

Zohlman v Zoldan

2011 NY Slip Op 30357(U)

January 31, 2011

Supreme Court, New York County

Docket Number: 603619/07

Judge: Joan A. Madden

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

PRESENT: JOAN A. MADDEN
Justice

PART 11

ZOHLMAN

Plaintiff,

- v -

ZOLDAN

Defendant.

INDEX NO.

603619/07

MOTION DATE

MOTION SEQ. NO.

006

MOTION CAL. NO.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is determined in accordance with the annexed decision and order.*

FILED

FEB 15 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: January 31, 2011

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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J.S.C.
HON. JOAN A. MADDEN

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 11

-----X
ROBERT ZOHLMAN,

Petitioner,

-against-

INDEX NO. 603619/07

BARBARA ZOLDAN,

Respondent,

and

ALEX ZOLDAN,

Judgment-Debtor.
-----X

JOAN A. MADDEN, J.:

FILED

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In this turnover proceeding, Respondent Barbara Zoldan moves for an order, pursuant to CPLR § 4404, setting aside this Court's decision after a non-jury trial and vacating the judgment on the grounds that the court erred in applying the law of equitable ownership and "Sua Sponte" amended petitioner's theory after trial, and on the grounds that the conclusions contained in the decision are not supported by any fair interpretation of the evidence. Petitioner Robert Zohlman opposes the motion arguing that the court correctly applied the law with respect to equitable interest, that the theory upon which the court based its determination is stated in the petition, and that a fair interpretation of the evidence supports the conclusions. In reply, respondent argues that the standard of review which petitioner cites, that is, whether the conclusions are supported by a fair interpretation of the evidence, while applicable to appellate review, is inapplicable to this motion, and that pursuant to CPLR §4404 (b) this court should exercise its discretion after a no-jury trial to set aside its judgment and make new findings.

Respondent makes this argument notwithstanding that, as noted above, she moved on the grounds that the decision was not supported by a fair interpretation of the evidence and in support of this argument cited the same case as Petitioner, *Saperstein v Lewenberg*, 11AD3d289 (1st Dept. 2004). For the reasons below, this court declines to set aside the verdict in the exercise of discretion and make new findings under CPLR §4404 (b) or on an evidentiary basis as it cannot be said that the verdict is not supported by a fair interpretation of the evidence. *Saperstein v Lewenberg*, supra; see *Syndicated Communication Venture Partners IV, LP v Baystar Capital, LP*, 51 AD3d 546 (1st Dept. 2008).

Petitioner Robert Zohlman, a judgment creditor, commenced this action pursuant to CPLR §5225(b) seeking to collect a judgment from Respondent Barbara Zoldan, the wife of judgment debtor Alex Zoldan, through the turnover of distributions she received as a minority shareholder in a real estate development limited liability corporation, Mahopac Corporation LLC ("Mahopac"), in which distributions petitioner claimed judgment debtor had an equitable interest.

The issue before the Court was whether Petitioner judgment creditor established judgment debtor's "interest" in Respondent's (his wife's) distributions within the meaning of CPLR §5255(b) so as to warrant the equitable relief sought. In finding that Petitioner satisfied the requisite legal burden to warrant turnover relief, the Court stated

the legal construct underlying petitioner's theory is that Alex Zoldan has an equitable ownership interest in his wife's distributions, as the structure of their participation in Mahopac and Sozo, [two entities created to advance the real estate project] and the structure of the distributions, wrongfully diverted Alex Zoldan's income to his wife's distributions so as to shield such income from the judgment in issue.

To the extent necessary to address the issues raised in this motion, certain parts of the

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decision will be restated. Mahopac was formed by Barbara Zoldan and Matthew Soloff ("Soloff") to construct a new home real estate development in Mahopac, New York involving land which was divided into 23 lots. Ultimately, 10 houses were constructed and the remaining lots sold to developers. Under the Operating Agreement ("Agreement"), Soloff and Barbara Zoldan had ownership interests in Mahopac of, respectively, 51% and 49%. Soloff contributed startup capital to the project in the amount of \$300,000¹ and helped secure additional bank financing for the project, including a \$550,000 mortgage loan for land and a \$1,660,000 mortgage loan for building costs. Soloff and Barbara and Alex Zoldan were joint and several guarantors on the loans. Under the Agreement Barbara Zoldan was named the Manager, with the responsibility to "acquire, finance, develop, construct, improve and sell or lease the Property, open bank accounts and otherwise invest the funds of the Company."² As part of the management of the project, a separate C corporation named Sozo Development Corporation ("Sozo") was created to function as the cost center vehicle through which all expenses on the project were paid. Sozo was funded by Mahopac and 100% owned by Barbara Zoldan.

Neither Mahopac nor Sozo had any employees, and Alex Zoldan was listed on the corporate registration as the CEO of Sozo. All invoices were sent to Alex Zoldan's attention at

¹In a May 2000 amendment to the Agreement, Soloff contributed an additional \$50,000 in capital, although no additional capital contributions are reflected in the 2001 and 2002 tax returns.

²Barbara Zoldan's responsibilities also included the authority to purchase insurance on the business and assets of the Company, commence lawsuits and other proceedings, enter into any agreement, insurance or other writing concerning the operations of the company, retain accountants, attorneys or other agents and take any other lawful action that the Member(s) consider(s) necessary, convenient and advisable in connection with any business of the Company."

an address where he had an office and where Barbara Zoldan testified Sozo's office was located. Significantly, Alex Zoldan was responsible for approving all invoices and requisition requests on the project and submitting them to Isaac Molyneaux ("Molyneaux"), Mahopac's outside accountant, for payment. Only Alex Zoldan and Molyneaux were authorized signatories on the Sozo bank account with corporate check writing privileges. In addition to approving and managing the payment of project costs through Sozo, Alex Zoldan represented Mahopac at some of the mortgage closings and signed some of the HUD closing documents, and also signed the land and building loans' commitment letter on behalf of Mahopac. Molyneaux testified that his dealing in connection with the project were with Alex Zoldan whom he believed was the construction manager of the project.

As indicated above, Barbara Zoldan argues, inter alia, that the Court "Sua Sponte" amended Petitioner's theory of the case after trial, that the theory of equitable ownership is inapplicable to a turnover proceeding and to the specific facts of this case, and that a fair interpretation of the evidence does not support the determination that Alex Zoldan's role contributed to the distributions to Barbara Zoldan. Barbara Zoldan further argues that a fair interpretation of the evidence does not support the determination as to the relative contributions made by Alex and Barbara Zoldan.

As to Barbara Zoldan's argument that the Court Sua Sponte amended Petitioner's theory of the case, this argument is rejected as the Petition supports such theory. As stated in the decision

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

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judgment creditor's rights to the property are superior to those of the transferee" (emphasis added). CPLR 5225(b). To the extent applicable to the instant case, to establish that property is subject to a CPLR 5225(b) turnover proceeding, petitioner must show that property in which Alex Zoldan as a judgment debtor has an "interest," is in the possession of his wife, respondent Barbara Zoldan, and that Alex Zoldan is entitled to the possession of such property. See Beauvais v. Allegiance Securities, Inc., 942 F2d 838, 840 (2d Cir 1991).

The Petition is sufficient to support this theory based on following allegations.

Petitioner above named submits this Petition pursuant to CPLR §5225(b) seeking the turnover of funds and assets in possession of, or given or *diverted to* BARBARA ZOLDAN, the transferee, in which funds and assets the above named Judgment Debtor, ALEX ZOLDAN has *an interest*. Petition ("Pet. ¶ 2).

In paragraphs eight through thirty-four, the Petition describes in detail the real estate venture involving Barbara and Alex Zoldan, and Soloff ; the formation of Mahopac and Sozo; and the theory that Alex Zoldan was the "one who operated the business," and Barbara Zoldan was "simply an empty figurehead used to insulate ALEX from his creditors." Pet. ¶ 32. The Petition further states that

[i]t is obvious that Judgment Debtor, ALEX, has gone to great lengths to hide his business activities and income from his creditors. It is also obvious that it was ALEX and not BARBARA who earned all the income from the various real estate construction ventures in which BARBARA claimed that she participated and that ALEX only lent his unpaid consultation. Pet. ¶ 35.

Thus, contrary to Respondent's argument, the theory that income earned by Alex Zoldan from the project was diverted to Barbara Zoldan, and that Alex Zoldan had an interest in the funds received from the real estate project is stated in the Petitioner. Moreover, a special proceeding pursuant to CPLR §5225(b) is equitable in nature and it is of no moment that the Petition does not specifically use the words "equitable interest." Based on the foregoing, the Petition sufficiently asserts the theory and respondent's argument that the court Sua Sponte amended the

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theory is without merit.³

Additionally, the Court rejects Respondent's argument that the theory of "equitable interest" is inapplicable to this turnover proceeding as there is no precedent for this determination. Respondent's argument that Petitioner's theory is based on veil piercing and that the applicable inquiry is whether Alex Zoldan exercised control over Mahopac to the point of completely disregarding the corporate form and acting as though the corporation's assets were his own is also without merit. The Court specifically addressed this issue in the following section of the decision.

Precedent shows that the legal theories most frequently employed to establish a judgment debtor's "interest" in property in possession of a third party pursuant to CPLR 5255(b), are based on principles of fraudulent conveyance or veil piercing. See e.g. WBP Central Assocs, LLC v. DeCola, 50 AD3d 693 (2nd Dept 2008) (fraudulent conveyance); EAC of New York, Inc. v. Capri 400, Inc., 49 AD3d (3rd Dept 2008) (piercing the corporate veil); FDIC v. Conte, 204 AD2d 845 (2nd Dept 1994) (fraudulent conveyance). Here, liability based on a theory fraudulent conveyance is neither asserted nor applicable. Moreover, while petitioner uses certain terms commonly used in a veil piercing context, and notwithstanding respondent's mischaracterization of petitioner's claims as veil piercing, petitioner does not in fact rely on this theory. Rather, petitioner's theory, when stripped to its essentials, is that based on petitioner's outstanding judgment against Alex Zoldan and the Zoldans' marital relationship, the couple contrived their respective participation in Mahopac and structured the wife's distributions to divert the husband's income for the work he performed from [to] such distributions. Thus, Petitioner argues Alex Zoldan has an equitable interest in his wife's distributions. ..

At the outset, it must be noted that corporate veil piercing theories are not strictly applicable to the instant circumstances. "Piercing the corporate veil is an equitable concept that allows a creditor to disregard a corporation and hold its controlling shareholders personally liable for the corporate debt. Reverse-piercing flows in the opposite direction and makes the corporation liable for the debt of its shareholders. In both situations there is a disregard of the corporate form, and the controlling shareholders are treated as alter egos of the corporation and vice

³Respondent also argues that the theory was first raised in petitioner's post trial brief. For the same reasons as stated above, this argument is without merit.

versa” (internal citations omitted). Sweeney, Cohen, Stahl & Vaccaro v Kane, 33 AD3d 785 (2nd Dept 2006), lv app dismiss 8 NY3d 858 (2007). To pierce the corporate veil it must be established that an owner or shareholder exercised complete domination over the corporation with respect to the transaction at issue, and that such domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil. See Morris v. New York State Dept of Taxation, 82 NY2d 135, 141 (1993).

Here, petitioner does not seek to pierce the corporate veil of Mahopac or Sozo to pay Alex Zoldan’s personal debt, and in fact, those entities have not been named as parties in this proceeding. Rather, petitioner seeks to satisfy his unpaid judgment from a corporate distributions to a shareholder as payment of the personal debt of the shareholder’s husband on the grounds that the debtor-husband has an interest in his wife’s distributions based on uncompensated work he performed on behalf of the corporation.

While traditional veil piercing theories do not apply, veil piercing is used when the dominion and control results “in wrongful or inequitable consequences.” TNS Holdings, Inc. v MKI Securities Corp., 92 NY2d 335, 339 (1998), and thus, certain principals underlying veil piercing are instructive in analyzing petitioner’s allegation that Barbara Zoldan and her husband, the judgment debtor, contrived to commit a wrong, that is to shield Alex Zoldan’s compensation from the reach of his creditor. Petitioner’s post-trial brief relies on the concept of equitable ownership as a basis for establishing Alex Zoldan’s “interest” in his wife’s distributions sufficient to justify turnover relief pursuant to CPLR 5225(b). Courts have recognized equitable ownership interests for purposes of piercing the corporate veil, as to a non-shareholder who commits a wrong using his control over the corporation. See Freeman v. Complex Computing Company, Inc., 119 F3d 1044, 1051 (2nd Cir 1997); Guilder v Corinth Construction Corp., 235 AD2d 619 (3rd Dept. 1997); Lally v Catskill Airways, Inc., 198 AD2d 643 (3rd Dept. 1993); State of New York v Easton, 169 Misc2d 282 (Sup Ct Albany Co 1995).

This analysis discusses equitable ownership interests under veil piercing principles as instructive with respect to the issue of equitable ownership interest when applied to a non-shareholder of a corporation. The Court did not find that Alex Zoldan had an equitable ownership interest under principles of veil piercing. Rather, the conclusion that Alex Zoldan had an equitable ownership interest in his wife’s distributions, was based on the structure of their participation in Mahopac and Sozo, and the structure of the distributions, which wrongfully diverted Alex Zoldan’s income to his wife’s distributions so as to shield such income from the

judgment in issue.⁴

Notwithstanding the foregoing analysis, which clearly distinguishes “equitable ownership” under veil piercing theories and “equitable interest” in a turnover proceeding, Respondent argues the court misapplied veil piercing theories. As indicated above, Respondent’s argument mischaracterizes the legal basis for the determination that Alex Zoldan had an equitable interest in his wife’s distributions.

Similarly, Respondent’s argument that the conclusions reached by the court cannot be supported by a fair interpretation of the evidence is unpersuasive. As cited by both Respondent and Petitioner, applicable case law holds that “[a] judgment rendered after a bench trial should not be disturbed unless it is obvious that the court’s conclusions cannot be supported by any fair

⁴In reaching this conclusion, the court stated that “ Alex Zoldan received no compensation for the work he performed. As the work he performed was significant, essential and integral to the project, and based on his lack of compensation, his marital relationship with respondent, and the existence of the outstanding judgment, this Court finds that his wife’s distributions were intentionally structured as a contrivance so that compensation for Alex Zoldan’s services was diverted through distributions to his wife so as to shield the funds from the enforcement of petitioner’s judgment. Under these circumstances, this court finds that this contrivance was a wrong warranting imputing to Alex Zoldan an equitable ownership interest in his wife’s distributions. See National Union Fire Insurance Company of Pittsburg, Pa., v Bodek, 270 AD2d 139 (1st Dept), lv app disp 95 NY2d 881, rearg den 95 NY2d 959 (2000) (court found judgment debtor entitled to one half of wife’s corporate distributions where husband dominated and controlled the corporation); Guilder v Corinth Construction Corp., supra and Lally v Catskill Airways, Inc., supra (both holding that a non-shareholder who dominated and controlled the corporation where the control was used to commit a wrong may be considered its equitable owners); FDIC v. Conte, 204 AD2d 845 (3rd Dept 1994) (question of fact as to whether transfer of proceeds from refinancing of judgment debtor’s house to debtor’s mother and her reconveyance of the majority of the proceeds to a corporation controlled by the debtor was a contrivance to place some of the equity out of the reach of creditors); Manhattan Apartments, Inc v Simeon, 11 AD3d 404, (1st Dept 2004) (recovery of a brokerage commission on the theory that the mother who purchased an apartment was the alter ego of her son who was introduced to the property by the broker).

interpretation of the evidence particularly where the credibility of witnesses is central to the case.” *Saperstein v Lewenberg*, 11 AD3d 289 (1st Dept. 2004). Here, a fair interpretation of the evidence supports the conclusion that Alex Zoldan’s “role was central and integral to the actual construction of the houses.” Specifically, Alex Zoldan had over twenty-five years experience in the development and construction of residential and commercial real estate. He was the CEO and only officer of Sozo, which like Mahopac, had no employees. Alex Zoldan and Molyneaux were signatories on Sozo’s bank account, and only they had check cashing privilege. Significantly, all invoices from subcontractors and vendors and requests for requisitions were sent to Alex Zoldan and he was the only person with authority to approve these requests. Costs and expenses are central to a real estate project such as Mahopac. Clearly, Alex Zoldan in exercising control and authority over all invoices and requisitions, must have had detailed knowledge of the financial structure, and, on an on going basis, the financial condition of Sozo and Mahopac, including amounts received and amounts available for operating and other expenses. He must also have had a detailed understanding of the project, the stage of construction and the specifics regarding the construction to exercise these responsibilities. Contrary to Respondent’s argument, expert testimony is not needed to establish the significance of Alex Zoldan’s role which can be inferred from the evidence.

Moreover, the significance of his role is further reflected in the evidence that he represented Mahopac at certain mortgage closings, was the signatory on certain HUD statements, signed land and building loan commitment letters on behalf of Mahopac, and filled out and filed the Biennial Registration Statement with New York State on behalf of Sozo. Alex Zoldan interviewed Molyneaux for the bookkeeper position, and he, not Barbara Zoldan, communicated

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with him with respect to the project's financial transactions.

Based on the foregoing, it cannot be said that Alex Zoldan's did little more than handle paperwork as argued by Respondent. Nor can it be said that the Court's determination that Alec Zoldan's role was essential and integral to the construction of the houses" cannot be supported by a fair interpretation of the evidence. *Saperstein v Lewenburg*, supra. As to Respondent's argument that in reaching this conclusion, the court relied on incompetent evidence from Molyneaux that Alex Zoldan was the construction manager for the project, this argument mischaracterizes the basis of the Court's conclusions and the Court's reference to Molyneaux's testimony. In the decision, the Court stated that based on his interactions with Alec Zoldan, Molyneaux believed that Alec Zoldan was the construction manager. The Court did state that the evidence warrants the inference that by virtue of his experience and his role in approving invoices, requisitions and checks, that Alex Zoldan controlled the day to day operations of the project, that his role was central and integral, and that this inference was "supported by Molyneaux's testimony." However, at no point did the Court state that Molyneaux's belief was the basis for her conclusion.

Respondent again mischaracterizes the Court's finding, in arguing that the Court found "Alex Zoldan was paid construction management fees of \$10,000 in 2001 and \$10,800 in 2002." This quote is out of context and ignores the specific finding of the Court that such payments did not constitute payment for his work. The portion of the sentence quoted by Respondent is in the following paragraph.

While Barbara Zoldan alleges that her husband was not paid a salary for his role as CEO of Sozo, computer printouts of Sozo's check registers indicate that Alex Zoldan was paid construction management fees of approximately

\$10,000 in 2001 and \$10,800 in 2002. Alex Zoldan's 2001 and 2002 individual tax returns show Schedule C self-employment income from "Real Estate" in the amount of \$15,000 per year. However, evidence indicated that during the time periods in issue, Sozo had not paid rent for use of Alex Zoldan's office, and Barbara Zoldan alleges the checks were actually payments for office rent.

At trial Barbara Zoldan specifically testified that the checks were actually payment for office rent as Alec Zoldan used his own office to perform his responsibilities in connection with Sozo.⁵ As discussed below, the Court found that these payments were for rent and Respondent's argument misrepresents this finding. Specifically, the Court stated that

Alex Zoldan's failure to receive compensation was intentional in order to avoid generating income which could be attached by petitioner to satisfy the judgment. In reaching this conclusion, the Court finds that Alex Zoldan did not receive compensation for his work, and the \$20,000 to \$30,000 he received was payment for rent of his office space.

The court also finds without merit Respondent's arguments that the Court minimized Barbara Zoldan's participation in and contributions to the project, and that there is no evidence to support the apportionment of the relative values of Barbara and Alex's contribution of respectively 25% and 75%. As stated above, a Court's conclusions should not be set aside unless the conclusions cannot be supported by a fair interpretation of the evidence. *Saperstein v Lewenburg*, supra. The Court evaluated Barbara Zoldan's testimony concerning her experience in real estate development and participation in a number of real estate projects with her husband in the 1970s and 1980s, her operation of a gift shop in the 1980s and participation in certain real estate projects in the 1990s. The Court also evaluated her testimony regarding her role in the Mahopac project, which involved 23 lots and the construction of 10 homes, including her testimony that she negotiated a letter of credit, hired a superintendent and subcontractors, was on

⁵Additionally, Respondent in summation argued that the payments were for rent.

the site three to four days a week to observe the progress, negotiated and was involved in the sale of completed homes and was present at many, if not, all of the closings. Significantly, it was the superintendent who supervised the subcontractors and the construction on the site. Considering the size and complexity of the project, the depth of Alex Zoldan's experience and Barbara Zoldan's relatively limited experience, and the nature of their respective participation in the project, it cannot be said that the Court's conclusions regarding the relative contributions of Barbara and Alex Zoldan, apportioned at 25% and 75% respectively, are not supported by any fair interpretation of the evidence. In reaching this determination, the court rejects respondent's argument that expert testimony is required for apportionment.

The Court also rejects Respondent's argument that the evidence shows that profits Mahopac made came from the sale of the lots without houses and not from the sale of lots with houses, so that Alex Zoldan's role in connection with the construction of the houses did not contribute to the distributions to Barbara Zoldan. In support of this argument, Respondents points to the following testimony by Barbara Zoldan:

Q. You were able to calculate—you said earlier that Mahopac broke even on those homes that it built?

A. Correct.

Q. Was there a profit made by mahopac in connection with the sale of the lots that homes had not been erected on?

A. Yes.

Q. And how much of a profit was made with regard to that aspect of the development?

A. I believe it was 800-some-odd-thousand dollars.

This argument is raised by Respondent for the first time in this motion. Even if properly before the court, consideration of this argument, does not change the conclusion that compensation for Alex Zoldan's services were diverted through distributions to his wife. Barbara Zoldan offered

no explanation for this allocation, did not refer to any figures regarding the profit from any individual sale of a lot without a house, did not refer to any calculations regarding either the sale of lots with or without house nor even point to any documentation to support her "belief." Nor does Respondent point to any documentary evidence to support Barbara Zoldan's testimony. Significantly, neither Sozo's bookkeeper, Molyneaux, nor Ronald Kaplan, an accountant hired to do Mahopac's tax returns were questioned by Respondent as to this issue when they testified.⁶ Under these circumstances, the court finds that Barbara Zoldan's testimony allocating "800-some-odd thousand dollars" to profit from the sale of lots without houses is self serving, unsupported by reference to any financial documents or analysis, unsupported by other evidence and rejects it as not credible.

The Court also rejects Respondent's argument that the Court did not afford sufficient weight to Barbara Zoldan's testimony regarding other construction projects in which Mr. Zoldan was involved after the judgment as the Court did not appreciate its significance. The argument that Alex Zoldan may have been involved in other projects and did not funnel his earnings from the projects, if any, through his wife, and that this has relevance to intent, is meaningless without context.

As to Respondent's argument that CPLR §5231(b) limits execution on judgment debtor's

⁶ The evidence at trial regarding Mahopac's tax returns for 2001 and 2002, was that the net income from the project was allocated to Barbara Zoldan's capital account proportionate to her 49% ownership interest, and she received distributions from her capital account in 2001 and 2002 totaling \$385,000. No evidence was introduced at trial of any Mahopac tax returns subsequent to 2002. Ronald Kaplan testified that his firm was not retained after 2002 to prepare any company returns other than filing an extension for 2003. Thus, it is unclear if any additional distributions were made on behalf of Mahopac, although several deeds indicate the sale of property in 2003.


income to ten percent, the Court finds it is not applicable under the circumstances here, where the court has determined that Respondent Barbara Zoldan and judgment debtor Alex Zoldan contrived to shield compensation for Alex Zoldan's services from the enforcement of petitioner's judgment by diverting the compensation through distributions to his wife, and that this contrivance was a wrong warranting imputing to Alex Zoldan an equitable ownership interest in his wife's distributions.

Accordingly, it is

ORDERED that Respondent's motion to set aside the verdict is denied.

DATED: January ³¹~~29~~, 2011

ENTER:



J.S.C.
HON. JOAN A. MADDEN
J.S.C.

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