

**Schaeffer & Krongold LLP v Richter**

2005 NY Slip Op 30000(U)

August 9, 2005

Supreme Court, New York County

Docket Number:

Judge: Carol R Edmead

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. HON. CAROL EDMEAD PART 35  
Justice

Schaeffer & Krongold

- v -

Barry Richter et al.

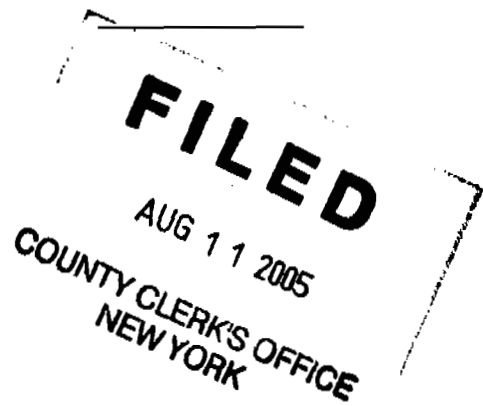
INDEX NO. 602225/03  
MOTION DATE 5/18/05  
MOTION SEQ. NO. 004  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits...	_____
Answering Affidavits - Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers



In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that plaintiff's motion for summary judgment against defendant Barry Richter is granted in the sum of \$ 83,161 plus appropriate interest and the cross-motion to dismiss the complaint is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry within 20 days of entry.

This constitutes the decision and order of the Court.

Dated 8/9/05

ENTER: [Signature], J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

SCHAEFFER & KRONGOLD LLP as )  
assignee of SCHAEFFER & ZAPSON LLP, )

Plaintiff, )

-against- ) Index No.: 602225/2003

BARRY RICHTER and PROPERTY )  
MANAGEMENT INC., ) MEMORANDUM  
as successor-in-interest to NATIONWIDE ) DECISION  
ASSOCIATES, INC., )

Defendants. )

**CAROL EDMEAD, J.:**

Plaintiff law firm moves for summary judgment against the remaining defendant Barry Richter, a licensed mortgage banker, for the alleged balance due of \$ 83,161 for legal services rendered between November 1994 and early 1998 under an oral retainer with plaintiff's assignor law firm. That firm represented Nationwide Inc., a mortgage securities firm, and its two equal shareholders, i.e., Richter, and Daniel Perla, who later sold his shares to Richter. A stay of proceedings against Richter's co-defendant, Property Management, Inc., Nationwide's successor in interest, was granted by order of this court dated December 9, 2003 based on Nationwide's filing for bankruptcy in April 2003.<sup>1</sup>

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<sup>1</sup> The action as against defendant Property Management Inc., as successor-in-interest to Nationwide Associates, Inc., was dismissed by order dated April 5, 2004.

The legal services at issue were rendered in a federal civil RICO action brought by one Dr. Joseph Parisi and a retirement trust fund formed with his wife. The Parisi action charged Nationwide, Richter and Perla with fraud and conversion in connection with a portion of the Parisi investment of over \$ 3,000,000 with Nationwide "to be placed in mortgage loans and/or equity positions." Allegedly, funds were "diverted for their own use" after the true value of certain properties was grossly inflated to secure excess funds from Parisi.

Richter cross-moves for summary judgment on his two counterclaims sounding in the negligent negotiation of an interim stipulation on July 7, 1997, in the federal action and the alleged loss of files from the Parisi action after the law firm had filed an unopposed motion to withdraw as attorneys on learning that Perla had decided to testify against Richter. Of note is plaintiff's undisputed contention that the missing file papers were delivered to corporate headquarters and that Richter participated fully in reaching the stipulation entered on the record in open court in July 1997.

This court grants the main motion for summary judgment against Richter, whose cross-motion for similar relief on his counterclaims is denied under the applicable three-year Statute of Limitations (CPLR 214 (6)). Plaintiff has demonstrated a *prima facie* case for recovery under the theories of *quantum meruit* and account stated. Richter has neither challenged the reasonable value of the legal services rendered nor attempted to justify his undisputed failure to object to plaintiff's itemized invoices billed during the two-year period

preceding the service of the complaint in July 2003 (see, Rodkinson v Haecker, 248 NY480, 485 [1928]).

There is no merit to Richter's overriding contention that 1) plaintiff has not established that the shareholders "did not observe the niceties of (Nationwide's) independent corporate existence"; 2) he derived any benefit from the services; or 3) he signed a written guaranty of Nationwide's indebtedness as required by the Statute of Frauds (GOL 5-701 (a)(2)). The clear rationale of these defenses is that Nationwide is the real party in interest in the federal action while its principals were acting solely on behalf of their corporation and, therefore, with impunity.

Given the serious nature of the deliberate tortious conduct pleaded against Richter in the Parisi action, plaintiff law firm manifestly need not "pierce the corporate veil" to establish Richter's personal liability for the legal services rendered in the federal action. At issue, here is far more than "the corporation's commercial dealings . . . (or) its negligent acts" (*cf.* Walkovszky v Carlton, 18 NY2d 414, 417 [1966]).

Rather, the controlling legal principle here is that "officers and agents of corporations are personally liable for their own acts which bring about a conversion of a third party's property, and it is no defense to personal liability that the officer or agent may have been acting on behalf of a corporate principal" (Ingram v Machel and Jr Auto Repair, Inc., 148 AD2d 324, 325 [1st Dept 1989]).

While Richter does not contest plaintiff's statute of limitations defense to his counterclaims he argues erroneously that his claims stand as valid offsets to this attorney-fees

action. This argument borders on the disingenuous. If uniformly applied, it would substantially vitiate the rationale for the various Statutes of Limitation enacted by the Legislature in the interest of elementary fairness and public policy. The holding relied on by Richter in this regard, Ayres v Ayres, 274 AD2d 352, (1st Dept 2000), does not compel a contrary result. That partition action was litigated, essentially between a long divorced couple. The court ruled that the wife, who occupied a private home exclusively under a 1973 divorce judgment which imposed financial obligations flouted by her husband was not time-barred from raising, for purposes of an offset, the full expenditures she made on her own toward maintaining the house and raising the children of the marriage. This discretionary ruling on the equities between the divorced couple is hardly authority for the offset proposition asserted by Richter.

Accordingly, it is


ORDERED that plaintiff's motion for summary judgment against defendant Barry Richter is granted in the sum of \$ 83,161 plus appropriate interest and the cross-motion to dismiss the complaint is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: August 9, 2005

  
Hon. Carol Edmund, J.S.C.

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**FILED**  
AUG 11 2005  
COUNTY CLERK'S OFFICE  
NEW YORK

[\* 5 ]