

**Zohlman v Zoldan**

2008 NY Slip Op 32375(U)

August 19, 2008

Supreme Court, New York County

Docket Number: 0603619/2007

Judge: Marcy S. Friedman

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

PRESENT: MARCY S. FRIEDMAN  
*Justice*

PART 57

Robert Zohman

INDEX NO. 603619/07

MOTION DATE \_\_\_\_\_

- v -  
Barbara Zoldan

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to *for turnover petition*

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
_____	1
_____	2
_____	3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this *petition* ~~motion~~

*is determined per accompanying decision order dated 8/19/08.*

**FILED**  
AUG 27 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/19/08

*M S F*  
MARCY S. FRIEDMAN 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 – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_ x

ROBERT ZOHLMAN,

*Petitioner,*

- against -

BARBARA ZOLDAN,

*Respondent,*

and

ALEX ZOLDAN,

*Judgment-Debtor.*

\_\_\_\_\_ x

Index No.: 603619/07

DECISION/ORDER

**FILED**  
AUG 27 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

This is a turnover proceeding brought by petitioner, Robert Zohlman, against respondent Barbara Zoldan (“Barbara”), wife of Alex Zoldan (“Alex”), the judgment-debtor. Petitioner seeks to enforce a judgment entered in 1992 against monies paid to Barbara Zoldan from a real estate venture, Mahopac Group LLC (“Mahopac”), in which Barbara, along with non-party Matthew Soloff (“Soloff”), was a named member. Petitioner claims that Barbara “was simply an empty figurehead used to insulate Alex from Alex’s creditors,” and that Alex was the “real party in interest” in Mahopac. (Petition, ¶¶ 32, 34.)

CPLR 5225(b) authorizes a judgment creditor to commence a special proceeding “against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession

of such property or that the judgment creditor's rights to the property are superior to those of the transferee."

In the instant case, it is undisputed that Mahopac was capitalized by Soloff, and there is no contention that Alex Zoldan transferred assets to Mahopac or to Barbara in order to insulate them from creditors. However, contrary to respondent's contention, CPLR 5225(b) by its terms authorizes a creditor to use a turnover proceeding not only to reach fraudulent conveyances of money or other property by the judgment debtor to a third party, but also to reach money in the possession of a third party in which the debtor has an interest. Moreover, a turnover proceeding may be used by a judgment creditor to litigate a veil piercing claim or a claim that the third party is in possession of money as an alter ego of the judgment debtor. (See Matter of WBP Central Assocs., LLC v DeCola, 50 AD3d 693 [2d Dept 2008].)

Here, petitioner in effect contends that respondent, in her capacity as a member of Mahopac, was the alter ego of Alex Zoldan. In opposition, Barbara Zoldan contends that she was responsible for the construction and selling of houses built by Mahopac (B. Zoldan Dep. at 20), and that while her husband gave her "advice" about the real estate venture he did not work for her and was not on salary. (Id. at 73.)

In claiming that Barbara was the alter ego, petitioner does not merely rely on Barbara's status as Alex's spouse but, rather, submits substantial evidence, obtained through discovery conducted before this proceeding was commenced, as to Barbara's use of the Mahopac funds and the extent of her involvement in the business. Petitioner cites Barbara's deposition testimony in which she acknowledges that she made payments for certain expenses for Alex from accounts containing distributions from Mahopac. (See id. at 72, 74.) Significantly, petitioner submits

testimony from Isaac Molyneaux, Mahopac's bookkeeper, which directly contradicts Barbara's testimony as to Alex's involvement with Mahopac. Molyneaux testified that while Barbara Zoldan and Soloff were the signatories on the Mahopac account (Molyneaux Dep. at 8), Alex Zoldan was the "supervisor of construction" and submitted requisitions to him for construction expenses for the Mahopac houses through a different corporation, Sozo Development Corp. (Id. at 10-12.) He also testified that Alex wrote approximately 200 checks on the Sozo account over a three year period. (Id. at 16.) Barbara's deposition testimony, read as a whole, also evidences a complete lack of familiarity with any of the financial aspects of the business. Although Barbara appears to have attempted to explain this lack of familiarity by stating that Soloff took care of the financial part of Mahopac's business, she testified that she had no knowledge even as to so basic a matter as whether the distributions that she received from Mahopac related to the profits from the sale of houses that Mahopac built. (Id. at 38-39.) Finally, petitioner submits evidence from Fred Weiner, an attorney with whom Barbara engaged in a real estate venture prior to Mahopac, that although he and Barbara were the shareholders of the development corporation, Alex was the de facto operating head and Barbara "had no operating role at all." (Weiner Dep. at 13.)

The court finds that this record does not establish as a matter of law that Barbara Zoldan acquired possession of monies from Mahopac as the alter ego of Alex Zoldan. However, the record is sufficient to raise a triable issue of fact as to whether Barbara's membership in Mahopac was a "contrivance" designed to insulate Alex's profits from the reach of judgment creditors. (See Matter of Fed. Dep. Ins. Corp. v Conte, 204 AD2d 845, 846 [3d Dept 1994]. See generally Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135 [1993].)

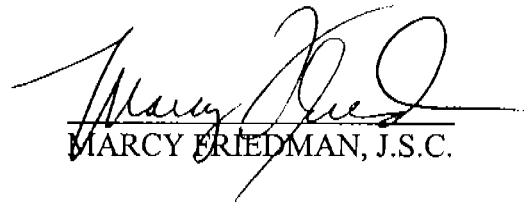
It is accordingly hereby ORDERED that the petition shall be tried forthwith; and it is

[\* 5 ]  
further

ORDERED that within 30 days of the date of entry of this order, petitioner shall serve a copy of this order with notice of entry, a note of issue and a statement of readiness upon respondents and upon the Clerk of the Trial Support Office (Room 158, 60 Centre Street), and shall pay the proper fees, if any, and said Clerk shall thereupon place this action on the appropriate trial calendar.

This constitutes the decision and order of the court.

Dated: New York, New York  
August 19, 2008

  
MARCY FRIEDMAN, J.S.C.

**FILED**  
AUG 27 2008  
COUNTY CLERK'S OFFICE  
NEW YORK