24 P.S. § 20-2002-A(a)(7). The enabling statute for the PSSHE provides that it is "a body corporate and politic constituting a public corporation and government instrumentality" created pursuant to the regulatory powers conferred upon the State Board of Education. 24 P.S. § 20-2002-A(a). As a "government instrumentality" created under the Board of Education there can be no dispute that PSSHE and its 14 state universities, including IUP, are public agencies under sub-sections (1) and (5) of Section 6 of the SPPA, which defines public agencies as expressly including "boards" and "instrumentalities." Accordingly, the "public agency" element of the SPPA claim is met here.[9]

We also agree with the Commonwealth that it has alleged sufficient facts to show that the Foundation itself is a public agency under the SPPA. The Commonwealth pleads that the Foundation was incorporated for the purpose of promoting educational purposes in connection with or at the request of IUP and that the articles of incorporation provide that an express purpose of the Foundation is "acquiring, constructing, or otherwise providing buildings, grounds, or other suitable facilities, improvements or equipment for [IUP]." (FAC ¶¶38-39.)

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[9] *See also Dynamic Student Services v. State System of Higher Educ.*, 548 Pa. 347, 697 A.2d 239 (1997) (holding that public universities are state agencies for purposes of the Right-To-Know Act); *Williams v. West Chester State College*, 370 A.2d 774 (Pa. Cmwlth. 1977) (same, regarding sovereign immunity).

Relevant to the IUP Project, IUP determined that its student housing facilities were in dire need of replacement and created a master housing plan, which was ultimately approved by the PSSHE Board of Governors as the Residential Revival Project with a total estimated price of $270 million. (FAC ¶¶44-50.) Next, because only a small portion of PSSHE appropriations are available for capital projects, IUP engaged the Foundation in a public-private partnership authorized by the PSSHE and entered into the Ground Lease Agreements to provide for the financing and construction of the Project. (FAC ¶¶51-56.) The Commonwealth alleges that the Foundation acted as an instrumentality of the University for the purpose of, *inter alia*, raising public and private funds and entering into the necessary contracts to finance and complete the Project. Thus, the Commonwealth has plead sufficient facts to show that the Foundation is a "public agency" pursuant to Section 6 of the SPPA, 73 P.S. § 1886(5).

There is no case law that discusses whether a private, non-profit corporation created by a public agency for the purpose of constructing or operating a public work project is also a public agency under the SPPA. However, there is analogous case law under the Pennsylvania Prevailing Wage Act,[10] where we have held that a private, non-profit corporation created by a county for the purpose of building and operating a nursing home was a "public body" under that Act. *Lycoming County Nursing Home Association, Inc. v. Prevailing Wage Appeal Board*, 627 A.2d 238, 241 (Pa. Cmwlth. 1993).

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[10] Act of August 15, 1961, P.L. 987, *as amended*, 43 P.S. §§ 161-1 to 165-17. The purpose of the Prevailing Wage Act is to protect workers on public projects from sub-standard wages by insuring that they receive the prevailing minimum wage. *Lycoming County Nursing Home Association, Inc. v. Prevailing Wage Appeal Board*, 627 A.2d 238, 242 (Pa. Cmwlth. 1993).

We have held that the Prevailing Wage Act, like the SPPA, applies when a "public body" contracts or proposes to contract for any project of "public work." *Id.* at 242. The Prevailing Wage Act, like the SPPA, does not require that a "public body" must be directly involved in the project. *Id.* The definition of "public body" in the Prevailing Wage Act is similar (although more narrow) than the definition of "public agency" in the SPPA.[11] In *Lycoming County Nursing Home Association*, we reasoned that the private, non-profit corporation in question was a public body covered by the Prevailing Wage Act, because the corporation was charged with developing a public project proposed by a public body and, in essence, stood in the shoes of and was an instrumentality of the public body that created it, at least as it pertained to the public works project at issue. *Id.* at 243. We find that reasoning persuasive here, where, as explained, the IUP Foundation is the instrumentality of a public university vis-à-vis the IUP Project. Accordingly, we find that the reasoning in *Lycoming County Nursing Home Association* is applicable here and supports our finding that the Foundation is a public agency under the SPPA.[12]

Finally, we find that to interpret the definition of "public agency" to exclude the Foundation under the circumstances alleged here, as Defendants urge

[11] A "public body" is defined at Section 2 of the Prevailing Wage Act as "the Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth of Pennsylvania and any instrumentality or agency of the Commonwealth of Pennsylvania." 43 P.S. § 165-2(4).

[12] The Commonwealth also alleges that funds for the IUP Project came from, among other public sources, the Pennsylvania Higher Education Facilities Authority (PHEFA). (FAC ¶¶65-66.) PHEFA, as an Authority created under the Pennsylvania Higher Educational Facilities Authority Act of 1967, is a "public agency" under the SPPA, 73 P.S. § 1886(3). Act of December 6, 1967, P.L. 678, *as amended*, 24 P.S. §§ 5501-5517.

us to do, would frustrate the express remedial purposes of the SPPA. There is no question that IUP's Residence Revival Project is a "public work" for the benefit of the residents of the Commonwealth and that the project is being conducted through the Foundation at the behest of IUP. Under the circumstances, the Foundation is acting as the public agency itself. *See* Section 7, 73 P.S. § 1887 (providing that the General Assembly intended the SPPA to be "remedial legislation designed to promote the general welfare" and that every provision is intended to receive "liberal construction such as will effectuate that purpose" and no provision is intended to receive "strict or limited construction"); *L.B. Foster Co. v. SEPTA*, 705 A.2d 164, 170 (Pa. Cmwlth. 1998) (interpreting definition of "steel products" in an inclusive, rather than exclusive, manner in order to effectuate the intent of the General Assembly).

Thus, the first Preliminary Objection is overruled. Further, because we find that the SPPA is applicable to the IUP Project, we also find that the Commonwealth clearly has the capacity to enforce the SPPA, which empowers the Attorney General to bring an enforcement action. 73 P.S. § 1885. Accordingly, we overrule the second Preliminary Objection asserting the Commonwealth's lack of capacity to sue.

II. Preliminary Objections III and IX

Having determined that the Commonwealth's allegations fulfill the "public agency" requirement of the SPPA and that the Attorney General has the capacity to enforce the SPPA against Defendants, we turn to Preliminary Objections III and IX, which assert a failure to state a claim because the First Amended Complaint does not allege the existence of a contract between a public agency and any Defendant regarding either the IUP Project or the Blairsville

Project.[13] Defendants argue that with the exception of paragraphs 47, 50, and 51, the Commonwealth fails to identify any Defendant by name and fails to assert the existence of any relationship, contractual or otherwise, between a Defendant and the two projects.

These objections are sustained in part and overruled in part. The First Amended Complaint clearly alleges the existence of a contract and a contractual obligation to comply with the SPPA for certain Defendants. For the IUP Project, the Commonwealth alleges that Ryco and the Ryco Fire Protection Entities were required to comply with the SPPA through a series of contracts, each requiring the respective parties to comply with the SPPA, which ultimately bind those Defendants.

The Ground Lease Agreements between IUP and the Foundation applicable to the IUP Project provide that:

> Regardless of whether or not Lessee [Foundation] would otherwise be required to comply therewith, Lessee covenants and agrees to comply with the Steel Products Procurement Act, and to cause all contractors and subcontractors to do the same, and from time-to-time at the request of Lessor [IUP] to provide such confirmation thereof as Lessor may reasonably request.

(FAC, Ex. C, Ground Lease Agreement at Art. 10.2(d); Ex. D, Phase IV Ground Lease Agreement at Art. 10.2(d).)

In turn, the Development Agreements between the Foundation and Allen & O'Hara required compliance with the SPPA. (FAC ¶72.) The

[13] Preliminary Objections III and IX raise identical arguments. Preliminary Objection III seeks dismissal of all claims against all Defendants except for "Ryco Fire Protection," and Preliminary Objection IX seeks dismissal of all claims against all Defendants. See note 4, *supra*.

Development Agreements required Allen & O'Hara, as developer, to submit all plans to the Foundation and IUP for final approval. (FAC ¶71.) Likewise, Allen & O'Hara's Prime Construction Contracts with Massaro, the general contractor, required compliance with the SPPA. (FAC ¶74.) And it is alleged that Massaro's subcontracts with "Ryco Fire Protection Services" required compliance with the SPPA. (FAC ¶76.)

The IUP Project was completed in four phases, and the Commonwealth alleges that Ryco Fire Protection Services, both the LP and LLC, were engaged as subcontractors for Phases III and IV and that Defendant Richard Bosco executed contracts for both those phases. (FAC ¶¶76-79.) The Commonwealth alleges that the Ryco subcontracts for both phases required, *inter alia*, the subcontractor to work in full accordance with the Prime Contracts and incorporated by reference the provisions of the Prime Contract that mandated compliance with the SPPA. (FAC ¶83; FAC, Exs. K and L, Ryco Subcontracts, Section 2.1.) The Prime Contracts provided: "All steel procurement for this Project shall be purchased in conformance with the Pennsylvania Steel Products Act, 73 P.S. § 1881, *et seq.*" (FAC ¶¶92-93.) The subcontracts provide that the Prime Contracts were made available to the subcontractors.

Next, the Commonwealth alleges that Defendants knowingly submitted false Steel Product Certification forms for Phases III and IV, consisting of Forms ST-1, ST-2, and ST-3 from the Pennsylvania Department of General Services (DGS), which falsely certified compliance with the SPPA. The certifications were submitted by "Ryco Fire Protection Services LP" (FAC ¶¶86, 89, 91; FAC, Exs. M and N) and were executed by Richard Bosco, who inconsistently identified the Ryco entity for whom he was signing (FAC ¶¶77, 79,

87). The subcontracts themselves identify only "Ryco Fire Protection Services," and do not differentiate between the LP and LLC entity, and the Commonwealth alleges that Defendants used interchangeably the names of Ryco and the Ryco Fire Protection Entities. (FAC ¶123.)

For the Blairsville Project, the Commonwealth alleges that Ryco contracted directly with the School District and that the contract provided for compliance with the SPPA. (FAC ¶¶104-106; FAC Ex. O.) The Commonwealth also alleges that "Ryco Fire Protection Services LP" knowingly submitted false Steel Product Certification forms certifying compliance with the SPPA for the Blairsville Project (FAC ¶107; FAC Ex. Q), and that the corporate names "Ryco" and "Ryco Fire Protection Services," again without identifying LP or LLC, were used interchangeably during the Project by corporate representatives (FAC ¶¶107-109.)

In short, regarding the contracts for both projects, the Commonwealth alleges that is impossible to determine at this stage of the litigation which Ryco entity was bound by the contract and that the various Ryco corporate names were used interchangeably. Accordingly, we overrule Preliminary Objections III and IX, in part, because the Commonwealth has plead the existence of a contractual obligation to comply with the SPPA. Further, it would be premature to dismiss the First Amended Complaint against Defendants Ryco Inc., Ryco Fire Protection Services LP, and Ryco Fire Protection Services LLC given the allegations against them.

Regarding the other Defendants, Defendants appear to misapprehend the nature of the claims against them, other than Ryco and the Ryco Fire Protection Entities. Defendants are correct that the Commonwealth alleges that the contracts

at issue were between Massaro and Ryco and/or the Ryco Fire Protection Entities, and not the other Defendants. But there is no direct claim against the other Defendants for a violation of the SPPA. The claims against the other Defendants are premised not on allegations of strict contractual obligation or privity, but on allegations that those other Defendants are controlled by, and essentially are the same as, the entities that did sign and perform the contracts. The Commonwealth alleges that Defendants themselves have created confusion regarding which business entity contracted with and performed services for the public agencies.[14] The Commonwealth also alleges that Richard Bosco personally and with knowledge and intent submitted false certifications. Thus, dismissal of the corporate entities and Richard Bosco would be premature.

The same cannot be said for Thomas and Susan Sherry. The Commonwealth seeks to pierce the corporate veil purportedly to attach individual liability to, *inter alia*, Thomas and Susan Sherry. The only allegations in the First Amended Complaint that even mentions them alleges that Thomas Sherry is the President of Ryco and Susan Sherry is the Secretary and Treasurer of Ryco. (FAC ¶¶15-16, 159.) The Commonwealth does not allege that they approved of the alleged wrongful conduct of the corporations or that they were even aware of it. Also, the Commonwealth does not appear to seek any relief against Thomas and Susan Sherry individually. (*See* FAC ¶164.) An allegation that an individual is an officer of a corporation is insufficient under Pennsylvania law to pierce the

[14] The Commonwealth also appears to argue that it is not required to establish a legal duty to comply with the SPPA in order to prove a violation of it. (Commonwealth Brief at 11-12.) That argument is clearly incorrect. As this case progresses, the Commonwealth will need to prove that each Defendant had a duty to comply with the SPPA, either through a contract or the alleged veil piercing theory that the corporate entities and their officers are really one and the same.

corporate veil and trigger personal liability for the alleged wrongful acts of the corporation or for the alleged acts of the other corporate officers and directors.[15] Accordingly, we sustain Preliminary Objections III and IX only as to Defendants Thomas and Susan Sherry and dismiss Counts I and IV against them. The Preliminary Objections are overruled as to all other Defendants.

III. **Preliminary Objections VI and VII**

Preliminary Objections VI and VII assert, respectively, that Counts III and II, alleging violations of the UTPCPL and PCOA, fail to make any specific allegations of wrongdoing against the Ryco Plumbing Entities, Richard Bosco, Thomas Sherry, and Susan Sherry, requiring the dismissal of the counts against them.

In response to Preliminary Objection VI regarding Count III, the Commonwealth explains in its brief responding to the preliminary objections that the UTPCPL claim is plead only against Ryco and the Ryco Fire Protection Entities and that a remedy under the UTPCPL is sought only against them.

[15] Piercing the corporate veil is a "means of assessing liability for the acts of a corporation against an equity holder in the corporation." *Village at Camelback Property Owners Assn. Inc. v. Carr*, 538 A.2d 528, 532 (Pa. Super. 1988), *affirmed*, 524 Pa. 330, 572 A.2d 1 (1990). The party seeking to establish personal liability through piercing the corporate veil must show the person "in control of a corporation [used] that control, or [used] the corporate assets, to further his . . . own personal interests. . . . ." *Ashley v. Ashley*, 482 Pa. 228, 393 A.2d 637, 641 (1978). Pennsylvania law has a strong presumption against piercing the corporate veil. *Lumax Industries, Inc. v. Aultman*, 543 Pa. 38, 41, 669 A.2d 893, 895 (1995). Any inquiry involving corporate veil piercing must "start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception." *Wedner v. Unemployment Compensation Board of Review*, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972). One exception to the general rule is the alter ego theory, which requires proof (1) that the party exercised domination and control over corporation; and (2) that injustice will result if corporate fiction is maintained despite unity of interests between corporation and its principal. *Allegheny Energy Supply Co., LLC v. Wolf Run Min. Co.*, 53 A.3d 53, 58 n.7 (Pa. Super. 2012). None of the required allegations are present here in relation to Thomas Sherry and Susan Sherry.

(Commonwealth Brief at 17-18.) Accordingly, we sustain Preliminary Objection VI as to the remaining Defendants.

In response to Preliminary Objection VII regarding Count II, the Commonwealth explains in its brief responding to the preliminary objections that the PCOA claim is plead only against Richard Bosco and that a remedy under the PCOA is sought only against him. As Defendants correctly point out, Count III contains no allegation of wrongdoing against the Ryco Plumbing Entities or Thomas and Susan Sherry. Defendants are incorrect that there are no allegations of wrongdoing against Richard Bosco. The First Amended Complaint alleges that Richard Bosco is the "person" under the PCOA against whom relief is sought and that Richard Bosco personally and with knowledge and intent made false, sworn statements and directed the alleged Ryco criminal Enterprise to violate the law. (FAC ¶¶132-146.) The false certifications are attached as exhibits to the First Amended Complaint. Accordingly, we sustain Preliminary Objection VII as to all Defendants except Richard Bosco.

IV. Preliminary Objection V

Preliminary Objection V claims a misjoinder of a cause of action under Pennsylvania Rule of Civil Procedure 1028(a)(5), asserting that the First Amended Complaint impermissibly joins two separate, unrelated causes of action related to the IUP Project and the Blairsville Project in violation of Rule of Civil Procedure 2229(b). Defendants argue that the Commonwealth is required to file independent lawsuits related to each project. Defendants clarified during oral argument that their contention relates to the misjoinder of numerous unrelated Defendants.

Rule 2229(b) provides that "A plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief jointly, severally, separately, or in the alternative, in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action."

We find that the Commonwealth meets the requirements of Rule 2229(b) here and overrule this preliminary objection. The First Amended Complaint alleges a series of transactions or occurrences involving the same Defendants where many questions of law and fact are overlapping. In short, the Commonwealth alleges that Defendants committed the same misconduct twice, once related to the IUP Project and again related to the Blairsville Project.

Defendants do not cite any case law to convince us to reach the opposite result. They argue, without any citation, that causes of action involving two or more contracts must be brought separately. However, that two or more contracts may be at issue is not a basis to find impermissible joinder, especially given that the Rule expressly permits joinder of defendants where the claims against them have "any common questions of law or fact affecting the liabilities." Further, Pennsylvania Rule of Civil Procedure 1020(a) permits the Commonwealth to plead more than one cause of action against the same defendants.

V. Preliminary Objections IV and VIII

Finally, in Preliminary Objection IV, as an alternative to their preliminary objections asserting a failure to state a claim, Defendants argue that each count in the First Amended Complaint lacks specificity pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(3) and fails to differentiate between each individual Defendant, especially the Ryco Plumbing Entities and Thomas and

Susan Sherry. Preliminary Objection VIII raises the same argument regarding the Commonwealth's prayer for relief, which Defendants contend seeks relief against "Defendants" collectively.

Regarding the Commonwealth's prayer for relief, Defendants' argument appears to be a vestige of their preliminary objections against the original complaint. See note 4, *supra*. In the First Amended Complaint, as detailed at the outset of this memorandum opinion, the Commonwealth specifically identifies the relief it seeks against each Defendant. (FAC ¶164.) Accordingly, Preliminary Objection VIII is overruled.

Preliminary Objection IV is also overruled. This Preliminary Objection was raised in the alternative in the event this Court determined the allegations contained insufficient detail to resolve. Because we have addressed the substance of the allegations and Defendants' legal arguments regarding Counts II and III, indicating where the Commonwealth has stated a claim and where it has failed as a matter of law, Defendants' alternative argument that the First Amended Complaint lacks specificity is moot.

An appropriate order follows.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Plaintiff	:	
v.	:	No. 494 M.D. 2012
Ryco, Inc.; Ryco Fire Protection Services, LP; Ryco Fire Protection Services, LLC; Ryco Plumbing II, LLC; Ryco Plumbing II, LP; Ryco Plumbing, LLC; Ryco Plumbing, LP; Thomas Sherry Jr.; Susan E. Sherry and Richard Bosco, Defendants	:	

ORDER

AND NOW, this 21st day of February, 2013, upon consideration of the Defendants' Amended Preliminary Objections to the First Amended Complaint, the responses and replies thereto, oral argument held on January 28, 2013, and the entire record, it is hereby ordered:

(1) Preliminary Objections I, II, IV, V, and VIII are OVERRULED;

(2) Preliminary Objections III and IX are SUSTAINED in part for the reasons set forth in the attached memorandum opinion, and Counts I and IV are DISMISSED as to Thomas Sherry Jr. and Susan E. Sherry;

(3) Preliminary Objection VI is SUSTAINED in part for the reasons set forth in the attached memorandum opinion, and Count III is DISMISSED as to all Defendants except Ryco, Inc.; Ryco Fire Protection Services, LP; and Ryco Fire Protection Services, LLC;

(4) Preliminary Objection VII is SUSTAINED in part for the reasons set forth in the attached memorandum opinion, and Count II is DISMISSED as to all Defendants except Richard Bosco; and

(5) The First Amended Complaint is DISMISSED in its entirety as to Thomas Sherry Jr. and Susan E. Sherry.

JAMES GARDNER COLINS, Senior Judge