

**Brevetti v Jacobowitz**

2025 NY Slip Op 34609(U)

August 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 519327/2025

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22<sup>nd</sup> day of August 2025

HONORABLE FRANCOIS A. RIVERA

-----X  
GREGORY R. BREVETTI, M.D.,

Petitioner,

- against -

ISRAEL J. JACOBOWITZ,

Respondent.  
-----X

**DECISION & ORDER**

Index No.: 519327/2025

Oral Argument: 8/14/2025

Cal. No.: 14 & 53

Ms. Seq. No.: 1 & 2

By notice of petition, filed on June 12, 2025 (NYSCEF Doc. No. 1) (“Petition”) with supporting papers (NYSCEF Doc. Nos. 2-28) and Notice of Petition dated June 12, 2025 (NYSCEF Doc. No. 29), under motion sequence number one, Petitioner Gregory R. Brevetti, M.D. (“Petitioner”) seeks, *inter alia*, summary disposition under CPLR 409(b) on all causes of action of the Petition. The following documents were considered thereon: NYSCEF Doc. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 43, 44, 45, 46, 47, 48, 49, 50, 51, and 52.

By Notice of Cross-Motion dated, filed on August 7, 2025, under motion sequence number two, Respondent Israel J. Jacobowitz (“Respondent”) moves, *inter alia*, under CPLR 3211(a)(4) and CPLR 3211(a)(7) to dismiss the Petition. The following documents were considered thereon: NYSCEF Doc. Nos. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 53.

On the said Petition (mot. seq. 1) and Cross-Motion (mot. seq. 2), the Court issued Interim

Order dated August 15, 2025, and entered August 21, 2025 (*see* NYSCEF No. 54).

Oral arguments were held on the record on August 14, 2025.

After oral argument, the aforementioned Petition and Cross Motion are decided as follows:

Respondent's Cross Motion is GRANTED IN PART and DENIED IN PART as provided herein.

That branch of Respondent's Cross Motion under CPLR 3211(a)(4) is DENIED. The prior related proceeding was dismissed without prejudice, and thus there is no prior action currently pending. *See Hempstead Hous. Auth. V. Middle County Resources Mgt., Inc.*, 216 A.D.3d 621, 622 (2d Dep't 2023). The fact that Petitioner appealed from the dismissal of that prior related proceeding does not alter the result. *See Concepcion v. Lessel Transportation Corp.*, 213 A.D.3d 449, 449 (1st Dep't 2023). If the Appellate Division reinstates the prior related proceeding, then, at such time, Respondent may move for appropriate relief.

That branch of Respondent's Cross Motion under CPLR 3211(a)(7) is GRANTED to the extent it seeks dismissal of the Petition's First Cause of Action under Business Corporation Law § 630. The fax sent by Petitioner to Respondent on January 22, 2003, while timely, does not constitute sufficient notice under Business Corporation Law § 630. *See Ingvarsdottir v. Gaines, Gruner, Ponzini & Novick, LLP*, 144 A.D.3d 1099 (2d Dep't 2016).

That branch of Respondent's Cross Motion under CPLR 3211(a)(7) is DENIED to the extent it seeks dismissal of the Petition's Second Cause of Action (Trust Fund Doctrine - Accounting), Third Cause of Action (Trust Fund Doctrine – Breach of Fiduciary Duties), Fourth Cause of Action (Fraudulent Conveyance by a Defendant – Former Debtor and Creditor Law § 273-a), Fifth Cause of Action (Fraudulent Conveyance with Actual Intent to Defraud - Former Debtor and Creditor Law § 276), Sixth Cause of Action (Attorney's Fees - Former Debtor and

Creditor Law § 276-a), and Seventh Cause of Action (Imposition of Personal Liability under the Doctrine of Piercing the Corporate Veil). Accepting the allegations of the Petition as true, Petitioner pleads cognizable claims for relief under those said causes of action.

Petitioner's Petition is GRANTED IN PART and DENIED IN PART as provided herein.

Petitioner's Petition is DENIED to the extent it seeks summary disposition under CPLR 409(b) with respect to the Petition's Third Cause of Action (Trust Fund Doctrine – Breach of Fiduciary Duties), Fourth Cause of Action (Fraudulent Conveyance by a Defendant – Former Debtor and Creditor Law § 273-a), Fifth Cause of Action (Fraudulent Conveyance with Actual Intent to Defraud - Former Debtor and Creditor Law § 276), Sixth Cause of Action (Attorney's Fees - Former Debtor and Creditor Law § 276-a), and Seventh Cause of Action (Imposition of Personal Liability under the Doctrine of Piercing the Corporate Veil). There are triable issues of material fact precluding summary disposition on those said causes of action. *See WBP Cent. Assocs., LLC v. DeCola*, 50 A.D.3d 693, 694 (2d Dep't 2008). As provided herein, Respondent shall answer the said causes of action and this proceeding shall thereafter proceed as a plenary action with respect to those said causes of action.

Petitioner's Petition is GRANTED to the extent it seeks summary disposition under CPLR 409(b) with respect to the Petition's Second Cause of Action (Trust Fund Doctrine - Accounting). Petitioner has made a prima facie showing that the Trust Fund Doctrine applies by submitting proof in admissible form showing (1) that Petitioner is and has been a creditor of New York Cardiothoracic Surgeons, P.C. ("NYCTS") since at least 2003, (2) that Respondent is and has been an officer or director of NYCTS during that period, and (3) that NYCTS is and has been insolvent or approaching insolvency since 2006. Petitioner has also made a prima facie showing that, during said time period, NYCTS had assets, and that Respondent caused certain of said assets to be

transferred under circumstances that warrant Respondent to account, including because said transfers appear suspicious, appear to possibly have been made for Respondent's personal use, and/or were possibly made without consideration. Under these circumstances, an accounting is warranted. *See New York Credit Men's Adjustment Bureau v. Weiss*, 305 N.Y. 1, 7 (1953); *Buttles v. Smith*, 281 N.Y. 226, 235 (1939). In opposition, Respondent has failed to raise a triable issue of material fact as to the necessity of an accounting under the Petition's Second Cause of Action.

Accordingly, it is hereby

ORDERED, that Respondent's Cross Motion is GRANTED to the extent it seeks dismissal of the Petition's First Cause of Action under Business Corporation Law § 630, and said cause of action is hereby DISMISSED WITHOUT PREJUDICE, and Respondent's Cross Motion is otherwise DENIED; and it is further

ORDERED, that the Petition is GRANTED under CPLR 409(b) with respect to the Petition's Second Cause of Action, to the extent set forth herein, and is otherwise DENIED; and it is further

ORDERED that, within 30 days of service of this Order upon Respondent with notice of entry, Respondent shall serve and file an answer to the Petition's Third, Fourth, Fifth, Sixth, and Seventh Causes of Action; and it is further

ORDERED, that, upon Respondent serving and filing an answer with respect to the Petition's Third, Fourth, Fifth, Sixth, and Seventh Causes of Action as provided herein, this proceeding shall be converted, in part, to an action with respect to those said causes of action only, and the parties shall proceed thereafter as in a plenary action as to those said causes of action; and it further

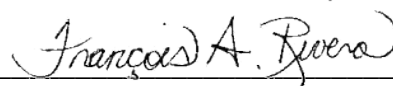
ORDERED, that, pursuant to the accompanying Order of Reference, a referee is being

appointed, *inter alia*, to hear and report with respect to the Petition's Second Cause of Action; and  
it is further

ORDERED, that Petitioner shall serve a copy of this Order upon Respondent by NYSCEF  
e-filing.

The foregoing constitutes the decision and order of this Court.

ENTER:



Francis A. Rivera

J.S.C.