SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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PENSMORE INVESTMENTS, LLC,

Index No.: 650002/2014

Plaintiff,

DECISION & ORDER

-against-

GRUPPO, LEVEY & CO., GRUPPO, LEVEY HOLDINGS, INC., GRUPPO, LEVEY PARTNERS, INC., THE JANE MICHAEL 1999 TRUST, CLAIRE GRUPPO as trustee for THE JANE MICHAEL 1999 TRUST, THE CLAIRE GRUPPO TRUST, the trustee for THE CLAIRE GRUPPO TRUST, JANUARY MANAGEMENT, INC., MAGIC MANAGEMENT, LLC, CLAIRE GRUPPO, HUGH LEVEY, WILLIAM SPRAGUE, EVAN LEVEY, JANUARY PARTNERS, L.P., FROG POND PARTNERS, L.P., and IFG CAPITAL MANAGEMENT, LLC,

Defendants.

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JENNIFER G. SCHECTER, J.:

This is an action by plaintiff Pensmore Investments, LLC (Pensmore) to enforce the settlement of a prior action against defendant Gruppo, Levey Holdings, Inc. (GLH). After summary judgment was granted against GLH and others, the court conducted a three-day bench trial in which Pensmore principally sought to hold GLH's direct and beneficial owners liable under the settlement agreement (Settlement Agreement) by piercing their respective corporate veils. The court finds six of the eight remaining defendants liable. Additionally, Pensmore moves to hold two of those defendants, Claire Gruppo and Hugh Levey, in civil and criminal contempt for violating an order of attachment (Attachment Order) prohibiting them from selling property owned by defendant Frog Pond Partners, L.P. (Frog Pond). The court finds that Gruppo knew that

the Attachment Order prohibited her from selling the property. She nonetheless did so; therefore, she is in criminal contempt and is sentenced to incarceration.

Background & Procedural History

In 2010, Pensmore loaned approximately $1.3 million to GLH. GLH defaulted and, in December 2011, Pensmore commenced an action against it by moving for summary judgment in lieu of complaint (*Pensmore Investments, LLC v Gruppo, Levey & Co.*, Index No. 653628/2011 [Sup Ct, NY County]). In September 2012, Pensmore's motion on liability was granted. At the December 2012 inquest on damages, GLH conceded that it owed Pensmore approximately $1.65 million.

Faced with the prospect of enforcement proceedings, on February 19, 2013, Pensmore and GLH executed a Settlement Agreement (Dkt. 598) in which GLH agreed to pay the full amount owed (by then, approximately $1.7 million with interest) in installments, with full payment due by September 30, 2013. Pensmore also was to receive 12.5% of the fees generated by GLH and its related entities, with expected deals listed on Exhibit E of the Settlement Agreement (Exhibit E Deals) (*see id.* at 86). One of GLH's beneficial owners, Levey, along with former defendant William Sprague, also jointly and severally personally guaranteed $625.000 of GLH's debt (*see id.* at 83). Pensmore requested that GLH's other (majority) beneficial owner, Gruppo, execute a personal guaranty, but she refused. Pensmore, nonetheless, entered into the Settlement Agreement. The agreement permits Pensmore to recover its reasonable attorneys' fees in any enforcement action (*see id.* at 2).

GLH immediately defaulted. It did not make the very first payment that was due on March 1, 2013 (*see id.* at 4). GLH then defaulted on the rest of the payment deadlines, even though it received $440,000 in mid-April 2013 on one of the Exhibit E Deals. GLH lied to Pensmore about not having received these funds. Neither GLH nor the guarantors paid anything to Pensmore by the end of September 2013.

On January 2, 2014, Pensmore commenced this action. In April 2014, the court granted Pensmore summary judgment against Sprague (Dkt. 52). On July 18, 2014, the court granted Pensmore's unopposed motion for summary judgment against Levey on his guarantee (Dkt. 94). After judgments were entered (Dkts. 60, 100), Pensmore served defendants with restraining notices.[1]

Pensmore amended its pleadings in September and October 2014 (Dkts. 114, 133). In February 2015 (among other developments not material to this decision), Pensmore moved to hold Gruppo and Levey in contempt for violating the restraining notices. By order dated April 23, 2015, the court found that they willfully did so, explaining that Gruppo and Levey "do not (nor can they) dispute the occurrence of [the transactions violative of the restraining notices], nor do they meaningfully dispute the allegations that the manner in which the transfers were made was for the purpose of providing a continued source of funding for GLH and [Levey] despite the subject judgments and restraining notices" (Dkt. 202 [the April 2015 Decision] at 11). The court found there to

[1] The vast majority of the amount owed under the settlement remains outstanding (*see* Dkt. 575 at 18 ["Levey's apartment recently was sold and while 75% of the sale proceeds went to Levey's ex-wife, Levey was forced by Pensmore to pay roughly $1 million into the Court. ... In February 2016, Sprague satisfied the personal guarantee, netting Pensmore $728,125"]).

be "little doubt that [Gruppo and Levey] knowingly and steadfastly refused to satisfy plaintiff's judgment against GLH. Instead, they devised an array of alternative means of financing GLH while ensuring GLH remains judgment proof on a judgment of less than $3 million" and that "defendants' money was fungible" because "[m]oney moved from Gruppo to Levey to the various corporate entities and trusts, with no legitimate corporate basis" (*id.* at 13).[2] The court concluded with the following observations which, unfortunately, appear prescient:

> Plaintiff avers that only jail time will cause [Gruppo and Levey] to take their obligations to plaintiff and the court seriously. While this may be true, at this juncture, the court will not order such a harsh remedy. Nor will the court hold either of them in civil contempt. While defendants are testing the limits of the court's patience, the record on this motion does more to justify veil piercing than contempt since most of the money used to fund GLH appears to have come from [Gruppo's] personal funds. But for [Gruppo] using her own money, GLH would not be able to pay its expenses, such as its payroll. None of the challenged transfers appear to have made it substantially more difficult for plaintiff to collect its judgment. The proper remedy is not contempt; it is veil piercing. Once GLH's debt can be collected from whichever defendant has its cash, plaintiff can finally be made whole (*id.* at 15 [emphasis added]).

Pensmore understandably responded by taking action to secure its ability to recover an eventual judgment from defendants. It moved to attach various assets owned by defendants, including Frog Pond's bank account and real estate. The court granted Pensmore's motion and issued the Attachment Order on August 11, 2015 (Dkt. 268).[3]

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[2] Gruppo did not dispute that she engaged in actions that were clearly violative of court orders because she felt it was necessary to protect her financial stake in the business.

[3] By order dated December 15, 2016, the court modified the Attachment Order to conform it the way in which Levey agreed to dispose of his Manhattan apartment with his ex-wife (Dkt. 479 [the December 2016 Order]). While that order directed Pensmore to submit an order on notice

The Appellate Division affirmed (143 AD3d 588 [1st Dept 2016] ["Plaintiff established a likelihood of success on its veil piercing claim by showing that defendants used a variety of corporate entities and accounts to collect and disburse money to themselves and the various corporate entities without consideration or corporate formalities, and that they used this web of payments to keep the judgment debtor corporation in business but grossly undercapitalized by paying its debts without putting any funds into it"]).

Pensmore filed its operative pleading, the third amended complaint, on May 6, 2015 (Dkt. 209). After discovery was completed in early 2016, the parties moved for summary judgment. By order dated April 6, 2017, the court denied defendants' motions and granted Pensmore partial summary judgment by piercing the corporate veil of GLH to hold its subsidiaries, defendants Gruppo, Levey & Co. (GLC) and GLC Partners, Inc. (GLCP) (collectively with GLH, the GL Companies), liable for GLH's breach of the

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(*see id.* at 2), it nonetheless made it clear that the court was "attaching the 'Frog Pond' properties," which were unaffected by the divorce settlement (*see id.* at 1). Though Pensmore's proposed order was not signed, the December 2016 Order and the decision affirming the Attachment Order expressly provide that Frog Pond's property was attached. Indeed, Gruppo admitted at trial that she understood that the property was attached and only sought to justify her actions by lying about her prior counsel having told her she could sell the property. Of course, even if Gruppo had doubts about the enforceability of the Attachment Order, that is no defense to violating it (*see Sigmoil Res. N.V. v Fabbri*, 228 AD2d 335, 336 [1st Dept 1996] ["That a party is sanguine in its good-faith belief that an order is defective, misguided or erroneous, is an insufficient basis upon which it may then unilaterally disregard such order."]). The December 2016 Order's explicit pronouncement that the Frog Pong properties were being attached coupled with Gruppo's admission that she knew the properties were attached leads to the inescapable conclusion that Gruppo knowingly violated an unequivocal mandate (*see Tishman Constr. Corp. v United Hispanic Constr. Workers, Inc.*, 158 AD3d 436, 437 [1st Dept 2018] ["These conditions expressed an unequivocal mandate of which appellants were well aware, and their violation of the order prejudiced plaintiffs' right[s] ... thus justifying the finding of contempt"]).

Settlement Agreement (Dkt. 495 [the SJ Decision]).[4] The court found there to be "no question of fact that ***all of the defendant entities*** were dominated and controlled by [Gruppo and Levey]" and that they "kept GLH cash poor by funding it only to the extent of paying its expenses, doing business through affiliates, such as GLC and GLCP" (*id.* at 4 [emphasis added]). After addressing applicable Delaware law (because GLH is a Delaware corporation), the court found veil piercing warranted with respect to the GL Companies because they were completely dominated and controlled by Gruppo and Levey, who abused the corporate form in a manner specifically designed to make it impossible for Pensmore to enforce its judgment against GLH (*see id.* at 15 [finding that Gruppo and Levey "specifically kept GLH cash poor to ensure that Pensmore could never collect the full amount of the settlement agreement from GLH" and noting that "[u]nder Delaware law, deliberately undercapitalizing a company to keep it judgment proof while operating the business through another alter-ego company is a textbook example of when veil piercing is appropriate"]). While the court was mindful that veil piercing claims are often not amenable to summary judgment, the evidence was so compelling that no "reasonable finder of fact could conclude that GLH, GLC, and GLCP are entitled to rely on the liability shield of their corporate veils" because "[t]he way in which these companies were operated and the clear intent to defraud Pensmore necessitates the imposition of alter ego liability" (*id.* at 16).

[4] The court did not opine on the merits of the claims under the New York Debtor and Creditor Law (DCL) because Pensmore failed to substantively address them (*see id.* at 8-9).

The court, however, denied summary judgment on the balance of Pensmore's veil piercing claims, which seek to hold the direct and beneficial owners of GL Companies--including Gruppo and Levey--personally liable for GLH's breach of the settlement agreement. This court explained:

> the fact that corporate affiliates do not operate as separate entities does not necessarily mean that, collectively, the business is an alter ego of its owners. After all, if the companies would still have lacked the means to pay Pensmore had they observed corporate formalities, it would be unreasonable to put [Gruppo and Levey] on the hook. In other words, there is a real question about whether Pensmore could have been made whole even if the companies were not operated as alter egos. This question of fact is material to the issue of whether piercing the corporate veil of the business to reach its owners (i.e., making [Gruppo and Levey] liable for the full amount of the Settlement Agreement) can be justified on the ground that the corporate form abuse had the actual effect of harming Pensmore.
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> Yet, Pensmore wants to hold [Gruppo] personally liable under a contract to which she is not a party - and was not made a party over Pensmore's objection. Pensmore, nonetheless, agreed to settle for the full amount only with GLH, despite knowing that GLH, at the time, did not have the means to pay that amount of money. Granted, Pensmore was given assurances that certain future revenues would be forthcoming, which, if received by GLH, GLC, or GLCP, may be recoverable by Pensmore by virtue of piercing those companies' corporate veils. Pensmore, however, had no right to expect that in the event GLH or its subsidiaries ultimately lacked the means to pay the amounts due under the Settlement Agreement, that [Gruppo and Levey] would personally pick up the full tab. Pensmore - perhaps unwisely given the recalcitrance shown by defendants - expressly agreed to take GLH credit risk on the Settlement Agreement in excess of that personally guaranteed by [Levey] and Sprague (which, it should be noted, has now been satisfied). To rewrite that bargain by holding [Gruppo and Levey] liable for the full amount is to not only give Pensmore the benefit of a better bargain than it struck, but to give it the benefit of the very bargain it actually sought - but failed - to procure at the negotiating table.

> To be relieved from the consequences of that bargain, Pensmore must prove that, counterfactually, the absence of corporate form abuse would have resulted in the defendant entities having the means to satisfy GLH's liability. It is far from clear that, even had [Gruppo and Levey] not treated GLH, GLC, and GLCP as alter egos, there would have been sufficient corporate funds to pay Pensmore. But for a veil piercing basis for liability (or Pensmore's DCL claims), [Gruppo and Levey] will not be subject to personal liability. To hold them liable for abdicating corporate formalities in a way that did not actually decrease the amount of assets available to the company to pay Pensmore is not a fraud sufficient to justify the imposition of personal liability. In other words, for the fraud prong to be satisfied with respect to [Gruppo and Levey], Pensmore must prove that they unjustifiably funneled corporate funds to themselves and that, had they not done so, Pensmore would have been able to recover the amounts sought from the companies in excess of the assets they currently have on hand. Pensmore has not made such a showing on this motion, nor have defendants demonstrated that Pensmore could not do so at trial (*id.* at 17-19).

Judgment against the GL Companies was entered on May 9, 2017 (Dkt. 507). None of the defendants appealed the SJ Decision or the related judgments.

Defendants' counsel withdrew after they were not being paid (*see* Dkt. 524 at 2-3), and the court permitted defendants an extended period to retain new counsel after Levey suffered a stroke.[5]

The court decided the parties' in limine motions in early August 2018. On August 17, 2018 – the Friday before trial – Pensmore moved by order to show cause to hold Gruppo and Levey in civil and criminal contempt for violating the Attachment Order by selling some of the real property owned by Frog Pond, depositing the proceeds into a

[5] Defendants asserted that they needed substantial time to find new counsel. In the end, they retained Mr. Michael, who has been involved in this action since 2015. He represented other defendants such as Frog Pond and Levey's son Evan (who settled).

newly-created bank account (to evade the restraining notice on the existing account),[6] and paying off their creditors, such as the bank that held a mortgage on the property, their accountant, and their current (but not their former) counsel, Mr. Michael. The court, without objection, conducted a contempt hearing along with the trial and allowed for post-proceeding briefing (*see* Dkts. 581, 587, 589).

A three-day bench trial was held between August 20-22, 2018 (*see* Dkts. 583 [8/20/18 Tr.]; 584 [8/21/18 Tr.]; 585 [8/22/18 Tr.]). Judgment is awarded in favor of Pensmore on most of its veil piercing claims and Pensmore is awarded attorneys' fees. Additionally, Gruppo is adjudged to be in criminal contempt and is sentenced to 30 days imprisonment.

Findings of Fact & Conclusions of Law

Two categories of claims were tried: (1) veil piercing to hold the remaining defendants jointly and severally liable for the amount owed by GLH under the Settlement Agreement; and (2) DCL claims, which seek to recover transfers from the GL Companies to the other remaining defendants that were either made to insiders without fair consideration while the GL Companies were insolvent (constructive fraudulent conveyance) or made with the specific intent to defraud Pensmore (intentional fraudulent conveyance).

[6] "With Frog Pond's long-standing Bank of America account . . . frozen by the TRO (Dkt. No. 215 at 3) and attached in the three prejudgment attachment orders (Dkt. No. 268; Dkt No. 271 at 38-39), Gruppo opened a new Frog Pond account in conjunction with the close of the sale of Frog Pond in order to avoid the restraints and access the funds" (Dkt. 589 at 19 n 10).

The court begins with veil piercing. The first step is to identify the governing law, which is the law of the state of incorporation of the entities whose corporate veils Pensmore seeks to pierce (*MMA Meadows at Green Tree, LLC v Millrun Apts. LLC*, 130 AD3d 529, 530 [1st Dept 2015]). The remaining defendant entities are: (1) Fong Pond, a New York limited partnership;[7] (2) January Management, Inc. (January Management), a Delaware corporation;[8] (3) January Partners, L.P. (January Partners), a Delaware limited partnership (4) The Jane Michael Trust (the JM Trust), a New York trust;[9] (5) The Claire Gruppo Trust (the CG Trust), a New York trust; and (6) Magic Management, LLC (Magic), a Delaware LLC.

The CG Trust owns 98% of GLH.[10] Gruppo is its sole beneficiary. The former trustee, Nancy Robertson, is Gruppo's close friend. There currently is no trustee. Simply put, Gruppo, through the CG Trust, owns 98% of GLH. As decided on the summary

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[7] The standard for piercing the corporate veil under Delaware law is addressed extensively in the SJ Decision (*see id.* at 12-13). New York's veil piercing standard is not, as applicable here, materially different, and is certainly not stricter than in Delaware (*see Matter of Morris v N.Y. State Dept. of Taxation & Fin.*, 82 NY2d 135, 140 [1993]). As in Delaware, there must be proof of domination and corporate fraud abuse employed to inequitably prejudice plaintiff (*see TNS Holdings, Inc. v MKI Secs. Corp.*, 92 NY2d 335, 339 [1998] ["Evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance"]).

[8] "While it was represented to plaintiff, and this Court, that [January Management] was a Connecticut corporation, plaintiff's counsel discovered post-trial that [January Management] is actually a Delaware corporation doing business out of Connecticut" (Dkt. 589 at 36 n 26).

[9] Although veil piercing is technically not the correct doctrine when it comes to trusts (*cf. JFK Hotel Owner, LLC v Hilton Hotels Corp.*, 42 Misc3d 1237[A], at *6 [Sup Ct, NY County 2014]), the practical implications are the same.

[10] GLH wholly owns GLC which, in turn, wholly owns GLCP. Given this structure, and since the court has already held that the GL Companies are alter egos, ownership of GLH is tantamount to ownership of the whole company.

judgment motion, Gruppo dominates and controls GLH. As decided herein, the court finds that Gruppo also dominates the CG Trust, as the evidence showed that she personally determined how its money was distributed (*see* Dkt. 589 at 41). Under both Delaware and New York law, a conclusion that Gruppo abused GLH's corporate form to defraud Pensmore along with a conclusion that the CG Trust is a sham results in Gruppo being personally liable for GLH's debt under the Settlement Agreement.

The other 2% of GLH is owned by January Management, which is wholly owed by Levey. January Management is the general partner of January Partners, of which Levey owns 48%. While Levey is only a minority beneficial owner of GLH, he was a GLH director and, as noted, the court has already found that he dominated and controlled the GL Companies. Under Delaware law, if Levey is found to have abused the corporate form of GLH and January Management to defraud Pensmore, he could be held liable for GLH's debt under the Settlement Agreement.

Levey is also the sole beneficiary of the JM Trust. Gruppo is the trustee. The JM Trust owns 49% of Frog Pond. The remaining 51% is owned by the CG Trust. Pensmore seeks to pierce Frog Pond's corporate veil to use its assets to satisfy GLH's judgment. To do so, the court would have to first find Gruppo and Levey personally liable for GLH's judgment, then find that the JM Trust and CG Trust are shams under New York law, and finally find that Gruppo and Levey abused Frog Pond's corporate form for the purpose of defrauding Pensmore. Alternatively, Pensmore could prove that

Frog Pond is an alter ego of the GL Companies and that Gruppo and Levey treated it as such for the purpose of defrauding Pensmore.

As a threshold matter, to satisfy the fraud prong of Delaware's veil piercing standard in accordance with the SJ Decision, "Pensmore must prove that [Gruppo and Levey] unjustifiably funneled corporate funds to themselves and that, had they not done so, Pensmore would have been able to recover the amounts sought from the [GL Companies] in excess of the assets they currently have on hand" (SJ Decision at 19).[11] Pensmore complains about having to make such a showing (*see* Dkt. 589 at 26 n 19 ["Pensmore's exhaustive research of Delaware law yields no case narrowing the veil piercing test to include an analysis of whether a plaintiff could have been made whole. Instead, under Delaware law veil piercing is an equitable remedy of jointly and severally liability"]). Critically, however, all veil piercing plaintiffs must show that the subject corporate form abuse had the effect of inequitably harming them (*U.S. Bank N.A. v U.S. Timberlands Klamath Falls, L.L.C.*, 2005 WL 2093694, at *1 [Del Ch Mar. 30, 2005] ["veil piercing is appropriate when a company is a sham entity designed to defraud investors and creditors."]; *see* SJ Decision at 13 [collecting cases standing for the proposition that veil piercing requires evidence of fraud or similar injustice perpetrated though the abuse of a corporate form, for instance, by establishing "some sort of elaborate shell game."], accord *Crosse v BCBSD, Inc.*, 836 A2d 492, 497 [Del 2003]).

[11] Defendants rely on inapposite caselaw regarding the standard for piercing the corporate veil of a special purpose vehicle (SPV), instead of a business that operates as a going concern (such as the GL Companies). Both this court and the Appellate Division expressly held that cases involving SPVs are inapposite (*see* SJ Decision at 10-11).

This court need not decide whether, as a necessary predicate to all veil piercing claims, there must be proof that a business composed of alter ego affiliates is collectively capable of paying off the plaintiff but for the corporate malfeasance. Rather, given the nature of the inequity alleged by Pensmore here – that GLH lacked the funds necessary to pay Pensmore what it was owed under the Settlement Agreement – this court continues to maintain that if the business as a whole could not have afforded to pay Pensmore, then Pensmore would not have been harmed as a result of the corporate malfeasance. After all, if GLC and GLCP did not have the money to pay Pensmore, then Pensmore suffered no inequity by virtue of the GL Companies functioning as alter egos. Thus, proof of the GL Companies' collective capacity to pay is a predicate of the fraud prong under the circumstances.

In any event, Pensmore, proved[12] that the GL Companies had more than enough money available to them to pay Pensmore between 2012 and 2014, and that but for Gruppo and Levey keeping such funds away from GLH, Pensmore would have been able to satisfy its judgment against GLH. In 2012, GLH owed Pensmore approximately $1.3

[12] The court is convinced that the preponderance-of-the-evidence standard applies to Pensmore's veil-piercing claims (*see* PJI 2:266). Caveat 3 extensively discusses the issue and concludes that the "heavy burden" nomenclature used by courts in describing veil piercing does not mean that the elevated clear and convincing standard applies. This court concurs that "since an action against a corporate owner based on the doctrine of piercing the corporate veil is not the equivalent of an action in fraud, the clear and convincing standard of proof is not applicable" (*see* NY PJI 2:266, Comment, Caveat 3 [citing *Rotella v Derner*, 283 AD2d 1026 (4th Dept 2001)]). The applicable burden of proof may also be an open issue in Delaware (*see Gadsden v Home Pres. Co.*, 2004 WL 485468, at *4 [Del Ch Feb. 20, 2004]). Regardless, given the strength of the evidence, much of which is uncontroverted (exemplified, for instance, by the court piercing the GL Companies' corporate veils on summary judgment), even the clear-and-convincing standard has been satisfied here based on the evidence because it is highly probable that the subject corporate form abuse and resulting inequities occurred (*see People v Britton*, 31 NY3d 1019, 1027 [2018]).

million, and that amount increased to approximately $1.7 million under the Settlement Agreement in 2013. In April 2012, GLCP had more than $1.8 million in its bank account (Dkt. 607 at 14). This money could have been used to repay Pensmore. Gruppo's explanation to the contrary is not credible (*see* 8/20/18 Tr. at 152-53 [after claiming it "was money invested by other people," admitting "that doesn't make any sense"]). Moreover, between September 2012 and March 2014, the GL Companies had revenues of nearly $1.2 million (*see* Dkt. 591).[13]

Indeed, some of that revenue came from the "DMRA transaction," which is one of the Exhibit E Deals. Levey admitted at trial that the GL Companies received $440,000 on that deal (*see* 8/22/18 Tr. at 43). GLCP's records show that this amount was deposited into its checking account on April 18, 2013 from DMRA (*see* Dkt. 629 at 5). Yet, on June 10, 2013, when Pensmore's principal, Alan Harter, asked Levey and Sprague "what ever happened to the DMRA" funds. Levey told Sprague to tell Harter that "[w]e got nothing from dmra" (*see* Dkt. 627). Levey had testified, falsely, at his deposition that he never instructed Sprague to lie to Harter. At trial, Levey was asked how he could reconcile his testimony with the June 10, 2013 email. Levey testified that did not want to change his deposition testimony (*see* 8/22/18 Tr. at 42). Moreover, the evidence showed Levey was actually aware that the GL Companies received the $440,000 because he

[13] Pensmore also proved that during this time period, nearly $1.2 million was transferred into the GL Companies' accounts by the other defendants (*see* Dkt. 592). While this also shows that the GL Companies had enough money to pay the judgment, the court need not opine on whether infusing money into the GL Companies had the effect of harming Pensmore because Pensmore has otherwise shown, between the $1.8 million available in April 2012 and the $1.2 million in revenue over the next two years, that the GL Companies, if they wanted to, could have repaid Pensmore.

emailed his son, Evan, telling him that Sprague wanted to use the funds to pay Harter (*see id.* at 43). Gruppo also admitted the obvious – that the DMRA proceeds could have been used to make the payment of $187,643.63 that was due under the Settlement Agreement on April 1, 2013 (*see* 8/22/18 Tr. at 104-05). In fact, the $440,000 was more than enough to make up for the missed payment from the prior month of the same amount. But instead of paying Pensmore, Gruppo and Levey lied to Pensmore about not having the funds and then pocketed the money for themselves (*see also* Dkt. 594 [listing more than $850.000 in revenue from the GL Companies' clients paid directly to Gruppo], citing, *e.g.*, Dkt. 600 at 10).

Thus, there is compelling, convincing evidence of the GL Companies' corporate form being abused for the specific purpose of harming Pensmore.[14]

Additionally, piercing GLH's corporate veil to its owners is warranted and January Management and the CG Trust are therefore liable for the judgment against GLH. There is also sufficient proof that most of the entities' corporate veils must be pierced to hold their owners liable.

[14] The documentary evidence alone, even without considering the witnesses' credibility, suffices to show that defendants' corporate-form abuse warrants veil piercing. That said, Gruppo and Levey outright lied in and out of court. Their consistent lack of candor and their demeanor as they tried to justify their numerous wrongs in the face of incontrovertible evidence rendered them not credible witnesses. Their direct pecuniary interest in this action reinforces this conclusion (*see Kalam v K-Metal Fabrications, Inc.*, 286 AD2d 603, 604 [1st Dept 2001]; *see also* Dkt. 589 at 24 [FINRA imposed industry bar on Levey due to his alleged theft of $5 million from Magic because he refused to testify; at trial, Levey lied about having testified]). Based on their lack of credibility Gruppo and Levey's testimony on material issues is discredited (NY PJI 1:22, Comment ["The principle falsus in uno permits the jury to disregard in its entirety the testimony of a witness who has willfully given false testimony on a material matter"]).

January Management is the alter ego of GLH (*see* Dkt. 589 at 36 ["[January Management] has no employees, no payroll, no hard assets and operated from the GL [Companies'] offices."]). GLCP's general ledger indicates that, as of January 30, 2012, GLCP owed more than $5 million to GLH (*see* Dkt. 619 at 128). On January 31, 2012--which, not coincidentally, was just a month after Pensmore made its original summary-judgment-in-lieu-of-complaint motion against GLH--this debt was written off and a new a debt of more than $4 million was recorded as being owed by GLH to January Management. Defendants did not provide any credible explanation for how this debt was generated or why GLCP's debt was extinguished.[15] Gruppo admitted that no consideration was paid for these transactions (*see* Dkt. 589 at 33-34) and did not testify or otherwise prove the existence of any specific loan agreements (nor were any produced in discovery) (*see id.* at 34).

Defendants employed fraudulent accounting as the first step in their scheme to make GLH judgment proof from Pensmore. There is no credible evidence showing that GLH owed January Management more than $4 million and no justification for paying

[15] In their post-trial brief, defendants claim that "application of proper accounting rules" explains these transactions (*see* Dkt. 587 at 12). But defendants do not explain those "accounting rules." While they contend they "would be happy to provide the Court with a supplementary brief discussing GAAP rules on this, if desired" (*see id.* at 11 n 5), it is too late for that. Defendants did not call any accounting expert witness at trial (and neither Gruppo nor Levey claimed to be, nor were they certified as, accounting experts). Defendants cannot seek to expand the trial record based on unelaborated accounting explanations that they had every opportunity to explore at trial but did not. The court also rejects "Levey's conclusory testimony that the GL [Companies] had owed [January Management] $5.3 million since the early 2000s" (*see* Dkt. 589 at 35) because no actual evidence was introduced substantiating such a debt, and the court does not find Levey's testimony to be credible. Furthermore, the court entirely discredits Levey's attempts to blame his son, Evan. The court found Evan to be more of a credible witness than his father. The court also does not find it plausible that Levey was unaware of how the GL Companies and January Management were being operated.

more than $1.4 million from the GL Companies to January Management (*see* Dkt. 595), thereby keeping GLH a judgment proof shell.

January Management, moreover, directly spent more than $3.2 million on Levey's family's personal expenses (*see* Dkt. 597; *see also, e.g.*, Dkt. 620 at 1 [January Management's General Ledger showing payments for a Mercedes-Benz and "black amex"]). Under these circumstances, not only was January Management GLH's alter ego for the express purpose of defrauding Pensmore, but it also is Levey's own alter-ego--a vehicle he used to funnel money from the GL Companies to himself while bypassing GLH's bank accounts. It is clear that rather than sending money to GLH, which would and should have been subject to the judgment (and thus subject to turnover), company money was routed around GLH so that lavish personal luxuries could be obtained and personal expenses could be satisfied without having to pay Pensmore.[16]

In addition, Gruppo and Levey are alter-egos of Frog Pond and there were transactions between them meant to defraud Pensmore. Frog Pond exists solely to hold title to properties in upstate New York, all of which were attached by the court. As discussed more extensively below, Gruppo and Levey, in express violation of the Attachment Order, caused some of Frog Pond's property to be sold on January 18, 2018

[16] Given Gruppo's and Levey's lifestyle, their own complaints about their financial situation do not excuse their conduct (*see* Dkt. 575 at 6 ["Twenty days after this lawsuit was filed, Levey filed a $29 million net worth statement in his suspiciously timed divorce action. In the middle of this dispute, Gruppo sold a $4 million dollar apartment and netted $2 million (Gruppo paid roughly $130,000 in taxes that year). Until last year, Gruppo and Levey paid $15,000 per month in rent to live together on the Upper West Side"]). They improperly chose to funnel money to themselves instead of honoring the agreement, lied about it, hid what they were doing and violated court orders.

for $600,000 (*see* Dkt. 630 [the Closing Statement]). The Closing Statement indicates that the property was sold ***by Gruppo***--even though Frog Pond, and not Gruppo, owned the property. In total, Gruppo and Levey obtained at least $264,000 in value from the sale. The Closing Statement shows, among other things, that Frog Pond received net proceeds (after, for instance, paying off the bank) of $200,000, that defendants paid their accountant $50,000, and that Gruppo and Levey personally received nearly $14,000 (*see id.* at 3).[17] Of the $200,000 received by Frog Pond, more than $50,000 was paid to Mr. Michael – the lawyer for ***all*** of the remaining defendants – between January 30 and February 6, 2018 (*see* Dkt. 631 at 4-5).[18] Defendants funded their trial costs by violating the Attachment Order. To be sure, while approximately half of the $600,000 sale price would have been unavailable for Pensmore to recover given the bank's mortgage priority, Pensmore lost the security of being able to recover more than $250,000, much of which was already used to pay defendants' expenses.

The Frog Pond property was sold for the express purpose of undermining Pensmore's attachment. Indeed, Gruppo concedes she should "have sought the Court's approval to sell off a portion of the Frog Pond property to avoid foreclosure" (Dkt. 587 at 27). Yet, she claims this was not a big deal because Pensmore was harmed "at most

[17] The Closing Statement actually shows net proceeds of $313,446.13 (*see* Dkt. 630 at 3). However, some of this money was used to pay for expenses incidental to the sale (e.g., $3,783 in recording fees and transfer taxes) – amounts that would have to be paid even if the property were used to satisfy the judgment. The court only views net proceeds unrelated to the sale as the ill-gotten gains of the contempt.

[18] It remains to be seen whether Pensmore will seek disgorgement of the money defendants paid Mr. Michael.

minimally" (*id.*). Given the lengths to which defendants have gone to avoid paying their debt to Pensmore when it was only $1.3 million,[19] Pensmore should not have to simply shrug off the opportunity to obtain, without resort to judgment enforcement proceedings, at least $250,000 from defendants because they believe it is a minimal amount.

The sale of the Frog Pond property, moreover, was not the only instance where Frog Pond was treated as the alter ego of its owners. Rather, the evidence established that Frog Pond, a real estate holding company that had no business with the GL Companies or January Management, was treated as their alter-egos. For instance, in 2013, Frog Pond paid $250,000 in rent to the GL Companies' landlord (*see* Dkt. 589 at 39). Also, between 2010 and 2013, January Management (the now-adjudicated alter-ego of the GL Companies) transferred nearly $740,000 to Frog Pond. The court previously found that some of this money was to help Levey pay his personal bills (*see id.*). There is no evidence in the record showing a legitimate business purpose for these transfers. On the contrary, the transfers are evidence that Gruppo and Levey simply treated their entities as interchangeable. In fact, "[w]hen asked 'why in the world' Frog Pond was 'paying for every defendant's legal fees if these are all separate entities,' Gruppo testified, '[i]t was easier'" (*see id.*). Gruppo has a documented history of transferring money between the defendant entities to avoid restraining notices and attachment orders (*see* SJ Decision at 4-5 [Gruppo "admitted that she opened new GLCP bank accounts specifically for the purpose of evading the restraining notices issued by Pensmore

[19] Defendants have no one but themselves to blame for their debt ballooning to an amount more than three times of the original debt. Had the debt been timely paid (as it could have been), interest and default payments would have been avoided entirely.

because '[w]e needed a bank account to run [the] business'"]). Consequently, Frog Pond is simply an alter ego of Gruppo and Levey and the GL Companies, and Gruppo and Levey abused Frog Pond's corporate form for the express purpose of frustrating Pensmore's ability to enforce its judgment against GLH.

Next, both the CG Trust and the JM Trust are vicariously liable for the respective debts of Gruppo and Levey. "Under New York law, '[a] disposition in trust for the use of the creator is void as against the existing or subsequent creditors of the creator'" (*Thea v Kleinhandler*, 807 F3d 492, 498 [2d Cir 2015], quoting EPTL § 7-3.1[a]; *see Pierce v Victor*, 1 AD3d 247 [1st Dept 2003] ["Defendant trust was properly held jointly and severally liable with the individual defendant since a disposition in trust for the use of the creator is void as against the existing or subsequent creditors of the creator"]). In other words, "self-created trusts are void as against present and future creditors" because "a person may not avoid his creditors (or his future creditors) by placing his property in trust for his own benefit" (*In re de Kleinman*, 172 BR 764, 772 [Bankr SDNY 1994] ["This rule is over two hundred years old"]; *see Planned Consumer Mktg., Inc. v Coats & Clark, Inc.*, 71 NY2d 442, 452 [1988]). EPTL § 7-3.1(a) codifies the rule that a property owner cannot use "a spendthrift trust to insulate . . . assets from the reach of present or future creditors" and the "settlor's creditors need not allege or prove the trust is a fraudulent conveyance before they are permitted to reach the full amount of the beneficial interest retained by the settlor" (*Vanderbilt Credit Corp. v Chase Manhattan Bank, NA*, 100 AD2d 544, 546 [2d Dept 1984]). To be sure, where "there is a discretionary trust, the

law is clear that a creditor of a beneficiary, who is not the settlor, cannot compel the trustee to pay any part of the income or principal to the beneficiary. However, when a person creates for his own benefit a discretionary trust, his creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit, even though the trustee in the exercise of his discretion wishes to pay nothing to the beneficiary or to his creditors, and even though the beneficiary could not compel the trustee to pay him anything" (*id.*). This rule exists because "[i]t is against public policy to permit the settlor-beneficiary to tie up her own property in such a way that she can still enjoy it but can prevent her creditors from reaching it" (*id.*).

That is the case with both the CG Trust and the JM Trust. Levey is the grantor of the CG Trust, which, as discussed, does not even currently have a trustee. And even when it had a trustee, it was Gruppo's friend, who did nothing at all with respect to the trust (*see* Dkt. 589 at 41). Instead, Gruppo and Levey personally decided how much they would obtain from their trusts. And even though the CG Trust nominally owns 98% of GLH, Gruppo operates GLH as if she personally owns it. Simply put, she acts as if there is there is no difference between her and her trust. It would be inequitable if piercing GLH's corporate veil would result in Gruppo being held personally liable if she owned GLH's stock, but since she put the stock in a trust in which she is the sole beneficiary and which lacks any trustee, she is completely absolved of all liability. That makes no sense. If that were the case, owners of companies could immunize themselves from potential veil piercing liability simply by placing their stock in trust. Veil piercing is an equitable

remedy. Here, equity requires looking at the economic reality of Gruppo's interest in GLH. She was effectively the 98% beneficial owner who personally committed many of the acts the warrant piercing GLH's corporate veil. Thus, the CG Trust is merely an artifice for Gruppo to insulate her assets from creditors.

The same is true for the JM Trust. It was formed by Levey's sister with a $20 conveyance. Gruppo is the Trustee. Levey admitted that the JM Trust exists for the specific purpose of shielding Levey's assets from creditors (*see* 8/22/18 Tr. at 57). The JM Trust was also used to attempt to shield Gruppo's assets from creditors and to avoid taxes. Gruppo sold her apartment in 2013 for approximately $4.4 million and received net proceeds of approximately $2.5 million after paying off the mortgage (*see* 8/21/18 Tr. at 27-29). But in an attempt to avoid paying taxes (*see* Dkt. 626), Gruppo had previously transferred the apartment to the JM Trust (i.e., Levey's trust, not her own trust) for $10 (*see* 8/21/18 Tr. at 30-31). Despite the JM Trust actually owning the apartment, Gruppo, its trustee, paid herself the proceeds.[20] As with the sale of Frog Pond's property, Gruppo played fast and loose with the identity of the property's owner--consistent with her overall approach to corporate formalities.

It is clear that the CG Trust and the JM Trust are simply discretionary trusts that Gruppo and Levey use to shield their assets from creditors. Arguably, the trusts themselves are alter egos given how Gruppo and Levey commingled their assets. In any

[20] "Gruppo told her accountant that she transferred the apartment to the trust, while concealing that she wired the $2.5 million in sale proceeds back to herself. In fact, the accountant prepared Gruppo's 2013 tax return and listed Gruppo's reported income of $123,961, of which she allegedly owed $0.00" (Dkt. 589 at 40 n 30).

event, the law is clear that trusts may not be used in this manner to shield assets from creditors. Thus, the CG Trust and the JM Trust are held jointly and severally liable.

Finally, it is clear that various transfers made from the GL Companies and January Management to the remaining defendants are constructively fraudulent under DCL § 273 (*see CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 302 [1st Dept 2006] ["A conveyance that renders the conveyor insolvent is fraudulent as to creditors without regard to actual intent, if the conveyance was made without fair consideration"]). Importantly, even payments made for fair consideration are constructively fraudulent if they are made in bath faith (*see id.* at 303). An "insider payment is not in good faith, regardless of whether or not it was paid on account of an antecedent debt." (*Am. Media, Inc. v Bainbridge & Knight Labs., LLC*, 135 AD3d 477, 478 [1st Dept 2016], citing *EAC of N.Y., Inc. v Capri 400, Inc.*, 49 AD3d 1006, 1007 [3d Dept 2008] ["The requirement of good faith is not fulfilled through preferential transfers of corporate funds to directors, officers or shareholders of a corporation that is, or later becomes, insolvent, in derogation of the rights of general creditors."]). Thus, DCL § 273 was violated when January Management received more than $1.4 million from the GL Companies for no consideration. Of course, even if lack of consideration and bad faith were not proven, to avoid liability under § 273, the GL Companies would have had to carry ***their*** burden of proving that they were solvent at the time of the transfers (*see Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 166 AD3d 496 [1st Dept 2018], citing *Battlefield Freedom Wash, LLC v Zhuo*, 148 AD3d 969, 971 [2d Dept 2017] ["when a

transfer is made without fair consideration, a presumption of insolvency and fraudulent transfer arises, and ***the burden shifts to the transferee to rebut that presumption***."] [emphasis added]). Defendants made no attempt to make such a showing (or even recognize that they, not Pensmore, bear the burden of proving solvency). Defendants, in seeking to avoid veil piercing, simply pleaded poverty, which is not a basis for avoiding liability to Pensmore.

Although Pensmore has proven fraudulent conveyances, it cannot separately recover on its DCL claims because any such recovery would be duplicative of its recovery on its veil piercing claims, which will be the entirety of the unpaid GLH judgment along with attorneys' fees as authorized by the Settlement Agreement.

January Partners and Magic

Pensmore did not prove that January Partners is an alter ego of January Management or any of the other defendants. Unlike January Management, which was clearly used to defraud Pensmore, the court lacks any basis for making the same finding as to January Partners or as to Magic.[21]

[21] Pensmore's post-trial brief is inconsistent about its desire to assert a veil-piercing claim against Magic because Magic is not listed among the defendants that "have no legitimate business purpose" (*see* Dkt. 589 at 9). All of Pensmore's arguments concerning Magic are relegated to a single footnote (Dkt. 589 at 35 n 24), which is insufficient (*Niagara Mohawk Power Corp. v Hudson River-Black River Regulating Dist.*, 673 F3d 84, 107 [2d Cir 2012] ["issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived" particularly when they are raised only in a footnote], accord *OFSI Fund II, LLC v Canadian Imperial Bank of Commerce*, 82 AD3d 537, 538 [1st Dept 2011]). Though Levey dominated, controlled and disregarded the corporate formalities of Magic, Pensmore failed to carry its burden of proving the fraud prong as to Magic.

Nor was there sufficient proof as to January Partners and Magic on Pensmore's DCL claims.[22]

Conclusion

For the foregoing reasons, the court directs entry of judgment on Pensmore's breach of contract and veil piercing claim against Gruppo, Levey, January Management, the JM Trust, the CG Trust, and Frog Pond. The judgment will be in the amount of $4,115,067.14. "This number is comprised of: (1) $2,621,743.78 in principal and interest as of May 9, 2017 (Dkt. 507); (2) plus $32,949.02 times the 18 calendar months since May 2017, equaling $593,082.36 (*id.*); (3) plus $900,241 in legal fees incurred through May 29, 2018 (Dkt. 556)" (Dkt. 589 at 42). Upon entry of judgment, Pensmore may submit a proposed order for the release to it of the $1,001,093.59 paid into court from the proceeds of the sale of Levey's apartment.

Contempt

Though Gruppo & Levey apparently felt otherwise, not to be ignored is that this court already analyzed contempt in this very case, explaining:

> "Civil contempt has as its aim the vindication of a private party to litigation and any sanction imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with the benefits of the mandate." A defendant may be held in civil contempt when there is "clear and convincing evidence that defendant knowingly disobeyed clear and unequivocal orders of the court." . . .

[22] The only remaining defendants that are not held liable on the veil-piercing claims are January Partners and Magic. Pensmore failed to identify any specific fraudulent transfers made to them. The claims against Magic and January Partners are therefore being dismissed. Aside from failing to establish veil piercing liability against them, Pensmore's post-trial briefs are entirely devoid of any analysis of how any specific transfer to either Magic and January Partners is violative of DCL §§ 273 or 276 (*see* Dkt. 589 at 32 n 21 [listing DCL transfers]).

> Moreover, "[a]lthough the line between the civil and criminal contempt may be difficult to draw in a given case and the same act may be punishable as both a civil and a criminal contempt, the element which escalates a contempt to criminal status is the level of willfulness associated with the conduct." That being said, the purposes of civil contempt and criminal contempt differ. Civil contempt "is designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate"; "[a] criminal contempt, on the other hand, involves an offense against judicial authority and is utilized to protect the integrity of the judicial process and to compel respect for its mandates." "Unlike civil contempt, the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory." To hold a party in criminal contempt, a hearing must be held and a willful disobedience of a court order must be proved beyond a reasonable doubt. Pursuant to Judiciary Law § 751, a party held in criminal contempt can be jailed for up to 30 days (April 2015 Decision at 13-14 [citations omitted]).

Pensmore moves to hold Gruppo and Levey in civil and criminal contempt for violating the Attachment Order by selling some of Frog Pond's property, which they owned through their sham trusts, in January 2018. It is undisputed that this property was attached. Gruppo admitted that she was aware of the Attachment Order and understood that it prohibited her from selling the property (*see* 8/20/18 Tr. at 116-17). She also admitted to being aware that the Attachment Order was affirmed by the Appellate Division and that this court's December 2016 Order expressly stated that Frog Pond's properties were attached (*id.* at 117-20; *see id.* at 144 ["Q. So it's fair to say that after you sold Frog Pond, which you acknowledge was attached, you depleted the Frog Pond portion of the sales proceeds by August 16th, 2018; didn't you? A. ***That's right.***"] [emphasis added]).

Gruppo testified that she was given some indication by a lawyer that there was some issue with the Attachment Order that might make it permissible to sell the property (*see, e.g.*, 8/20/18 Tr. at 125). The only lawyer that she specifically identified as having provided her advice was Jeremy King, formerly her counsel of record in this action, who was relieved in October 2017 (*see id.* at 130). Gruppo testified that approximately two months before the sale (which would be in November 2017--after Mr. King had already been relieved), Mr. King told her that it was legally permissible to sell the property (*see* 8/21/18 Tr. at 81). Mr. King, however, vehemently and very credibly refuted Gruppo's testimony, swearing that he did not discuss the Frog Pond properties with her after he was relieved as her counsel on October 4, 2017 (8/22/18 Tr. at 101-02). Mr. King further testified that he knew that the Frog Pond properties were attached and that he would not have advised Gruppo that she could sell them (8/22/18 Tr. at 103; *see id.* at 104 ["If Ms. Gruppo testified yesterday that you told her that she could sell Frog Pond properties at any time after October 4th, 2017, would that be truthful testimony? A. No, that would not"]). Based on observation of Mr. King's demeanor and the lack of any incentive to contradict his former client and the fact that it is unbelievable that he would have advised Gruppo that she could violate an order affirmed by the Appellate Division, the court completely discredits Gruppo's testimony that she believed that sale of a portion of the Frog Pond property was permissible. The court finds that: (1) Gruppo was never advised that she could sell the Frog Pond properties notwithstanding the attachment, which she was admittedly aware of; and (2) Gruppo outright lied under oath about Mr. King having

told her that it was permissible to do so.[23] These findings, coupled with her prior admission of intentionally violating restraining notices (*see* SJ Decision at 4-5), establish that Gruppo believes that she can violate court orders and commit perjury with impunity and without consequence.

The court finds, beyond a reasonable doubt, that while actually aware that the Frog Pond property was attached, Gruppo made the intentional deliberate decision to disregard the Attachment Order and sell the property so that she could use the proceeds as she pleased--to pay creditors other than Pensmore, including her trial counsel. Gruppo is in contempt.

Gruppo violated restraining notices in the past and lied on the witness stand. She has contempt for court orders and believes she does not have to follow them. Instead of appreciating the opportunity that she was given in the past, Gruppo very mistakenly felt emboldened to continue violating mandates. Given her penchant for violating court orders, her disregard for the court's authority, the fact that plaintiff is entitled to a judgment and that further enforcement proceedings lie ahead, 30 days imprisonment is required to ensure that Gruppo appreciates the authority of the court and respects its mandates in the future.

[23] Levey testified that he spoke with an attorney named Garry Morrow about the sale. He did not testify that he disclosed the Attachment Order to Mr. Morrow nor did he testify that Mr. Morrow told him that the sale was permissible notwithstanding the Attachment Order (*see* 8/22/18 Tr. at 117). The court is skeptical that Levey's conversations with Mr. Morrow ever occurred (particularly since Levey was not believable and Mr. Morrow was not called to testify). Because the court is not holding Levey in contempt, these concerns are of no moment aside from them being yet another instance where Levey proved to be an untrustworthy witness.

More than four years ago, based on its dealings with her, Pensmore was convinced that only incarceration would impel Gruppo to follow the law (*see* SJ Decision at 15). After observing Gruppo at trial and the lengths to which she has gone to avoid her legal obligation to Pensmore (including breaching the Settlement Agreement despite having the ability to comply, funneling money from one entity to the next to avoid payment and lying under oath) now this court is absolutely convinced too. Unless Gruppo experiences the most severe punishment for willful violation of a court mandate, this court has no confidence that she or Levey will refrain from violating the restraining notices and judgment-collection measures that will undoubtedly follow. Hopefully, imprisonment once will engender respect for court orders so that it is not required again in the future.

The court, however, is not convinced of Levey's complicity beyond a reasonable doubt. Gruppo controlled 51% of Frog Pond. It is unclear if Levey's consent or involvement was necessary or obtained to facilitate sale of the property. Indeed, the closing statement indicates that Gruppo personally is the property's owner, suggesting that she was the principal driver of the sale. Tellingly, in the portion of Pensmore's brief devoted to how Gruppo and Levey violated the Attachment Order, the only mention of Levey's involvement is a citation to Gruppo's trial testimony where she said that she and Levey decided to sell the property "together" (*see* Dkt. 589 at 14, citing 8/20/18 Tr. at 120). Aside from Levey obtaining a portion of the proceeds, Levey is not alleged to have had any meaningful involvement in the sale. It appears that Gruppo--perhaps due to Levey's medical conditions--took the lead.

Finally, civil contempt would serve no purpose under the circumstances because Pensmore is already entitled to collect the amount that Gruppo improperly diverted and is already entitled to attorneys' fees under the Settlement Agreement. Absolutely nothing would be gained by a civil penalty.

Based on the proof adduced by Pensmore, Gruppo is in criminal contempt and Levey is not.

Accordingly, it is

ORDERED that on Pensmore's claim for breach of the Settlement Agreement on which it seeks the remedy of veil piercing, the Clerk is directed to enter judgment in favor of Pensmore, and against (1) Gruppo; (2) Levey; (3) January Management; (4) the JM Trust; (5) the CG Trust; and (6) Frog Pond – jointly and severally – in the amount of $4,115,067.14, plus 9% pre-judgment interest from November 20, 2018 until judgment is entered; and it is further

ORDERED that, with respect to said defendants, Pensmore's claim for its reasonable attorneys' fees under the Settlement Agreement incurred between May 30, 2018 and November 20, 2018 is hereby severed and shall continue; and it is further

ORDERED that within one week of the entry of this order, Pensmore shall file a letter not to exceed 5 pages in which it attaches its legal bills for the foregoing time period and explains why they are reasonable, to which defendants are to respond, also in a letter not to exceed 5 pages, within one week; and it is further

ORDERED that all other claims not adjudicated herein or previously in this action are hereby dismissed; and it is further

ORDERED that after the judgment directed herein is entered, Pensmore may submit a proposed order for the release of the $1,001,093.59 paid into court from the proceeds of the sale of Levey's apartment and, upon receipt of these funds, Pensmore shall file a partial satisfaction of judgment; and it is further

ORDERED that Pensmore's motion to hold Levey in civil and criminal contempt is denied; and it is further

ORDERED that Pensmore's motion to hold Gruppo in criminal contempt is granted because the court finds, beyond a reasonable doubt, that Gruppo willfully disobeyed this court's lawful mandate by selling a portion of the Frog Pond property in January 2018 in violation of the Attachment Order; and it is further

ORDERED that as a penalty for her contempt, Gruppo is sentenced to 30 days in jail and Gruppo is to appear in court on June 28, 2019 at 2:30 p.m., at which time she will be taken into custody. If she fails to appear an arrest warrant will be issued.

Dated: May 14, 2019

ENTER:

Jennifer G. Schecter, J.S.C.

HON. JENNIFER G. SCHECTER
J.S.C.