

Fantazia Intl. v CPL Furs N.Y., Inc.

2008 NY Slip Op 31729(U)

June 19, 2008

Supreme Court, New York County

Docket Number: 0602131/2003

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN

PART 53

Index Number : 602131/2003
FANTAZIA INTERNATIONAL
 vs.
CPL FURS NE YOR
 SEQUENCE NUMBER : 004
 OTHER RELIEFS

INDEX NO. 602131/2003

MOTION DATE 3/26/08

MOTION SEQ. NO. 004

MOTION CAL. NO. 5

this motion to/for other

PAPERS NUMBERED

1-3
4
5, 6

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

FILED
 JUN 23 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated: 6/19/08

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X
FANTAZIA INTERNATIONAL,

Plaintiff,

against

CPL FURS NEW YORK, INC and
CENTROPEL PELZHANDEL GmbH,
Defendants.

Index Number 602131/2003
Mot. Seq. No.: 004
Submission Date 3-26-08
Calendar No. ~~20~~ 5

DECISION AND ORDER

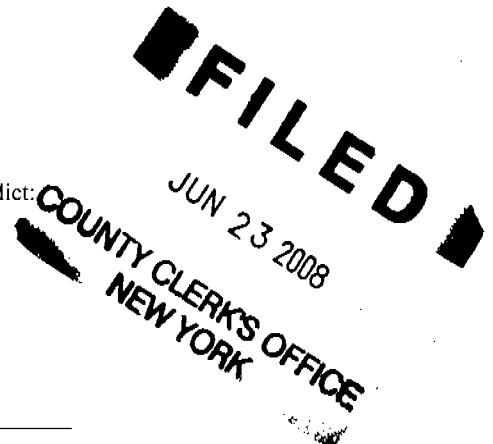
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Papers considered in review of this post-trial motion to set aside jury verdict:

Papers	Numbered
Notice of Post-Trial Motion, Affirmation & Exhibits	<u>1</u>
Trial Transcript	<u>2</u>
Defendants' Memorandum of Law in Support of Motion	<u>3</u>
Plaintiff's Memorandum of Law in Opposition to Motion	<u>4</u>
Defendants' Reply Affirmation	<u>5</u>
Defendants' Reply Memorandum of Law	<u>6</u>



PAUL G. FEINMAN, J.:

Defendants move pursuant to CPLR 4404 (a) to set aside the portion of the jury verdict by which the jury determined that defendant-third party plaintiff CPL Furs New York, Inc. was an "alter ego" of defendant Centropel, and direct that judgment be entered in favor of Centropel on that issue, or in the alternative, order a new trial on that issue. Plaintiff opposes the motion. For the reasons which follow, the motion is granted.

Factual and Procedural Background

CPL Furs New York, Inc. ("CPL New York") and Centropel Pelzhandel GmbH ("Centropel") (referred to herein collectively as "Defendants") claimed that this is a breach of

contract action arising entirely from an express contractual relationship between CPL New York and Fantazia International Corporation (“Fantazia”) (Memo in Supp. of Mot., p. 2). In March 1999, Fantazia entered into an express contract with CPL New York for Fantazia to style garments distributed by CPL New York and to serve as CPL New York’s sales representatives to North American retailers in exchange for specified sales commissions to be paid to Fantazia by CPL New York (hereinafter referred to as the “Sales Representative Agreement”) (Memo in Supp. of Mot., p. 2). In or around January 2002, the relationship between Fantazia and CPL New York ended, and a dispute arose as to the sales commission rates that had been orally agreed upon by the parties (Memo in Supp. of Mot., p. 3). Thereafter, Fantazia commenced a lawsuit against CPL New York for alleged unpaid commissions, and also alleged that Centropel owns, controls and dominates CPL New York to such a degree that their corporate identities should be disregarded¹ (Memo in Supp. of Mot., p. 3).

A jury trial was held in November 2007. At the trial, the President of CPL New York, George Papageorgiou, testified on behalf of defendants CPL New York and Centropel (Trial Tr. [11/9/07] 4:19-26). CPL New York, Centropel and, a third company, CPL Pelzhandel are each owned by various members of the Papageorgiou family (Trial Tr. [11/9/07] 10:9-12). CPL Pelzhandel GmbH is a German company formed by George in 1981 (Trial Tr. [11/9/07] 5:17-26). CPL New York was formed as a New York corporation by George and his uncle in 1985 (Trial Tr. [11/15/07] 114:6-15). Centropel, a German company, was formed by George’s brother, Marko Papageorgiou, sometime in 1990 (Trial Tr. [11/9/07] 6:7-9; [11/15/07] 113:7-9).

On March 1, 1999, the date of the execution of the Sales Representative Agreement,

¹ CPL New York then filed a third-party complaint against Dimitrios Georgiadis, *et al.*

George served as both the President and a director of CPL New York (Trial Tr. [11/15/07] 114:16-24). During the relevant time period,² George was also a director and a paid consultant for Centropel (Trial Tr. [11/9/07] 40:8-14; [11/15/07] 113:21-24), although he did not have an ownership interest in the company (Trial Tr. [11/15/07] 115:9-11). Marko is, and always has been, the sole owner of Centropel (Trial Tr. [11/9/07] 29:3-4; [11/15/07] 115:9-16). Marko was not at anytime a shareholder of CPL New York, nor has he held any office of employment in CPL New York (Trial Tr. [11/9/07] 13:19-23). CPL New York's bookkeeper testified that Marko did not provide her with instructions regarding CPL New York's business matters (Trial Tr. [11/16/07] 85:14-16). In fact, she stated that Marko only contacted her once a year, and even then it was of a personal nature—unrelated to the business of CPL New York (Trial Tr. 11/16/07 85:10-19, 17-21).

George testified that Marko did not participate in the negotiation of the Sales Representative Agreement (Trial Tr. [11/9/07] 43:17-20), although he discussed the contract with Marko prior to its execution (Trial Tr. [11/9/07] 43:21-23). And Marko directly communicated with Dimitrios Georgiadis (a/k/a Jimmy Georgiadis), President of Fantazia, regarding issues of production (Trial Tr. [11/9/07] 43:21-23; 45:26 - 46:1-3; 46:15-21).

According to George's testimony, CPL New York and Centropel's business dealings occurred primarily as a result of their involvement in the CPL Group. The CPL Group is comprised of a group of companies that "help each other" in regard to various matters relating to

² The general time period from 1999 to 2002 is referred to by the attorneys, during questioning at trial, as the "relevant time period." Therefore, unless a specific time period is indicated, the trial testimony refers to events occurring during the time period from 1999-2002.

the fur industry (Trial Tr. [11/9/07] 9:12-16, 70:6-14). CPL New York and Centropel are just two of the five companies within the CPL Group³ (Trial Tr. [11/9/07] 19:15-20). CPL New York's function in the CPL Group was to sell outerwear garments in the American market (Trial Tr. [11/15/07] 117:22-26). Centropel's function in the CPL Group was to create collections and produce garments that were ordered from those collections for various customers, including CPL New York, and customers located in Italy and Spain (Trial Tr. [11/15/07] 116:12-16; [11/16/07] 39:16-26).

In essence, Centropel manufactured goods for CPL New York to sell in the North American market⁴ (Trial Tr. [11/9/07] 70:19-23). In turn, CPL New York paid Centropel for its creation and manufacturing services (Trial Tr. [11/9/07] 71:8-17). CPL New York would occasionally help Centropel in the creation of a particular collection by informing Centropel's designer regarding the characteristics of the pieces that CPL New York would order for use in the American market (Trial Tr. [11/15/07] 116:20-26). While CPL New York made the decision with respect to what goods should be ordered, Centropel would sometimes ask CPL New York, as well as its other customers, to help Centropel clear some of its material or to help Centropel sell certain merchandise that it had in stock (Trial Tr. [11/15/07] 120:6-21). The decision as to the price at which each of its product should be sold was made exclusively by CPL New York (Trial Tr. [11/16/07] 37:7-17).

³ The remaining three companies in the CPL Group are ABEGE, S.A., and Helskin, S.A., companies based in Siatista of northern Greece, and CPL Bitola Dooel, a company based in the former Yugoslav Republic of Macedonia.

⁴ In 1998, Centropel manufactured over ninety percent (90%) of the goods sold by CPL New York (Trial Tr. [11/9/07] 23:5-7).

In or around January 2002, Fantazia received a notice of CPL New York's decision to terminate the Sales Representative Agreement (Trial Tr. [11/8/07] 42:12-25, 43:2-5). The termination letter was written by George on the CPL Group's letterhead (Trial Tr. [11/16/07] 53:3-11).

At the close of the trial, the court presented the jury with several questions in the form of a verdict sheet, and charged the jury with the law regarding alter ego liability and successor liability (Reply Aff., Exs. H, I). The jury then rendered a verdict in which it found, in relevant part, that based on the conduct of the parties, the agreement between CPL New York and Fantazia extended beyond its expiration date (Verdict Sh. ¶¶ 1, 2). The jury also found that Fantazia and CPL New York had a separate oral agreement for the sale of fur garments *only* (Verdict Sh. ¶ 3). The jury further found that CPL New York was an alter ego company of Centropel (Verdict Sh. ¶10).

Defendants now seek to set aside the portion of the jury verdict by which the jury determined that CPL New York was an alter ego of Centropel, and thus, Centropel should be liable for CPL New York's contractual obligations to Fantazia (Not. of Post-Trial Mot.).

Parties Contentions

Defendants' motion is based on their contention that the jury verdict was not supported by the evidence adduced at trial, or alternatively, was against the weight of the evidence (Not. of Post-Trial Mot.). Defendants claim that there is insufficient evidence in the record to show that Centropel exercised complete dominion and control over CPL New York (Memo in Supp of Mot., p. 13). According to defendants, Centropel and CPL New York were separately owned, managed, and operated, and there is no evidence to show that there was any flow of funds

between the two companies (Memo in Supp of Mot., pp. 5, 15). They emphasize that CPL New York has always maintained New York as its sole place of business, whereas Centropel's offices are located in Germany (Memo in Supp. of Mot., p. 4). Defendants argue that CPL New York and Centropel maintained separate accounting records, as demonstrated by the evidence adduced at trial (Trial Tr. [11/15/07] 122:12-17). Defendants also argue that CPL New York and Centropel did not have any directors or officers in common, with the exception of George who served as President and a director of CPL New York, and was also a subordinate director of Centropel (Memo in Supp. of Mot., p. 4). Defendants add that even where there is a "nearly complete overlap" of owners, officers, and directors, this alone is insufficient to pierce the corporate veil (Memo in Supp. of Mot., p. 18).

Defendants further argue that the business dealings between CPL New York and Centropel were conducted independently and at arm's length, since the business entities within the CPL Group had specific functions regarding the design, production, manufacturing, sale, etc. of fur and/or shearling garments (Memo in Supp. of Mot., p. 6). They contend that they did not lose their separate identities as a result of merely working closely together (Memo in Supp. of Mot., p. 18). Finally, defendants argue that the record is devoid of any evidence that Centropel was involved with CPL New York's failure to pay Fantazia any sales commissions which may be owed in accordance with the terms of the express contract between CPL New York and Fantazia (Memo in Supp. of Mot., p. 22).

Fantazia opposes the motion and argues that the jury verdict should stand, since it is not against the weight of the evidence adduced at trial (Memo in Opp. of Mot., p. 2). Fantazia asserts that a fair review of all of the evidence at trial demonstrates ample support for the jury's

verdict that CPL New York and Centropel were part of the single economic unit (CPL Group) which entered into a business relationship with Fantazia (Memo in Opp. of Mot., p. 2). Fantazia also asserts that the true nature of the relationship between CPL New York and Centropel was that of a joint venture (Memo in Opp. of Mot., p. 11). Fantazia further contends that the evidence at trial demonstrates that CPL New York's adherence to corporate formalities ranged from minimal to non-existent (Memo in Opp. of Mot., p. 3). Finally, Fantazia argues that virtually all of the revenue earned by CPL New York flowed upstream to Centropel in the form of payment for product sold (Memo in Opp. of Mot., p. 3). Thus, the jury finding that Centropel was the alter ego of CPL New York is supported by the evidence at trial (Memo in Opp. of Mot., p. 3).

Legal Analysis

Under New York law, a trial court upon the motion of any party, or *sua sponte*, may set aside a jury verdict and “direct that judgment be entered in favor of a party entitled to judgment as a matter of law,” or alternatively, the court may order a new trial where “the jury verdict is contrary to the weight of the evidence, or in the interests of justice ...” (CPLR 4404 [a]). The trial court's power under the statutory provision of CPLR 4404 (a) is discretionary, and is predicated on the assumption that the presiding judge is in the best position to evaluate errors at trial (*Micallef v Miehle Co., Div. of Miehle-Goss Dexter, Inc.*, 39 NY2d 376, 381 [1976]). Prior to setting aside a jury verdict, a trial judge is required to utilize his or her “own common sense, experience, and sense of fairness rather than look to precedents” to determine whether substantial justice has been done (*Micallef*, 39 NY2d at 381). The court must construe the evidence from the trial record in the light most favorable to the non-moving party (*Place v Federal Pac. Elec. Co.*,

241 AD2d 317, 318 [1st Dept. 1997]). And in the absence of an indication of substantial injustice, a litigant is entitled to the benefit of a favorable verdict (*Brown v Taylor*, 221 AD2d 208, 209 [1st Dept. 1995]). A court may not set aside a jury's verdict merely because it disagrees with the outcome (*Cholewinski v Wisnicki*, 21 AD3d 791, 791 [1st Dept. 2005]).

For a court to decide as a matter of law that a jury verdict is not supported by legally sufficient evidence, requires a "harsher and more basic assessment of the jury verdict" (*see Cohen v Hallmark Cards, Inc.*, 45 NY2d 493, 499 [1978]). It is necessary for the court to conclude that there is "no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury on the basis of evidence presented at trial" (*Cohen*, 45 NY2d at 499; *see also, Sow v Arias*, 21 AD3d 317 [1st Dept.], *app. denied*, 5 NY3d 317 [2005]; *Lieberman v Riverside Mem. Chapel*, 225 AD2d 283, 289 [1st Dept. 1996]). To reach this conclusion, the court must exercise considerable caution in balancing "the great deference to be accorded to the jury's conclusion against the court's own obligation to assure that the verdict is fair" (*McDermott v Coffee Beanery, Ltd.*, 9 AD3d 195, 206 [1st Dept. 2006]). Where the evidence is such that it would be "utterly irrational" for a jury to reach the verdict, and a valid question of fact exists, the court may find that the jury verdict is as a matter of law not supported by the evidence adduced at trial (*Cohen*, 45 NY2d at 499).

Conversely, a less-stringent standard is required to set aside a jury verdict as being contrary to the weight of the evidence, since in such a case, the result is simply a new trial, rather than deprivation of the parties' right to have a jury ultimately resolve the disputed issues of fact (*see Nicastro v Park*, 113 AD2d 129, 132-133 [2d Dept. 1985]). A court's discretion to set aside a jury verdict as being against the weight of the evidence should be exercised "only where it

seems palpably wrong, and it can be plainly seen that the preponderance is so great that the jury could not have reached their conclusion upon any fair interpretation of the evidence” (see *Loughman v A.W. Flint Co.*, 132 AD2d 507, 508 [1st Dept. 1987]; see also *Cornier v Spagna*, 101 AD2d 141, 149 [1st Dept. 1984]; *Szabo v Super Operating Corp.*, 51 AD2d 466, 471 [1st Dept. 1976]). Because assessing witnesses’ credibility and resolving conflicting proofs are matters properly left for the jury’s determination (*Mazariegos v New York City Transit Auth.* 230 AD2d 608, [1st Dept. 1996]), the standard is essentially a factual determination based on the reviewing court’s finding that the jury has incorrectly assessed the information at trial (see e.g., *Frances G. v Vincent G.*, 145 AD2d 599, 600 [2d Dept. 1988]).

It is well settled under New York law that “complete domination” of the corporation is the key to piercing the corporate veil (see *Walkovszky v Carlton*, 18 NY2d 414, 417 [1966]).

Generally, a party seeking to pierce the corporate veil must establish that “(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff’s injury” (*Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]). “The decision whether to pierce the corporate veil in a given instance depends on the particular facts and circumstances” (*Damianos Realty Group, LLC v Fracchia*, 35 AD3d 344, 344 [2d Dept. 2006], quoting *Weinstein v Willow Lake Corp.*, 262 AD2d 634, 635 [2d Dept. 1999]). However, in determining whether the defendant was a dominated corporation, the triers of fact consider factors, such as: “(1) the absence of corporate formalities and paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and

taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) use of common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by others of the corporations as if it were its own" (*Wm. Passalacqua Bldrs. v Resnick Developers S.*, 933 F2d 131,139 [2d Cir. 1991]). No one factor is dispositive for a finding of complete domination (*Freeman v Complex Complex Computing Co.*, 119 F3d 1044, 1053 [2d Cir. 1997]).

In regard to imposing alter ego liability, the corporate veil will be pierced to achieve equity, even in the absence of fraud, where a "corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego" (*Austin Powder Co. v McCullough*, 216 AD2d 825, 827 [3d Dept. 1995]). Thus, where a corporation is a mere fragment of a larger corporate entity "which actually conducts the business, the larger corporate entity may be held financially responsible for the acts of that corporation" (*Billy v Consolidated Mach. Tool Corp.*, 51 NY2d 152, 163 [1980]).

Yet, a bare claim that the corporation was "completely dominated by the owners, or conclusory assertions that the corporation acted as their alter ego," will not give rise to piercing the corporate veil (*see e.g., Goldman v Chapman*, 44 AD3d 938, 939 [2d Dept. 2007]). In other words, domination, standing alone, is insufficient; there must also be some proof of wrongdoing

or injustice done to the plaintiff (*see Wm. Passalacqua Bldrs.*, 933 F2d at 138). The very heavy burden of establishing complete domination and that such domination resulted in a wrong against the plaintiff is on those seeking to pierce the corporate veil (*see TNS Holdings*, 92 NY2d at 339).

Here, the jury verdict that CPL New York was the alter ego company of Centropel must first be based on a finding that Centropel exercised complete domination and control of CPL New York. If, as Fantazia contends, CPL New York failed to adhere to corporate formalities and did nothing more than carry out the business of Centropel, this would lend support for the jury verdict in Fantazia's favor. The evidence adduced at trial reveals that CPL New York was incorporated approximately five years prior to the formation of Centropel for the legitimate business purpose of selling fur and shearling collections to the North American market. Thus, this is not a case where CPL New York was formed and incorporated for the purpose of carrying out the business of Centropel (*see Joseph Kali Corp. v A. Goldner, Inc.*, 49 AD3d 397, 399 [1st Dept. 2008], quoting *TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339-340 [1998] [stating that an inference of abuse of the corporate structure ordinarily "does not arise . . . where a corporation was formed for legal purposes or is engaged in legitimate business"]]). Furthermore, CPL New York's maintenance of separate bank accounts, financial records, and filing of separate tax returns from that of Centropel are evidence tending to show that there was no absence of corporate formalities which would warrant piercing the corporate veil to impose alter ego liability (*see e.g., Bowles v Errico*, 163 AD2d 771, 774 [3d Dept. 1990]).

Nonetheless, even where corporate formalities are adhered to, the corporate veil may still be pierced and alter ego liability imposed if other factors are shown. In this case, George testified that he was a "subordinate director" in Centropel and did not possess an ownership interest in the

company during the period from 1999 to 2002. While Marko communicated with George on various matters, and with Fantazia in regard to manufacturing initiatives, he was not employed by CPL New York, nor did he possess an ownership interest in the company. The evidence indicates that there were no employees of CPL New York that were also in Centropel's employ. Assuming, however, that George was more than a "subordinate director" of Centropel during the relevant period, this cannot be the sole basis for a claim of complete domination and control (*Island Seafood Co. v Golub Corp.*, 303 AD2d 892, 895 [3d Dept. 2003] [finding that even where a party is the sole owner, director and officer of both corporations, this alone does not constitute sufficient proof of complete domination and control for piercing the corporate veil]; *but see e.g.*, *BT Americas, Inc. v ProntoCom Marketing, Inc.*, 18 Misc. 3d 1141A [Sup. Ct., NY County 2008] [determining that the use of shared owners, operating the same business, in the same physical location with the same assets, business operations and same employees was sufficient to find complete domination]). Thus, the record does not support a finding that there was an overlap of CPL New York's ownership, officers, directors, and personnel with that of Centropel's sufficient to weigh in Fantazia's favor. Moreover, with CPL New York located in New York and Centropel located in Germany, it cannot be properly argued that the two companies shared the same common office space, address or telephone numbers. While it is undisputed that George maintained an office in Greece that was located down the hall from Marko's office, this site was not at any time represented as the location of CPL New York.

The parties also disagree as to whether Centropel and CPL New York's dealings were conducted at arm's length. The various witnesses at trial, including those called for defendants, acknowledge the cooperative nature of the business relationship between CPL New York and

Centropel. Evidence of defendants' arm's-length dealings is shown by each company's specific business function in the CPL Group. While Centropel's primary function involved the production of fur and shearling collections, and the manufacturing of such, CPL New York's function was to facilitate the sale of those collections solely in the North American market. In order to accomplish their respective business objectives, defendants needed to maintain a close working relationship (*see e.g. Crowell Corp. v Merrie Paper Co., Inc.*, 35 AD2d 803, 8804 [1st Dept. 1970] [stating that "the mere fact that there was a close working relationship between the defendant and plaintiff corporations is insufficient to allow a disregard of their legally separate and distinct entities"])). Further evidence of defendants' arm's-length dealings is demonstrated by testimony that CPL New York primarily selected the garments that it sold to its customers, and determined the prices at which to sell its merchandise. In addition, after Centropel shipped the merchandise to CPL New York, it issued invoices for payment of the shipped merchandise, and received payment by CPL New York.

In considering the remaining factors, Fantazia either makes no claim or offers no proof that CPL New York received inadequate capitalization, or that funds were put in and taken out of the corporation for personal rather than corporate purposes, or that Centropel paid or guaranteed the debts of CPL New York. While the record shows that Marko was involved in the selection of a new location to house CPL New York and Fantazia's merchandise, it does not support a finding that Centropel used CPL New York's offices, warehouse, or other property as if they were its own.

The court now turns to Fantazia's belated attempt to transform its alter ego liability theory to one of a joint-venture theory; Fantazia now argues that CPL New York and Centropel were

engaged in a joint-venture relationship. The court notes that Fantazia was afforded the opportunity to present all applicable theories to be incorporated into the jury charge and verdict sheet, yet it did not seek to introduce a joint-venture theory. The jury was presented only with the law as it applies to both alter ego liability and successor liability. Because this joint-venture theory was never presented to the jury at trial, and they were not permitted to consider it, it cannot now be used to sustain the jury verdict (*see e.g., Kavanaugh v Naussbaum*, 71 NY2d 535, 549 [1988]).

In construing the evidence from the trial record in the light most favorable to Fantazia, the court finds that Fantazia's allegations that Centropel completely dominated and controlled CPL New York, and as such, should be held liable for CPL New York's contractual obligations to Fantazia is not borne out by the weight of the evidence in the record. While the court is unable to say that there "no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusion reached by the jury on the basis of evidence presented at trial," and cannot therefore direct entry of a verdict in defendants' favor on this issue, the court is persuaded that the jury's verdict is against a fair interpretation of the weight of the evidence presented at trial. Accordingly, the motion is granted to the extent of setting aside the jury's finding that CPL New York was the alter ego company of Centropel and directing a new trial on this issue. It is therefore

ORDERED that the motion to set aside the jury verdict as against the weight of the evidence is granted only to the extent of setting aside the jury's finding that CPL New York was the alter ego company of Centropel and directing a new trial on this issue; and it is further

ORDERED that the upon service of a copy of this decision and order together with a note

of issue and payment of any appropriate fees, the Clerk of Trial Support shall promptly schedule the re-trial of this limited issue.

This constitutes the decision and order of the court.

Dated: June 19, 2008
New York, New York



J.S.C.

FILED
JUN 23 2008
COUNTY CLERK'S OFFICE
NEW YORK