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

PRESENT: Wilkins
Lottie E. Wilkins Justice

PART 18

BOARD OF TRUSTEES OF THE NEW YORK DISTRICT COUNCIL OF CARPENTERS, ET AL.

-V-

JORDAN KARP FLOOR COVERING INC, ET AL.

INDEX NO. 600707/07

MOTION DATE

MOTION SEQ. NO. 01

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Petition, pursuant to CPLR 5232 denied, and the proceeding dismissed, and the temporary restraining order vacated, in accordance with attached decision and judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: April 3, 2007
APR 03 2007

Lottie E. Wilkins J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

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

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BOARD OF TRUSTEES OF THE NEW YORK DISTRICT COUNCIL OF CARPENTERS HEALTH WELFARE FUND, PENSION FUND, VACATION FUND, APPRENTICESHIP, JOURNEYMAN RETRAINING, EDUCATIONAL AND INDUSTRY FUND, CHARITY FUND, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA FUND AND THE NEW YORK CITY AND VICINITY CARPENTERS LABOR-MANAGEMENT COOPERATION TRUST FUND,

Petitioner,

- against -

JORDAN KANE FLOOR COVERING, INC., JORDAN KANE INSTALLATIONS, INC. and JONES LANG LaSALLE AMERICAS INC.,

Respondents.

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PART 18

Index No. 600707/07

DECISION and JUDGMENT

Lottie E. Wilkins, J.:

Petitioner, Board of Trustees of the New York District Council of Carpenters (hereinafter "Union") moves pursuant to CPLR 5232 for an order directing that monies owed by respondent Jones Lang LaSalle to respondent Jordan Kane Installations be paid over to the Union to satisfy a judgment it has against respondent Jordan Kane Floor Coverings, a corporation which is no longer operating. The Court imposed a temprary restraining order on March 8, 2007 baring Jones Lang LaSalle from paying any money it owes under a contract with Jordan Kane Installations while the

order to show cause was pending before the Court. The restraining order remains in effect and, to date, Jones Lang LaSalle is withholding a payment of about $120,000.00, essentially acting as a stakeholder until this matter is resolved. Based on the papers submitted and the hearings held, the Court concludes that the petition should be denied and the restraining order vacated.

As already stated, the Union obtained a judgment against Jordan Kane Floor Coverings ("Floor Coverings") in March 2006 in the amount of $496,208.44. Although some payments were made, an unpaid balance of $405,789.14 remains. At the time, Floor Coverings was a publicly traded company and its majority shareholder was Louis "Frank" Urban. Shortly after the Union entered judgment against Floor Coverings, a closely held New York corporation was formed called Jordan Kane Installations, Inc. ("Installations"). Ownership of Installations was shared with 51% of outstanding shares belonging Laura Trimmingham, a former employee of Floor Coverings, and 49% belonging to Frank Urban.

With respect to Frank Urban, the Union also obtained a judgment against Mr. Urban individually on March 23, 2006 via confession of judgment, however, Mr. Urban subsequently petitioned the federal court for personal bankruptcy in late 2006. As a result, the judgment obtained by the Union against Mr. Urban has become difficult, if not impossible, to enforce as a result of the bankruptcy stay protecting Mr. Urban.

The posture of this proceeding is very much dictated by the above factual context. It is claimed in the petition and supporting papers that the Installations company is a "successor" and/or "alter ego" of the Floor Coverings company. The Union alleges that both companies are engaged in the same kind of business, that both have Frank Urban as officers and that both operate out of the same offices. It is the Union's contention that Floor Coverings ceased operations and Installations came into being solely for the purpose of frustrating Floor Coverings' creditors, including the Union itself. Thus, petitioner asks that it be allowed to levy upon monies owed to Installations in order to satisfy the judgment it has against Floor Coverings. It is quite clear from the petition that the basis upon which the Union seeks to levy against Installations is its connection, or similarity, to the corporate judgment debtor Floor Coverings. The individual judgment debtor, Frank Urban, is quite notably not the judgment debtor through which the Union seeks to levy against Installations as there is clearly no allegation in the petition that Installations is an "alter ego" of Frank Urban. One can only assume that petitioner chose this tack away from Frank Urban and toward Floor Coverings because Frank Urban is personally shielded by a bankruptcy stay.

The most relevant statement of the law applicable to this situation is articulated in O'Brien-Kreitzberg & Assocs. v K.P., Inc., 218 AD2d 519 [1st Dept. 1995]). That case shows that there are essentially two ways to reach the assets of a third-party

corporation for the purpose of satisfying a debt owed to a judgment creditor: one is to demonstrate a fraudulent conveyance from the judgment debtor to the second corporation, which is not alleged in this case, and the other is to "pierce the corporate veil." A very obvious requirement for piercing the corporate veil is that the corporation whose assets are to be levied upon must operate as a "dummy for its individual stockholder who is in reality carrying on the business in his personal capacity" (Id. [internal quotations omitted], citing Walkovsky v Carlton, 18 NY2d 414, 418). That requirement is extremely important here since it is the Floor Coverings company, not Frank Urban individually, that the Union claims is using Installations as its alter-ego.[1]

Thus the question, as framed by the petition and applicable law, is whether Installations is an "alter-ego of" Floor Coverings such that the corporate veil can be pierced to satisfy the judgment against Floor Coverings.. At a hearing held on March 20, 2007, it was quite apparent that the two companies share many similarities. Both companies have similar names. Based on testimony at the hearings, Installations is in a very similar line of work as Floor Coverings even though the owners claim the work is different because Floor Coverings installed carpeting in newly constructed

[1] A far more interesting legal question arises as to whether monies owed to Installations could be levied upon pursuant to CPLR article 52 subsequent to a judicial finding that Installations is an alter-ego of Frank Urban. The presence of a bankruptcy stay protecting Mr. Urban's personal assets makes that question very complicated since piercing the corporate veil is tantamount to a finding that the corporation is essentially an extension of the individual. None of these issues, however, are addressed in the papers.

buildings while Installations is primarily engaged in installing carpeting in large-scale renovation projects. Moreover, both companies hold themselves out as minority-owned businesses (although how Floor Coverings could have been considered a minority-owned business was not fully explained). Despite his testimony to the contrary, it was also apparent that Frank Urban is actively involved in the business of Installations, just as he was in Floor Coverings. It also appeared, based on a review of certain financial records submitted to the Court, that Installations may pay for some of Frank Urban's expenses which are personal in nature, or at least questionable in that regard.

Were this a question of determining whether Installations is an alter-ego of Frank Urban, the issue would be much closer. As it is, however, it cannot be said as a matter of law that Installations is an alter-ego of Floor Coverings. To begin with, the corporate structure of the two companies is different. Floor Coverings was a publicly traded corporation in which Frank urban was a majority shareholder whereas Installations is a closely held corporation in which Frank Urban is a minority (49%) shareholder and Laura Trimmingham, an African-American woman, is the majority (51%) shareholder.[2] While the Court has serious doubts about who truly runs

[2] Although Laura Trimmingham and Frank Urban testified that they own 51% and 49% of outstanding shares, respectively, a review of the stock certificates raises more questions than it answers. It seems that both individuals own an equal number of shares (1500) and, furthermore, the certificate of incorporation indicates that the total number of shares issued was 1500. Thus it would seem from these documents that Ms. Trimmingham and Mr. Urban each own 100% of the outstanding shares.

Installations, the fact remains the companies are structured quite differently. Most relevant to the present analysis, however, is the fact that Floor Coverings does not have – and never had – an ownership interest in Installations. It is Frank Urban who is the common thread between both companies. But there is no direct ownership between Floor Coverings and Installations. Thus it cannot be logically said that Installations is an "alter-ego" of Floor Coverings. Since the corporate veil of the Installations company cannot be pierced to satisfy the judgment against Floor Coverings, the petition must be denied.

Having determined that the petition must be denied, the restraining order which has operated to prevent Jones Lang LaSalle from making payments to Installations should also be lifted. Accordingly, it is

ORDERED that the petition is denied and the proceeding dismissed, it is further

ORDERED that the temporary restraining order imposed by this Court on March 8, 2007 is hereby vacated.

This constitutes the decision and judgment of the Court.

Dated: April 3, 2007

Leland E. Wilkins, J.S.C.

APR 03 2007 UNFILED JUDGMENT
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LELAND E. Wilkins