

Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Gesmer, Kern, Oing, Moulton, JJ.

12677

ESTER J. O'MAHONEY et al.,  
Plaintiffs-Appellants-Respondents,

Index No. 652621/2014  
Case No. 2019-05104

-against-

Gavin Whiston et al.,  
Defendants-Respondents-Appellants.

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Samuel Goldman & Associates, New York (Samuel Goldman of counsel), for appellants-respondents.

Elaine Platt, New York, for respondents-appellants.

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Order, Supreme Court, New York County (Jennifer G. Schechter, J.), entered October 4, 2019, which denied the parties' motions for summary judgment and requests for sanctions, unanimously affirmed, without costs.

Summary judgment was properly denied because the record raises issues of fact including whether a bar opened by defendants qualified as a corporate opportunity of the bar and corporation owned by plaintiffs and defendants together, whether assets of the corporation, including its goodwill, were given to the new bar for no consideration, whether the individual defendants looted, committed waste, or paid themselves unfair bonuses, whether a loan issued by plaintiffs to the corporation was repaid, and whether the individual defendants' treatment of plaintiffs amounted to shareholder oppression (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). There is no reason to disturb the portion of the court's order directing defendants to provide an accounting.

The court did not abuse its discretion in denying defendant's application for sanctions (*see Yenom Corp. v 155 Wooster St. Inc.*, 33 AD3d 67, 70 [1st Dept 2006]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 17, 2020

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name being the most prominent.

Susanna Molina Rojas  
Clerk of the Court