

**Quinn Emanuel Urquhart & Sullivan, LLP v Avra
Surgical Robotics, Inc.**

2020 NY Slip Op 33718(U)

November 9, 2020

Supreme Court, New York County

Docket Number: 153447/2020

Judge: Alan C. Marin

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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

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Petitioner,

-against-

ORDER
Index no. 153447/2020
Motion nos. 001 to 006

AVRA SURGICAL ROBOTICS, INC., AVRA
MEDICAL ROBOTICS, INC., AVRA
ACQUISITIONS, LLC, GRANITE INVESTOR
GROUP INC., BARRY F. COHEN, JARED B.
STAMELL, ALBERT CHRISTIAN SCHAUER,
STEPHAN SAGOLLA, NIKHIL LALIT SHAH,
RAY POWERS, FARHAN TAGHIZADEH, PETER
CARNEGIE, VIPUL PATEL, JUAN JOSE
BADIMON, HIEP NGUYEN, JOCHEN BINDER,
HEYWOOD Y. EPSTEIN, EYTAN POLLAK,
ANDREW M. ECONOMOS, FRED NAZEM,
BIJAN SAFAI, RUTHI POLLAK, NICOLE
BERGMAN-FONG, MARGARET GILLIAM,
JACK H. PECHTER, and SUDHIR SRIVASTAVA,

Respondents.

The Court has read efiled documents 1, 2, 4, 16, 22, 24, 47 & 48 , 53, 61 through 63, 65 through 87 and 89 through 102; and has reviewed efiled documents 3,5, 6, 18, 19, 20, 21, 23, 26 through 46, 49 through 52, 54, 55, 57-60, 64 and 88.

This is a petition brought by plaintiff law firm to satisfy a judgment against defendant for legal fees. In *Quinn Emanuel Urquhart & Sullivan, L.P. v Avra Surgical Robotics, Inc.*, 158148/2014, a judgment was entered against the defendant on December 26, 2018 for \$296,880.33, which with interest as of May 26, 2020, the date this proceeding was begun, amounts to \$334,726.50.

Motion 001 is Quinn Emanuel’s petition for (i) turnover payment under CPLR sections 5225 and 5227; and (ii) attachment or levy execution under sections 274 through 276 and 278 of the Debtor and Creditor Law.

Motion 002 is an application for an extension of time that Quinn Emanuel argues is not a proper motion; in any event, it will be denied as moot. Motions 003 through 005 are from individual

respondents who maintain they had insufficient ties with the subject companies to be implicated by the petition. Motion 006 is by Jared B. Stamell.

The underling lawsuit and the judgment entered on December of 2016 were against one defendant, AVRA Surgical Robotics Inc. (“AVRA”), which in this action is the first of some two dozen respondents. Petitioner seeks to recover on the judgment from persons and entities that are sufficiently affiliated with the judgment debtor so as to be liable therefor. One entity or individual may be the alter ego of the other; while fraud may play a role (*Agai v Diontech Consulting, Inc.*, 138 AD3d 736, 2d Dept), it is not a necessary condition (*Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC*, 146 A.D.3d 1, 1st Dept, *affd* 31 NY3d 1002). In addition, transfers without consideration are suspect and may be subject to article 10 of the Debtor and Creditor Law.

Quinn Emanuel contends that:

- On about February 4, 2015 - - six months after Petitioner initiated suit against AVRA - - another respondent, Barry Cohen, incorporated a new company in Florida, AVRA Surgical Microsystems, Inc., later changing its name to AVRA Medical Robotics Inc. (“AVRA Medical”). AVRA Medical is in the same line of business as AVRA . . . owned and operated by the same founder, the same executives, and the same corporate officers (document 102, page 3). AVRA at all relevant times had its principal executive offices at the law firm of respondent Jared B. Stamell: “c/o Stamell & Schager, LLP, 1 Liberty Plaza 35th Floor, New York, NY 10006” (document 1, paragraph 9).

- Barry F. Cohen was the founder and Chief Executive Officer of AVRA. Respondent Cohen was also a member of AVRA’s board. Respondent Cohen is the founder and Chief Executive Officer of AVRA Medical. Respondent Cohen is a shareholder in and beneficial owner of AVRA Medical, and was a shareholder in and beneficial owner of AVRA, both in his individual capacity and through an ownership interest in Granite Investor Group Inc. (*id.*, paragraph 11).

- Jared B. Stamell was the co-founder, vice president, secretary, and general counsel of AVRA, and a member AVRA’s board. Respondent Stamell was a shareholder in and beneficial owner of AVRA, and is presently a shareholder in AVRA Medical (*id.*, paragraph 12).

AVRA failed to respond to Quinn Emanuel’s subpoena seeking information to aid the satisfaction of the judgment. This Court finds that AVRA Medical, Barry F. Cohen and Jared B. Stammel were sufficiently connected to AVRA to be deemed alter egos for the purposes of CPLR sections 5225 and 5227.¹ At this point, the submissions do not support a finding that there

¹ Piercing the corporate veil is typically cast in terms of exposing a shareholder, director or officer to individual liability, but can reach another corporate entity. That contention went forward in *Skanska, supra*, although the facts did not support a piercing. See *Pritchard Servs. v First Winthrop Props.*, 172 AD2d 394, 1st Dept. Inasmuch as alter egos are treated as a single entity for jurisdictional purposes, the need to find separate

were transfers of assets without consideration under the Debtor and Creditor Law. The burden of proof is on the creditor to show transfers were without consideration or otherwise fraudulent (*Petrocelli v Petrocelli Elec. Co., Inc.*, 121 AD3d 596, 1st Dept).

The financials focus on a period prior to the December, 2018 judgment. For example, the SEC prospectus that is document 19 apparently contains no data beyond September 30, 2016 (see page 35), although as noted above, AVRA Medical was formed shortly after Quinn Emanuel began suit for its fees.

Motion 003 was brought by respondents Vipul Patel, Peter Carnegie and Nikhil Lalit Shah; motion 004 by Eytan Pollak and Ruthi Pollak; and motion 005 by Farhan Taghizadeh. These respondents maintain that they had insufficient ties with the subject companies to be implicated in a turnover petition.

Dr. Vipul Patel, a urologic oncologist, states that he was never an officer, director or employee of AVRA or involved in its business or financial dealings and is not in possession or custody of any money or other personal property in which AVRA has any interest; he said that he was unaware of the judgment against it. “The scope of my relationship with AVRA [Surgical] was limited to that of an investor and shareholder” (document 67, paragraph 18).

Peter Carnegie, the cofounder and chief executive officer of several medical companies similarly was never an officer, director or employee of AVRA Surgical, and not involved in its business or financial dealings or in possession or custody of money or property. He was a shareholder; although according to petitioner, he is on AVRA’s board of directors. The latter is not enough to differentiate Mr. Carnegie from Dr. Patel: both will be dismissed from this suit.

Dr. Nikhil Lalitshah Shah, a urologist states that he was never an officer or director of AVRA and was not involved in their contractual relationships, business or financial dealings, in possession or custody of any money or other personal property and unaware of the judgment against AVRA. Dr. Shah does indicate that “His involvement was to advise AVRA on clinical decisions and strategy on its products” (document 69, paragraph 17).

Quinn Emanuel responds that Dr. Shah was the Senior Medical Science Liaison for AVRA, and is presently the Chief Strategy Officer for AVRA Medical (document 81, epage 21). The Court concludes that motion 003 shall be denied as to Dr. Nikhil Lalitshah Shah.

Eytan Pollak and Ruthi Pollak, who have brought motion 004, were on the advisory board of AVRA Medical for which they were given shares, made no capital contributions and had no other involvement in either firm. Petitioner argues AVRA was a closely held corporation with only 75 shareholders. That may be closely held from the vantage of the financial markets, but it

jurisdictional bases is limited (*National Union Fire Ins. Co. of Pittsburgh, Pa. v Ideal Mut. Ins. Co.*, 122 AD3d 630, 1st Dept).

does not make the connection close enough for a CPLR article 52 turnover. Motion 004 to dismiss against the Pollaks is granted.

Dr. Farhan Taghizadeh, a plastic and reconstructive surgeon, has brought motion 005 to dismiss. He owned no shares and provided no services to AVRA. Dr. Taghizadeh was paid for his services with shares in AVRA Medical. What is labeled as the opposition to Farhan Taghizadeh's motion is a more general opposition to the respondents' claims and not specific as to Dr. Taghizadeh. Motion 005 to dismiss against Farhan Taghizadeh is granted.

Motion 006 by Jared B. Stamell to dismiss the petition is denied for the reasons stated above, except as granted with respect to motions 003, 004 and 005.²

* * *

NOW therefore, in view of the foregoing,

IT IS ORDERED THAT:

Motion no. 001 by Quinn Emanuel Urquhart & Sullivan, LLP is granted for turnover payment under CPLR sections 5225 and 5227 against AVRA Surgical Robotics, Inc., AVRA Medical Robotics, Inc., Barry F. Cohen and Jared B. Stamell, and is otherwise denied;

Motion no. 002 for an extension of time is denied as moot;

Motion no. 003 is granted for dismissal of the petition as against Vipul Patel and Peter Carnegie; and it is denied as against Nikhil Lalit Shah;

Motion no. 004 is granted for dismissal of the petition against Eytan Pollak and Ruthi Pollak;

Motion no. 005 is granted for dismissal of the petition against Farhan Taghizadeh; and

Motion no 006 is denied, except as granted with respect to motions 003, 004 and 005.

ENTER

November 9, 2020



Alan C. Marin J.S.C.

ALAN C. MARIN
JUSTICE OF THE SUPREME COURT

² That this matter was brought on by a special proceeding does not affect the fact that the standard of proof for dismissal is governed by CPLR 3211, not by CPLR §404 (*Matter of Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 A.D.3d 1, 1st Dept).