

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

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In the Matter of the Application of

Index No. 101239/2014

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
Pokoik Family Partners, LP,

Petitioners,

**SO-ORDERED
TRANSCRIPT
WITH NOTICE
OF ENTRY**

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

575 Realties, Inc. and
Steinberg & Pokoik Management Corp.,

Respondents.
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COUNSEL

PLEASE TAKE NOTICE that the within is a true copy of the July 9, 2015 Decision and Judgment of the Supreme Court, New York County, Commercial Division (Oing, J.), the Transcript of which was so-ordered on July 29, 2015 and entered in the Office of the Clerk of the County of New York on August 25, 2015.

Dated: Huntington, New York
September 3, 2015

**The Law Firm of
GARY N. WEINTRAUB, LLP**
Attorneys for Petitioners
50 Elm Street
Huntington, New York 11743
(631) 421-2500

By 
Leland S. Solon

TO: FOX ROTHSCHILD LLP
Attorneys for Respondents
100 Park Avenue, Suite 1500
New York, NY 10017
212 878 7960

2 SUPREME COURT OF THE STATE OF NEW YORK
3 NEW YORK COUNTY : CIVIL TERM : PART 49

4 -----X
5 LEON POKOIK, INDIVIDUALLY AND DERIVATIVELY
6 ON BEHALF OF NORSEL REALTIES, et al

7 - against - Petitioner

Ind. No.
101239/2014

8 NORSEL REALTIES, 575 REALTIES, INC.
9 575 ASSOCIATES LLC and STEINBERG & POKOIK
10 MANAGEMENT CORP., et al

Respondent

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60 Centre Street
New York, New York
July 9, 2015

11 B E F O R E :

12 HONORABLE JEFFREY K. OING

13 Justice

mm seq
nos. 001 & 002

14 A P P E A R A N C E S :

15 THE LAW FIRM OF GARY N. WEINTRAUB, LLP
16 Attorneys for Plaintiff
17 50 Elm street
Huntington, NY 11743
BY: LELAND S. SOLON, ESQ.

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FOX ROTHSCHILD, LLP
Attorneys for Defendant
100 Park Avenue
New York, NY 10017
BY: DANIEL A. SCHNAPP, ESQ.

GARY S. RAPPARPOT, ESQ.
General Counsel Steinberg & Pukoik Management
575 Madison Avenue
New York, NY 10022

Kathy Y. Jones
Official Court Reporter

Proceedings

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2 THE COURT: I'll turn to the next case.

3 The Court has before it the matter of Leon
4 Pokoik et al versus 575 Realities Inc. and Steinberg &
5 Pokoik Management Corp, Index number 101239 of 2014. This
6 is an Article 78 proceeding and I have motion sequence
7 number one by the petitioner seeking a turnover or
8 compelling respondents to turn over books for inspection.

9 I have also motion sequence number two which is
10 a motion not to dismiss the proceeding.

11 Having said that, the parties enter their
12 appearances for the record. For the petitioner.

13 MR. SOLON: For both petitioners, Leland Solon
14 from the law firm of Gary N. Weintraub LLP, 50 Elm Street,
15 Huntington, New York 11743.

16 THE COURT: For the respondent.

17 MR. SCHNAPP: Your Honor, Daniel Schnapp from
18 Fox Rothchild LLP for the respondent 575 Realities, Inc.,
19 and Steinberg & Pokoik Management Corporation.

20 My colleague John Fuller from Fox Rothchild and
21 the general counsel to Steinberg & Pokoik Management
22 Corporation Gary Rappaport are with me as well.

23 THE COURT: Thank you.

24 Look, you know I looked at the record here. The
25 issue of him having standing. Why don't you think he has
26 standing because he's got an interest in these companies,

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doesn't he?

MR. SCHNAPP: He does not have an interest, your Honor, at all with respect to the Steinberg & Pokoik Management Corporation. They own absolutely no interest in that stock whatsoever.

THE COURT: Wait a minute. Steinberg & Pokoik?

MR. SCHNAPP: Pokoik Management Corporation.

THE COURT: If it has his name in it, doesn't he have an interest in it?

MR. RAPPAPORT: Four generation family business, Judge. Actually started by his grandfather a hundred years ago.

THE COURT: That's why the name is there?

MR. RAPPAPORT: That's why the name is there.

THE COURT: It's like a law firm. The name is there if the guy is gone.

MR. SCHNAPP: That's right, your Honor. As to ownership, it's nothing.

THE COURT: With respect to Steinberg & Pokoik, the SPM for short, he doesn't have an interest with respect to the 575 Realities?

MR. SCHNAPP: The family. That is the family partnership has an interest in 575. However, two things.

First of all, the demand on the business corporation law that was made in this case with respect to

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2 Mr. Pokoik was made individually. He himself owns no
3 stock in the company. It's only the family, the
4 partnership that owns stock.

5 Now, we pointed that out in our motion to
6 dismiss and their opposition to reply because it's an
7 Article 78. They put in a stock certificate but that is
8 only after the action started. That is not proper
9 procedure under the business corporation law. The demand
10 must have been made initially by the family partnership
11 and it was not.

12 Your Honor, I would analogize that to a
13 derivative tax where it's required that you may have had
14 proper demand. That's actually in --

15 THE COURT: It's a condition proceeding. If you
16 don't have the right, you are not in the game.

17 MR. SCHNAPP: That's correct.

18 THE COURT: But you know, counsel, at the end of
19 the day, you are just delaying the inevitable because he's
20 going to go back and do it right the next time.

21 MR. SCHNAPP: If he does, your Honor, we'll deal
22 with it then. As far as we are concerned, we are willing
23 to take our chance because he did not follow the proper
24 procedure. He did not follow the law and as a result he
25 is not entitled to motion whatever that is.

26 THE COURT: Your response.

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MR. SOLON: Number one, the Steinberg & Pokoik Management Corp. is a wholly owned subsidiary of 575 Realities, Inc. The owners of 575 Realities, Inc, is 575 Realities, Inc., Corporation. Leon Pokoik is a general partner in Leon Pokoik Family Partners LP which is a shareholder in 575 Realities, Inc.

The respondent's position of not books and records of the SPMC would be discoverable because there is no direct shareholder.

THE COURT: If they are wholly owned subsidiary, they're tied on. So, fine.

In terms of you getting your procedure right, is it correct that Mr. Pokoik is the one who personally asked to inspect rather than on behalf of the trust?

MR. SOLON: Well, I would point out the demand was actually made pursuant to the business corporation law and also pursuant to the common law and under the -- and the business corporation law is as the Court knows is much narrower.

THE COURT: I got reversed already on that because I got -- the common law is the greater right for someone who holds interest.

MR. SOLON: The argument that respondent is making, our clients wrote a letter on his letterhead making a demand and then the respondent responded to it.

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2 They didn't say you are not in the partnership. They are
3 only raising that now. This is after months. They
4 supposedly took months to respond to it. These are
5 closely held businesses. He knew exactly who it was. I
6 think there is a formal distinction without a difference.

7 THE COURT: You want to respond?

8 MR. SCHNAPP: I want to respond.

9 With respect to the issue of the parent,
10 subsidiary relationship. As we point out in our papers,
11 because you are a shareholder in a parent corporation does
12 not automatically entitle you to see the books and records
13 of the subsidiary.

14 THE COURT: As long as you observe the corporate
15 formality.

16 MR. SCHNAPP: That's correct, your Honor. In
17 fact, we point out the case law that in fact under New
18 York law shows that they are not entitled to get the books
19 and records of the subsidiary just because the family
20 partnership has an interest in the parent company.

21 THE COURT: You know what, I've heard enough.

22 This is my decision. I am going to grant the
23 petition in part and deny it in part.

24 With respect to the petitioner's right to get --
25 to inspect the books, I hear counsel's argument,
26 respondent's counsel's argument saying, you know what,

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2 they didn't do it properly. At the end of the day, they
3 got -- they have an interest. The petitioner has an
4 interest in some way. It's like there is no interest at
5 all.

6 So that I believe under the common law they do
7 have a right to inspect the books and records of the
8 respondent company and I recently learned that because I
9 was reminded of that by the Appellate Court in the
10 McGraw-Hill case.

11 So, having said that, what I'm going to do, I'm
12 going to grant the petition to the extent of entering
13 judgment to permit or direct that the company 575 Realities
14 Inc., turn over the documents that's being sought, books
15 and records that are being sought by petitioner to
16 inspect.

17 With respect to Steinberg Pokoik Management
18 Corp., I'm not going to direct or enter judgment directing
19 that company or that respondent to turn over books and
20 records.

21 I would think at this point the petitioner would
22 get the records, books and records from 575 Realities Inc.
23 They will look them over. If they believe they need
24 further information or further records, they then have now
25 sufficient -- they will probably at that point have
26 sufficient documentation to make the connection to say

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2 that, Judge, guess what, we need the other documents now
3 and here is why. You can point to it.

4 So, what I'm going to allow you to do is I'm
5 going to grant the petition in part to allow you to get
6 the books and records from 575 Realities, Inc., but I'm
7 going to deny in part that branch of the Article 78
8 petition seeking books and records from Steinberg Pokoik
9 Management Corp.

10 You follow that?

11 MR. SCHNAPP: Yes, your Honor.

12 THE COURT: So, that's my decision and judgment
13 on this motion here.

14 Counsel, you are the moving party. Please order
15 the transcript. I'll so order it for your records. I
16 think we're done.

17 MR. SCHNAPP: Yes, your Honor. Thank you very
18 much.

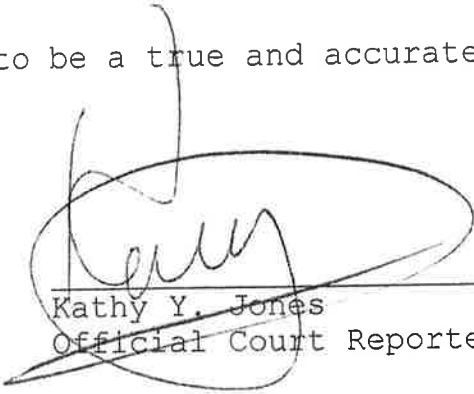
19 THE COURT: So that he we have it for the
20 record, motion sequence number one is decided the way I've
21 just stated. Motion sequences number two to dismiss is
22 denied. Thanks.

23 Have a good afternoon, folks. Thank you.
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Proceedings

C E R T I F I C A T E

Certified to be a true and accurate transcript of the proceedings.



Kathy Y. Jones
Official Court Reporter

7/29/15

Deber No. 101239/2014

Mtn seq. nos. 001 & 002

So Ordered



JEFFREY K. OING
J.S.C.

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