

**Matter of Northwest 5th & 45th Realty Corp. v
Mitchell, Maxwell & Jackson, Inc.**

2014 NY Slip Op 30529(U)

March 4, 2014

Supreme Court, New York County

Docket Number: 150344/13

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

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IN THE MATTER OF THE APPLICATION OF
NORTHWEST 5TH & 45TH REALTY CORP.,

Petitioner,

For a judgment pursuant to Section 5225 (b) of the
Civil Practice Law and Rules,

Index No.: 150344/13

- against -

MITCHELL, MAXWELL & JACKSON, INC.,
STEVEN KNOBEL, JEFFREY JACKSON a/k/a
JEFFREY SATKIEWICZ a/k/a JEREMY
SATKIEWICZ, COOPERATIVE DATA CORP.,
MITCHELL, MAXWELL & JACKSON (NY), INC.,
BOLD DATA SERVICES, INC., TRI-STATE REALTY
PARTNERS, LLC, MMJ APPRAISAL MANAGEMENT, INC.,
MMJ COMMERCIAL, INC., NATIONAL APPRAISAL
MANAGEMENT, LTD., and PETER KNOBEL,

Respondents.

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HON. ANIL C. SINGH, J.:

Respondents Mitchell, Maxwell & Jackson (“MMJ”) and Steven Knobel (“Knobel”) move for leave to renew and/or reargue the Order dated July 25, 2013, setting aside certain transfers of funds from MMJ to Knobel, and which pierced the corporate veil between Knobel and MMJ, and which directed petitioner to calculate the exact amount to be paid by Knobel based on what he received, less

his salary upon affidavit. Petitioner opposes the motion.

Movants seek reargument on the grounds that the Court that this court misapplied the elements necessary to find insolvency under DCL Section 271 and 273(b) and misconstrued facts concerning the solvency of MMJ; improperly pierced the corporate veil against Knobel; misconstrued the facts concerning Knobel's contemporaneous transfer for fair consideration the sum of his salary; and improperly considered evidence submitted by petitioner for the first time in reply.

The rule that "a motion for renewal be based upon newly discovered evidence is a flexible one, and a court, in its discretion, may grant renewal even where the additional facts were known to the party seeking renewal at the time of the original motion, provided the moving party offers a reasonable justification for the failure to submit the additional facts on the original motion" (Grantat v. Walbaum's Inc., 289 AD2d 289, 290 [2nd Dept. 2001] (other citations omitted)).

"A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. Nor does reargument serve to

provide a party an opportunity to advance arguments different from those tendered on the original application. It may not be employed as a device for the unsuccessful party to assume a different position inconsistent with that taken on the original motion.” (Foley v. Roche, 68 A.D.2d 558, 567-568 [1st Dept., 1979]).

Respondents’ contention that petitioner failed to prove insolvency is predicated upon the contention that it had valuable saleable assets – namely, MMJ’s goodwill, which Knobel estimated at \$1.6 million dollars in 2010 and 2011, fixtures and accounts receivable. The financial statement appended to respondents’ moving papers should have been submitted on the initial motion. In any event, the financial statement is not authenticated and has no indicia of reliability. The tax returns, which respondents contend should not have been considered, were submitted in opposition to respondents’ motion to dismiss. Respondents failed to make the argument that is now advanced that book value does not reflect the salable value of the assets. This argument is improperly raised for the first time on a motion to reargue.

The corporate veil was properly pierced based on Knobel’s use of corporate monies to pay for personal expenses while the judgment-debtor was insolvent.

Accordingly, the court declines to grant reargument.

Renewal is granted, however, on Knoebel’s assertion that this commission

income in 2010 and 2011 was \$385,929.05 and not \$183,100. Knobel maintains that there was an error in the Quickbooks account. As a result, his full earnings on his 1099s were not taken into account. Knobel asserts that he paid taxes on the full amount of the 1099s. Knobel submitted his 2010 and 2011 tax returns for an *in camera* inspection on this issue.

I decline to conduct an *in camera* inspection because petitioner is entitled to review the tax returns and cross-examine Knobel on the discrepancies on his earned income for 2010 and 2011.

In my decision dated July 25, 2013, I stated at pages 15-16 as follows:

As a general rule, a defrauded creditor in an action to set aside a fraudulent conveyance is “limited to [setting aside the conveyance of] the property which would have been available to satisfy the judgment had there been no conveyance” (*Marine Midland Bank v Murkoff*, 120 AD2d 122, 133 [2d Dept 1986], *see also Blakeslee v Rabinor*, 182 AD2d 390, 393 [1st Dept 1992]). Where the transferee has disposed of the transferred money in some manner which makes it impossible to return, a money judgment against the transferee may also be an available form of substitute relief (*Marine Midland*, 120 AD2d at 132-133; *see also Joslin v Lopez*, 309 AD2d 837, 839 [2d Dept 2003]). Obviously, the shareholders and Debtor’s affiliates disposed of some of the funds; to what extent is not known. A judgment will be entered ordering Knobel to pay what he received, less his salary, and piercing the corporate veil between Knobel and Debtor, and Knobel and the other respondents. Petitioner must work out the exact amount, taking into account Etzin’s allegation that Petitioner overstated the fraudulent transfer amount, which Petitioner does not deny. The judgment shall be supported by an affidavit made on personal knowledge setting forth how the amount was calculated. Otherwise, the petition is denied.

In retrospect, the Court should not have directed petitioner to settle a judgment upon an affidavit. A hearing is necessary to fix the amount of damages.

Accordingly, it is

ORDERED that the matter is referred to a Special Referee who shall hear and report on the following issues:

- (1) the amount Knobel earned in 2010 and 2011;
- (2) the sums that Knobel received from the insolvent corporation, less his salary; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M) for placement at the earliest possible date upon the calendar of the Special Referees Part; and it is further

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 15 days from this Order, submit to the Special Referee Clerk an Information Sheet containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including

all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to an adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

Dated: MARCH 4, 19

ENTER:



ANIL C. SINGH

HON. ANIL C. SINGH
SUPREME COURT JUSTICE