

<b>Zwarycz v Marnia Constr. Inc.</b>
2014 NY Slip Op 33473(U)
June 18, 2014
Supreme Court, Westchester County
Docket Number: 21513/09
Judge: Robert M. DiBella
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To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**FILED**  
AND  
**ENTERED**  
ON June 18, 2014  
**WESTCHESTER**  
**COUNTY CLERK**

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

-----X  
**MICHAEL ZWARYCZ,**

**Plaintiff,**

**-against-**

**MARNIA CONSTRUCTION INC., STEMAR  
CONSTRUCTION INC., KERRY SULLIVAN,  
WILLIAM J. SULLIVAN, JR. and JOAN  
HANNIGAN, as the Executrix of the Estate of  
Helen Sullivan,**

**Defendants.**

-----X  
**DIBELLA, J.**

**DECISION AND ORDER  
AFTER NON-JURY TRIAL**

INDEX NO. 21513/09

**FILED**  
JUN 18 2014  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHE

The above-captioned matter was referred from the Trial Assignment Part and this Court conducted a non-jury trial which commenced on July 8, 2013 and continued over the course of nine days, concluding on July 23, 2013. At the trial, Michael Zwarycz and Andrew Balint testified on behalf of plaintiff. Julius Ostreicher, William Sullivan, Jr., and David Purdy testified on behalf of defendant. The following exhibits were marked into evidence: Plaintiff's Exhibits 1-7, 10-13, 15, 17-19, 21-45, 48, 51-54, 57 and Defendant's Exhibits B, C, H-L, M-P, Q-T, V-Z, AA-DD, FF-II, KK, MM-TT. Following the conclusion of the trial, the parties submitted post-trial submissions on or about November 18, 2013. The Court has considered the credible testimony and evidence submitted at the trial, as well as the post-trial submissions, and makes the following findings of fact and conclusions of law.

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Plaintiff commenced this action seeking a judgment declaring that he is the owner of 50 percent of the outstanding shares of defendants Stemar Construction, Inc. ("Stemar") and Marnia Construction, Inc. ("Marnia").

**THE FACTS**

Stemar was incorporated on August 9, 1966 and has as its primary asset a 3-story building with 12 apartments located at 209 Cerrato Lane (f/k/a 211 Rockland Avenue/211 Cerrato Lane) in Yonkers, New York (PI Ex. 1). Marnia was incorporated on August 14, 1969 and has as its primary asset a 3-story building with 29 apartments at 97 Waring Place (f/k/a 95 Waring Place) in Yonkers, New York (PI Ex. 15). It is undisputed that William J. Sullivan, Sr. ("Bill"), who has since died, was a 50 percent owner of both corporations.<sup>1</sup> It is the ownership of the remaining 50 percent interest in both corporations that is in dispute. Plaintiff and defendant Estate of Helen A. Sullivan (Bill's sister) both claim ownership of the remaining 50 percent interest.

At the trial, plaintiff Michael Zwarycz testified. Plaintiff had various jobs when he first immigrated to the United States from Ukraine in 1949 (Trial Tr. 20). During the 1950's and 1960's, plaintiff was a successful real estate developer, buying land and building approximately 40 houses (Trial Tr. 21-23). During that time period, plaintiff and Bill were acquaintances, as plaintiff bought building supplies for his developments from Sullivan &

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<sup>1</sup> Upon Bill's death, his 50 percent interest was inherited by his wife Marie and three children (Trial Tr. 646). Following the death of Marie Sullivan and one of their children, the 50 percent interest originally held by Bill passed to William J. Sullivan, Jr. and Kerry Sullivan, who presently each have a 25 percent interest in Stemar and Marnia (Trial Tr. 654).

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Sons (Trial Tr. 23). The two gentlemen became friends and began seeing each other socially at various events (Trial Tr. 25–27).

At some point, plaintiff wanted to build an apartment building (Trial Tr. 27). He and non-party Angelo Fusino planned on partnering in this venture and purchased land on Rockland Avenue (now 211 Cerrato Lane) (Trial Tr. 27–28). However, Mr. Fusino backed out (Trial Tr. 29). Plaintiff then turned to Bill and asked him to be his partner (Trial Tr. 30). Bill agreed (Trial Tr. 29–30). They formed Stemar for this project development in 1966 (Trial Tr. 35). Plaintiff testified that the first three initials of each of their wives' names were used to come up with the name ("Ste" for Stefania, plaintiff's wife, and "Mar" for Marie, Bill's wife's name) (Trial Tr. 34–35). Plaintiff testified that he and Bill were each 50% owners and shareholders of Stemar (Trial Tr. 38). Plaintiff was President of Stemar and Bill was Vice President (Trial Tr. 40).<sup>2</sup> Plaintiff further stated that the office address listed for Stemar in 1966 was plaintiff's home address (Trial Tr. 42; PI Ex. 2).

Stemar then purchased the land on Cerrato Lane (Trial Tr. 40, 46; PI Exs. 2, 3-1, 3-2; Def Ex. Q). Mr. Fusino was paid for his 50% share of the land (Trial Tr. 46; PI Exs. 2, 3-1, 3-2; Def Ex. Q). Plaintiff testified that he was not paid for his 50% share of the value of the land because his share was part of his capital contribution to Stemar (Trial Tr. 47–48).

Further, he stated that he also contributed to Stemar by acting as general contractor

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<sup>2</sup> At his deposition, plaintiff testified that maybe he was Vice President and Bill was President (Trial Tr. 522–524).

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at the construction site of the property (Trial Tr. 36, 54). He supervised the subcontractors full time and it took over a year to build the apartment building (Trial Tr. 61-62). Plaintiff testified that he was not paid for his work on this building, as it was his view that this was part of his contribution to the corporation (Trial Tr. 64-65). Once the building was constructed, he and Bill decided to rent out the eleven apartments (Trial Tr. 67). Anthony DePonto was subsequently hired as a superintendent/janitor of the Cerrato Lane building (Trial Tr. 69). All the checks that were issued by Stemar were jointly signed by plaintiff and Bill's wife, Marie (Trial Tr. 45, 52, 77-79; PI Ex. 3, 4, 6, 10). In or about 1971, after the project was completed, plaintiff thought to increase the number of apartments at the building to thirteen (Trial Tr. 79). Stemar hired an attorney to represent it in the application to the Building Department to increase the number of apartments (Trial Tr. 79-80; PI Ex. 12).

Marnia was incorporated on August 16, 1969 to develop another apartment building at 95 Waring Place in Yonkers, New York (Trial Tr. 101; PI Ex. 15). The name of this corporation was again derived from the names of plaintiff's and Bill's wife (Trial Tr. 103). Plaintiff's home address was listed as the office address of the corporation (Trial Tr. 104; PI Ex. 15). Again, plaintiff states that he and Bill were 50/50 shareholders of Marnia (Trial Tr. 105). Plaintiff was Marnia's President and Bill was the corporation's Vice President (Trial Tr. 125). Marnia purchased the land on which it would build the apartment building from plaintiff and his previous partner, and plaintiff was present at the closing (Trial Tr. 126). The other owner of the land cashed his check of the proceeds of the sale, but, even

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though plaintiff was issued a check for his share, he did not cash the check and "left it behind" as investment in Marnia (Trial Tr. 127-130). Plaintiff testified that he acted as general contractor and was responsible for the development of the 29-apartment building (Trial Tr. 126). After the completion of this building, plaintiff and Bill decided to retain the building and rent out the apartments (Trial Tr. 153). Plaintiff testified that he maintained the property and rented the apartments (Trial Tr. 137, 153-154). He was never paid by Marnia for the work, as he considered it his contribution to Marnia (Trial Tr. 151). Bill was responsible for handling the books and the financial side of the projects (Trial Tr. 153).

In January 1971, Marnia acquired four additional properties on St. Andrew's Place in Yonkers, New York (Trial Tr. 155-157). Those properties were to be demolished and multiple units built in their place (Trial Tr. 156). Bill signed the contract of sale, but plaintiff's address was listed as Marnia's corporate address (Trial Tr. 158-159). Plaintiff did not financially contribute to the purchase of the St. Andrew's Place properties (Trial Tr. 218). Plaintiff and Bill both attended the closing (Trial Tr. 180). In 1973, Marnia purchased contiguous land to the rear of the St. Andrew's Place property it already owned (Trial Tr. 183-184; PI Exs. 31-32). Again, plaintiff attended the closing as Marnia's President (Trial Tr. 184). The property on St. Andrew's Place was ultimately sold (Trial Tr. 254-55).

In July 1973, Bill died (Trial Tr. 188). Bill was survived by his wife Marie Grady and three children, Kerry, William Jr. and James (Trial Tr. 192). Plaintiff testified that, after Bill's death, his sister Helen Sullivan ("Helen") began to act as Treasurer on behalf of

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Marnia (Trial Tr. 194).<sup>3</sup>

With regard to both properties, plaintiff testified that he did not receive any compensation to act as general contractor for the properties but that he did receive some reimbursement for labor costs related to the construction (Trial Tr. 218–221). On cross-examination, plaintiff testified that he began receiving a salary in the late 1970's in the amount of \$250/week (which later was increased to \$300/week) (Trial Tr. 259–260; Def Exs. L, LL). However, later on during cross it became clear that plaintiff was receiving wages from Stemar as early as 1971 (Def Ex. U).

At some point after Bill died, plaintiff stopped signing checks (Trial Tr. 260). Helen told him it was hard to get in touch with him every time a check needed to be signed, so plaintiff willingly took his name off of the accounts for check-writing purposes and authorized Helen to individually sign checks on Stemar and Marnia's behalf (Trial Tr. 260). In addition, at some point after Bill's death, tax bills/statements stopped coming to plaintiff's address which was listed as the corporate address (Trial Tr. 384; Def Exs. SS, TT; PI Ex. 28).

In 1994, certain tenants at 95 Waring Place filed complaints against their landlord Marnia (Trial Tr. 201, 205, 206; PI Ex. 47). Plaintiff was required to attend hearings with respect to those complaints (Trial Tr. 202, 206). Up until around 1994, plaintiff was still signing leases with tenants on behalf of Stemar and Marnia (Trial Tr. 211; PI Ex. 48).

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<sup>3</sup> Helen also took over the Sullivan & Sons business after Bill died (Trial Tr. 781–782).

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In or around 1995 or 1996, at the time when Sullivan & Sons was faced with bankruptcy, plaintiff learned that approximately \$400,000 was removed from Stemar (Trial Tr. 394-95, 591). There was conflicting testimony during his deposition and trial testimony about whether plaintiff made any inquiry to Helen about the money that was taken out of Stemar (Trial Tr. 396).

Sometime in the 1990's, plaintiff testified that he went to Albany to look at the corporate records and found out that Helen had made herself President of Marnia (Trial Tr. 419). In 2001, Helen died (Trial Tr. 538; Def Exs. D, MM).

Plaintiff testified that he never sold, transferred or gifted any of his shares in Stemar or Marnia and that he remains a 50% owner of both corporations (Trial Tr. 215, 216). He also testified that from the mid 1960's to 2004, he never asked for income or profits from either Stemar or Marnia (Trial Tr. 248).

Plaintiff testified that, in or around 2008 or 2009, plaintiff's employment with Stemar and Marnia was terminated, the locks were changed, and Kerry Sullivan ("Kerry") told him that he was no longer needed (Trial Tr. 466-467).

Plaintiff also called Andrew Balint to testify at trial. Mr. Balint has been an attorney since 1960 (Trial Tr. 744). He was retained in 1971 to apply for a use variance for Stemar to construct additional apartments (Trial Tr. 745). He stated that he met with plaintiff and Bill and the tone of the meeting was that they were principals of Stemar (Trial Tr. 746-747). He also stated that he was told that plaintiff was the President of Stemar and he did not understand plaintiff to only be the superintendent of the building (Trial Tr. 763,

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772). He testified that plaintiff was his main contact regarding the zoning issues, as plaintiff handled the day to day matters regarding such issues for Stemar (Trial Tr. 745). He also testified that he only recalled meeting Helen in person once, although he spoke with Helen from time to time (Trial Tr. 748). His involvement ended in 1975 and he has had no involvement in Marnia (Trial Tr. 759-764).

At the trial, the defense called Julius Ostreicher to testify. Mr. Ostreicher is a trusts and estate attorney who represents the Estate of Helen Sullivan (Trial Tr. 603). He was retained approximately one year after Helen's death (Trial Tr. 603). He testified that he conducted an investigation into the assets of the estate, he spoke to the Executrix of the estate (Geraldine Purdy) and accountants, and he reviewed the estate tax returns (Trial Tr. 604-606). In the federal estate tax return, Helen was listed as owning a 50% share of Stemar and Marnia (Trial Tr. 612; Def Ex. OO). Mr. Ostreicher testified that the corporate assets made up a large part of Helen's estate and without these assets, there would have been little to no tax for the estate to pay (Trial Tr. 614-615). 1099 statements were also admitted into evidence that demonstrated that both corporations issued dividends and/or distributions to the Estate of Helen Sullivan during the years 2004, 2006, 2007, and 2008 in the total amount of \$290,000 (Trial Tr. 614; Def Ex. PP). Mr. Ostreicher further testified that, during the time he has represented the estate, he has had no evidence that plaintiff had any interest in Stemar and Marnia (Trial Tr. 618).

The defense also called William Sullivan, Jr. ("William Jr.") as a witness. He testified that it was his "understanding" that his father Bill and his aunt Helen each had 50%

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of the corporations (Trial Tr. 643–645, 649). According to the witness, plaintiff was an employee—the superintendent—for the apartment buildings and got paid for his services (Trial Tr. 645, 649). He stated that plaintiff never got any distributions or profits, and plaintiff never requested same (Trial Tr. 650). The witness worked at Sullivan & Sons during the summers in the 1970's and then full-time from 1983 through 1995 (Trial Tr. 643–645). While he was working there full-time (which was after his father passed away), plaintiff would come by on Saturdays or weeknights to turn over the rent checks (Trial Tr. 646). After his father's death, William Jr. acquired 10% of his father's 50% interest in the corporations (Trial Tr. 646). He further testified that he never consulted with plaintiff about any issues concerning Stemar and Marnia, such as when the boiler and roof were replaced and the parking lot was paved, and he stated that plaintiff never questioned these decisions (Trial Tr. 647–651).

In the 1990's, funds from Marnia and Stemar were transferred by Helen and used to make payroll payments for Sullivan & Sons. Over the years, the witness testified that "hundreds of thousands" of dollars were taken (Trial Tr. 651). Because the witness did not consider plaintiff to be an owner, he never advised plaintiff of these transfers (Trial Tr. 652). The witness also never advised plaintiff when a turn-off notice was received from Con Edison in late 1994 or with regard to the real estate taxes that were not paid for two years (Trial Tr. 653). Then in 1995, the witness's sister Kerry was added as a required signatory on any written checks to oversee Helen (Trial Tr. 654).

The witness stated that, in 1999, he had a meeting with Kerry and Helen (and no

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notice of this meeting was given to anyone else) and they decided that Kerry would be the President and the witness would be the Secretary for both corporations (Trial Tr. 657, 689-690).

The defense also called David Purdy as a witness. He is the cousin of Kerry and William Jr. and the nephew of Helen (Trial Tr. 776). From late 1973 to 1996, he worked at Sullivan & Sons (Trial Tr. 777). He testified that plaintiff would come in to drop off rent checks and money from the laundry machines to Helen (Trial Tr. 782). Helen controlled the accounts and was the "boss of everything" (Trial Tr. 781-782). He stated that plaintiff's role was as the superintendent of the buildings (Trial Tr. 783). He stated that in 1994, William Jr. and Kerry got more involved in the corporations (Trial Tr. 788). Until that time, Helen was solely involved with Marie (Bill's wife), "her partner", but Marie was busy raising a family so Helen was in charge (Trial Tr. 788-789; Def Ex. TT). The witness testified that he understood that Bill and Helen were each 50% owners of the corporations (Trial Tr. 795).

**THE LAW**

Plaintiff bears the burden of proving his case by a preponderance of the evidence. *Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 NY2d 191 (1976). In order for plaintiff to prevail on his claim, the evidence that supports plaintiff's claim must appear more as representing what took place than the evidence opposed to plaintiff's claim. See PJI 1:23. This does not mean the greater number of witnesses who support plaintiff's position. See *id.* If, at the close of all the evidence, the evidence is equally balanced, the

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court must determine that plaintiff has failed to meet his burden and his claim is not made out. *Rinaldi & Sons, Inc.*, 39 NY2d at 196. The trial court's determination as to issues of credibility of the witnesses is given great deference, as a trial court is in a position which allows it to observe and evaluate the testimony and demeanor of witnesses, and affords it a better perspective from which to assess their credibility. See *Vizzari v. State of New York*, 184 AD2d 564 (2d Dep't 1992); *Kincade v. Kincade*, 178 AD2d 510 (1991).

Upon consideration of all the credible testimony and evidence in this case, the Court finds that plaintiff has established, by a preponderance of the evidence, that he is a 50% owner of the shares of Stemar and Marnia.

Plaintiff bears the burden of establishing by a preponderance of the evidence proof of his entitlement to ownership of shares in this closely held corporation where no stock certificates were issued. See *Hunt v. Hunt*, 222 AD2d 759 (3d Dep't 1995). The fact that an individual does not have any stock certificates or that none were issued does not preclude a finding that the individual has the rights of a shareholder. *Kun v. Fulop*, 71 AD3d 832, 833 (2d Dep't 2010); *French v. French*, 288 AD2d 256 (2d Dep't 2001). "[T]he mere fact that [an individual] was never formally issued stock certificates or that [the individual] did not physically possess stock certificates or a shareholder agreement, without more, is not dispositive of whether he was a shareholder." *Blank v. Blank*, 256 AD2d 688, 693 (3d Dep't 1998). Where no stock certificates were issued, the court must consider other evidence to determine the validity of an individual's claim of ownership. *Id.* "In the absence of a share certificate a court must determine from other available evidence

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whether a putative shareholder in fact and law enjoys that status." *Kun*, 71 AD3d at 833, quoting *Pappas v. Corflan Enters., Ltd.*, 22 Misc 3d 1113[A] (Sup Ct Kings County 2009); see also *Hunt*, 222 AD2d at 760.

In the real world, particularly that in which close corporations operate, clear evidence of share ownership is often not found in the corporate books and records, for any number of reasons. Other evidence must be found. . . . A court may consider the intent of the parties, particularly evidence of an agreement to form a corporation. . . . A court, in addition, may consider the conduct among the parties reflecting and in furtherance of status as shareholders; the managerial responsibilities borne by the putative shareholder; and how non-parties understand the relationship based upon their observation of the conduct among the parties. Of course, managerial responsibilities or the exercise of executive functions may be as consistent with status as an officer, or even an employee, as it is an indication of shareholder status, and the observations of third parties may be selective or limited.

*Pappas*, 22 Misc 3d at \*4–\*5 (internal citations and quotations omitted).

"The relationship between a corporation and its stockholders is contractual." *Id.* at \*3 (internal quotations omitted), *aff'd* 76 AD3d 679 (2d Dep't 2010).

The certificate of the corporation for the shares, or the stock certificate, is not necessary to the existence of the shares or their ownership. It is merely the written evidence of those facts. It expresses the contract between the shareholder and the corporation and his co-shareholders. But it is the payment, or the obligation to pay for shares of stock, accepted by the corporation, that creates both the shares and their ownership. . . . When a corporation has agreed that a person shall be entitled to a certain number of shares for a consideration permitted by law and executed by the person, those shares comes into existence and are owned by him.

*United States Radiator Corp. v. State of New York*, 208 NY 144 (1913). "Consideration for

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shares 'imports a contribution to the capital stock made by the shareholder and accepted by the corporation.'" *Pappas*, 22 Misc 3d at \*3, quoting *United States Radiator Corp.*, 208 NY at 149. Pursuant to Business Corporation Law § 504, consideration for the issuance of shares can include money, other property, and labor or services actually received by or performed for the corporation or for its benefit. *Kun*, 71 AD3d at 834. Experience can also constitute consideration. *Heisler v. Gingras*, 90 NY2d 682, 685 (1997). In addition, the fact that an individual also receives a salary as a corporate employee does not eradicate the consideration for a stock interest in the corporation. *Capizola v. Vantage Int'l Ltd.*, 2 AD3d 843 (2d Dep't 2003). Providing the concept for a business can also be considered viable consideration. *Id.* at 844.

In considering whether plaintiff should be declared an owner and shareholder of Stemar and Marnia, the Court must determine whether there was sufficient evidence of consideration for the entry of a contract between the corporation and plaintiff as a shareholder. See *Pappas*, 22 Misc 3d at \*4. The testimony and evidence supports a finding that there was valid and adequate consideration for plaintiff's shares in both corporations.

Plaintiff brought the concept of the business to Bill and was the individual responsible for conjuring up this venture (Trial Tr. 30). Plaintiff, a real estate developer of over 40 homes, owned two pieces of vacant land on which he was to build apartment buildings with other partners (Trial Tr. 23–28). When those arrangements fell through, plaintiff took the idea to Bill, with whom he was acquainted through Bill's business, Sullivan

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& Sons (Trial Tr. 29). After the two decided to partner on these projects together, they formed the corporations, Stemar in 1966 and Marnia in 1969 (Trial Tr. 34, 103).

The testimony and evidence demonstrate that plaintiff made direct capital contributions to each corporation by transferring his 50% ownership of vacant land to both corporations (Trial Tr. 46-48). Those lands were then used to build the apartment buildings which were the main assets of the corporations (Trial Tr. 27-28, 61-62, 153). In addition to transferring his share of vacant lands to the corporations (Trial Tr. 48), other evidence also supports a finding that plaintiff was a shareholder of Stemar and Marnia. Plaintiff's residential address was used as the corporate address of both corporations (Trial Tr. 42, 104; Pl Exs. 15, 17). During the process of the apartment buildings being built, plaintiff worked six days a week as a general contractor for more than one year on each project to supervise the projects (Trial Tr. 36, 61-63). Plaintiff's experience in having previously built over 40 homes was a significant and important asset for the corporations, especially considering Bill had no real estate development experience (Trial Tr. 21-22, 101, 171). Plaintiff was also responsible for taking the steps to hire and assist attorney Andrew J. Balint to apply for a variance to increase the units of Stemar's building (Trial Tr. 66-67, 79-80, 85). Plaintiff appeared at numerous meetings and hearings over the course of four years after construction to litigate the zoning issue (Trial Tr. 79-80, 745-746). Attorney Balint, who was hired by one of the corporations in 1971 before Bill died, testified at trial that, at a meeting held with plaintiff and Bill, he learned that they were partners and shareholders of Stemar (Trial Tr. 746-47, 754-55). Plaintiff also was responsible for

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leasing apartments, choosing tenants and collecting rents, even after a superintendent was hired by Stemar (Trial Tr. 69, 137, 153–154, 211, 577). Numerous documentary evidence denotes plaintiff as the corporations' President (PI Exs. 11, 24, 26–28).

Defendants' view of the evidence is not credible. Defendants argue that plaintiff was only a janitor or superintendent. However, such an argument is not believable. Plaintiff would not have been as involved—or allowed to be as involved—in both businesses if he was a mere superintendent. He took on the role of general contractor supervising the progress and development of the apartment buildings (Trial Tr. 36, 54). He contacted an attorney and worked with an attorney for several years to litigate a zoning issue (Trial Tr. 745). He transferred his share of vacant lands to the corporations (Trial Tr. 48). He signed checks as a signatory for Stemar as President (PI Exs. 3–4, 6, 10). His address was used as the corporate address in the incorporation documents (Trial Tr. 37, 101; PI Exs. 1, 15). Plaintiff was present at the closing for the real estate properties of the corporations, including the property at St. Andrew's Place (which plaintiff individually never had any connection to). The evidence is consistent with plaintiff having a shareholder stake in these two corporations. Even something as simple as the names of the corporations supports plaintiff's position. It is not until after Bill died that there is *any* evidence to support defendants' contentions of Helen's ownership interests. Most, if not all, of the evidence provided by defendants focuses on the decades after Bill's death. Nothing submitted by defendants shows any real involvement or ownership interest in the corporations by Helen when Bill was alive. Further, although the testimony of William Jr. and David Purdy supported defendants' position, William Jr. was only a small child at the

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time the corporations were incorporated and he only became involved in the business ten years after his father died (Trial Tr. 645-646). The witness David Purdy also did not have any knowledge of the corporate affairs of Stemar and Marnia before the death of Bill (Trial Tr. 777).

Even though it is undisputed that Helen was involved in the corporations, the fact that she took charge after Bill's death and was responsible for many of the financial responsibilities of the corporations is not inconsistent with plaintiff's version of the events. In fact, it appears that, from the inception of the corporations, the Sullivans (first Bill, then Helen, and then William Jr. and Kerry) were always in charge of the business/financial aspects of the corporations, as they had more experience in that department, while plaintiff's expertise was in the building of the apartments and project development (Trial Tr. 137, 153-154).

Based on the above, the Court finds that plaintiff has met his burden of establishing by a preponderance of the evidence that it is more likely than not that he was an equal shareholder of Stemar and Marnia. Plaintiff sufficiently established his shareholder status and defendants' evidence was insufficient to overcome that showing.

In accordance with the foregoing, the Court declares that plaintiff is the owner of 50 percent of the shares of Stemar Construction, Inc. and Marnia Construction, Inc.

This is the Decision and Order of the Court after trial.

Settle judgment on notice.

Dated: June 18, 2014  
White Plains, New York

  
Hon. Robert DiBella, JSC