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Manuela Gomez,
Editor

ROCKLAND COUNTY BAR ASSOCIATION

NEWSBRIEF

www.rocklandbar.org

October 2021

CLE ONLINE - What Attorneys Can Do to Plan for Their Professional and Personal Future

Thursday, October 14, 2021

12:00PM - 1:00PM

CLE ONLINE -The New Discovery Law: How Rockland Courts are Responding

Wednesday, October 20, 2021

12:00PM - 1:00PM



To: Attorneys, professional staff & interested parties

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September 16, 2021

October 14, 2021

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ANNOUNCEMENT FROM THE RCBA REAL ESTATE COMMITTEE

Please be advised, that after many months of work and coordination between the RCBA, the Real Estate Committee, its Co-Chairs and Members; we are pleased to announce that the RCBA Real Estate Committee has created, voted-on and Approved an updated Real Estate Contract for the first time in Decades!

Co-Chairs Jeff Yanowitz and David Ascher took notes and comments from the Real Estate Committee members over many months to provide this updated Contract to the entire RCBA! We look forward to utilizing this Contract throughout Rockland County and providing a more modern and streamlined approach to Real Estate Transactions for us all.

Please find two updated contracts (single family home and condominium) on our RCBA website at www.rocklandbar.org. Scroll down to the bottom of the homepage and find links under "Helpful Links."

New York State Bar Attorney Professionalism Award 2022 Seeking Nominations

The Committee on Attorney Professionalism administers the annual New York State Bar Association Attorney Professionalism Award.

On behalf of the Committee on Attorney Professionalism, we are now seeking nominations for the Award.

Nominations must be submitted and postmarked **no later than December 15, 2021.**

Please click on the link below for more information and to download the nomination form:

[2022 Attorney Professionalism Award](#)

Melissa A. O'Clair, Assistant to the General Counsel



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COMMERCIAL LITIGATION ISSUES OF INTEREST
Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.*

Your client is one of two LLCs that own a third LLC, which owns real estate. Your client has been sued, along with the other two LLC's, by a lender claiming to be the judgment creditor of a debtor who is alleged to be operating all three LLCs as the debtor's alter ego. The complaint alleges that the debtor does not adhere to corporate formalities, comingles funds among the LLCs, uses LLC funds for personal use, and uses his dominion over the LLCs to conceal his assets, resulting in injury to the creditor. The creditor seeks to pierce the corporate veil of the three LLCs and be declared owner of them. The creditor filed a notice of pendency, which you move to cancel. You argue that the property is owned by an entity that has no connection to the debtor at all, and that, in any event, a creditor's claim of an ownership interest in an entity does not permit the filing of a notice of pendency against real property owned by the entity.

Will you succeed on your motion to cancel the notice of pendency?

The answer is "no."

In *JS Equity Holdings 1 LLC v. 527Myrtle LLC*, Case No. 513368/20 (Sup. Ct., Kings Co., decided May 27, 2021), the plaintiff sought to pierce the corporate veil of an LLC ("Myrtle") that owned real property, and the two LLCs that owned Myrtle ("Jerico" and "Yorkshire"). The plaintiff claimed that the three LLCs were the alter egos of Jason Lee ("Lee"), against whom plaintiff had a \$1.5 million judgment by confession. Plaintiff sought a declaration that it owned the LLCs in place of Lee's interests, and filed a notice of pendency. The complaint alleges that Lee transferred property he owned to his wife on July 16, 2018, to avoid the consequences of his confession of judgment, and a year later, his wife transferred the property to another entity.

Jerico moved to cancel the notice of pendency, arguing that the judgment does not affect any real estate owned by Lee. Jerico argued that the loan from which the judgment by confession arose was not made to Jerico, but to another entity, and the property now encumbered by the notice of pendency was owned by an entity that had no connection to Lee at all. Jerico argued that the mere assertion of a claim of ownership in an entity does not support a notice of pendency against property owned by the entity.

The Court began by quoting CPLR 6501, which authorizes the filing of a notice of pendency if the judgment demanded "would affect the title to, or the possession, use or enjoyment of, real property." The Court quoted *In re. Sakow*, 97 N.Y.2d 436 (2002), which explains that the notice warns the world that the defendant's right in the property "is subject to whatever the action may establish as the plaintiff's right."

Continued

Continued. - COMMERCIAL LITIGATION ISSUES OF INTEREST**Submitted by Joseph Churgin, Esq. and Susan Cooper, Esq.***

Turning to the pleading requirements for piercing the corporate veil, the Court noted that conclusory claims, without more, will not suffice. The Court pointed out that the complaint alleges that Lee failed to adhere to corporate formalities, commingled funds with the entities, used corporate funds belonging to the entities for personal use, and used his dominion over the entities to conceal his assets, resulting in injury to the plaintiff. The Court ruled, citing *Saks v. Knolls at Pinewood LLC*, 157 A.D.3d (2d Dep't 2018), "These allegations establish, at this juncture, that Lee abused the privilege of operating in corporate form by dominating or controlling the corporation" and "the corporate veil will be pierced to achieve equity, even absent fraud."

Thus, the Court reasoned that "it is of no moment" whether the entities that own Myrtle are entities upon which the plaintiff's judgment was secured, "because the basis for the lawsuit and indeed the notice of pendency is that Lee is not entitled to any corporate protection and that consequently the lien affects Lee and is therefore proper." The Court noted that discovery will shed light on whether the allegations are true, but "at this stage of the litigation there are surely sufficient indicia that Lee in fact is not entitled to corporate protections." Therefore, the motion to cancel the notice of pendency was denied.

The lesson? If your client has sufficient evidence to back up a claim that a judgment debtor is hiding assets in real property owned by the debtor's sham entities over which the debtor exercises dominion and control, consider filing a notice of pendency along with an action seeking to be declared the owner of the debtor's interests in those entities.

Editor's note:

Jerico moved to reargue, pressing that Lee's ownership in the entities does not constitute ownership of the property, and, therefore, plaintiff has no right to file a notice of pendency. The Court denied reargument noting that Lee was the "indirect owner" of the property, and that was sufficient. Notices of appeal were filed for both orders.

*By Joseph Churgin, Esq. and Susan Cooper, Esq. of
SAVAD CHURGIN, LLP, Attorneys at Law

Technology Tips for Attorneys

submitted by
Michael Loewenberg*

Relationships

Contacting someone on your smart phone using voice commands is so convenient and safe and easy to set up on Androids and iPhones. You can tell your phone to “call <name>” and it will dial for you, for example.

When you set up your relationships with your contacts, it’s even more powerful.

For example, you can say “Hey Siri, call my wife’s cell phone” and your phone will call your wife. You can also say send a text message to my son and your phone will prompt you to dictate a message to your son. And you can say “email my manager” and your phone will set up the appropriate email message. There are lots of built in relationships you can select – personal and business.

The secret sauce is to tell your phone about your relationships with your contacts. Here is how to do it!

On an Android:

1. Open the Google app .
2. Tap Microphone or say "Ok Google," then say a nickname for one of your contacts. For example, "Diane is my mom."
3. If you have multiple contacts with the same first name, pick the right person.
4. Under "Remember a relationship," tap Done .

On an iPhone:

1. Launch the Contacts app on your iPhone or iPad.
2. Tap your own contact card.
3. Tap Edit in the top-right corner of the screen.
4. Scroll down and tap the plus (+) button next to add Related name.
- 5 . Enter the name of the contact you want to establish a relationship with.

Hint: when you search for your name in your iPhone contacts, the contact with “me” on the right side is your contact card (you might have several contact cards in your name).

When you set up the relationships, you can select from the list of labels or create your own label. For example, you can create a custom label “The King” and then use a voice command to call The King.

This feature is especially useful when you’re driving or can’t use your hands to manipulate your phone. Once you’ve set up relationships with your Contacts, you’ll be all set to call, message or email your people with simple voice commands.

Stay safe!

*Michael Loewenberg is the President of MESH Business Solutions, Inc., New City, NY, 10956 and he is also an Affiliate Member of the RCBA.

October 2021

THE PRACTICE PAGE**Hon. Mark C. Dillon *****CPLR Article 16 and 4th Grade Math**

Thank goodness for 4th grade math class. It provides the foundation for computations that are made by attorneys and judges each day for determining proportional shares of liability under CPLR Article 14, collateral source set-offs under CPLR 4545 (c), statutory interest additions under CPLR 5001-5003, marital shares of property and QDROs under DRL 236(B), and of course, the all-important value of one-third contingency fees. All are simple additions, subtractions, or percentages. We leave the complications of algebra and calculus to the MBAs.

But there is one provision of the CPLR, section 1601, where 50% does not necessarily mean 50%. CPLR 1601(1) provides that when a claim for personal injury is determined against two or more joint-tortfeasors, and the liability of a defendant is found to be “50% or less” of the total liability assessed against all persons liable, that defendant’s liability for non-economic loss (e.g. past and future pain and suffering, loss of enjoyment of life) shall not exceed its own equitable share of the total culpability. The statute acts as a cap upon a qualifying defendant’s liability, to protect parties liable for a “minor” percentage of culpability from paying a much larger percentage of the *non*-economic loss damages. Economic loss calculations are unaffected. There are some major exceptions, as CPLR Article 16’s limitations of liability do not apply to administrative proceedings, workers’ compensation claims, intentional and reckless torts, actions involving the use of automobiles, and other boutique carve-outs (CPLR 1602[1]-[14]).

Along came *Robinson v June* at the Supreme Court, Tompkins County, in 1996 (167 Misc.2d 483). The case involved a physical altercation at Poor Richard’s Saloon, where the plaintiff commenced an action against the saloon for negligent security at the premises and violations of the Dram Shop Act, and against defendants June and Norman for the intentional tort of battery. A jury, upon hearing the evidence of the plaintiff’s unfortunate beat-down, found the saloon to be 50% liable, the individual defendants 45% liable, and the plaintiff, not being entirely innocent in the sordid affair, 5% contributorily negligent. The court held that the various defendants were jointly liable, and that since defendants June and Norman were liable for intentional torts, they were not entitled to the limitations of liability under CPLR 1602(5).

The saloon in *Robinson* argued that since it *was* found 50% or less negligent from among all persons liable, it was entitled to the CPLR 1601 limitations of liability. The saloon was presumably the only defendant with a deep pocket insurance policy, and without the limitations of liability under CPLR 1601, it would otherwise be required to pay 95% of the plaintiff’s damages, subject to contribution from the individual defendants who presumably had no assets. But not so fast. Recall, the jury found that the plaintiff was 5% contributory negligent. CPLR 1601 applies its statutory limitations of liability to tortfeasors “jointly liable.” The plaintiff, while 5% contributory negligent, was not a tortfeasor “jointly liable” to himself and would not enforce payment of 5% of the damages to himself. Therefore, if the plaintiff’s 5% contributory negligence is eliminated from the statutory calculation, the liability of the defendants is no longer 50% and 45%, but must be “extrapolated” to a scale of 100%. Doing the math, the saloon’s proportional liability of the joint defendants’ liability was actually 52.63% on a 100% scale, and the individual defendants’ proportional liability was 47.37%. The saloon’s liability among the joint tortfeasors increased from 50% to 52.63% on a 100% basis, rendering the saloon *ineligible* for the limitations of liability under CPLR 1601, as its percentage of extrapolated liability was no longer “50% or less.” Thus, in this context, 50% did not mean 50%, and instead meant 52.63%, notwithstanding what was taught in 4th grade math.

Robinson v June was never appealed, but a case from the First Department lends appellate credence to its mathematical approach upon eliminating the plaintiff’s contributory share (*Risko v Alliance Builders Corp.*, 40 AD3d 345 [2007]). Extrapolating percentages of liability seems to be legally correct, when applicable, in deducting the plaintiff’s percentage of contributory negligence from the overall calculations. The unavailability of the limitations of liability under CPLR Article 16 might have made Poor Richard’s Saloon all the bit poorer.

* Mark C. Dillon is a Justice of the Appellate Division, Second Department, an Adjunct Professor of New York Practice at Fordham Law School, and an author of CPLR Practice Commentaries in McKinney’s.

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This is a friendly reminder that it is time to pay your 2021-22 RCBA Membership Dues.

Annual Dues for 2021-22 for regular Members are \$185.00.

Renew and pay online by clicking [here](#), or send in the [Renewal Form](#) with your check.

After September 30, 2021 Dues amount increases to \$200.00!

If you have any questions about your Membership, please contact

Manuela Gomez

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COVID-19 RESOURCES FOR MEMBERS

RCBA Cares

Go to: www.rocklandbar.org

“Member Resources”

for:

Professional Practice tips

Wellness articles

Community updates

Here’s to a happy and healthy 2021!

*discussions
for RCBA members*



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MEMO

TO ALL RCBA COMMITTEE CHAIRS & VICE- CHAIRS

The Association is seeking articles from your committee for publication in the Bar's monthly Newsletter. The membership would greatly benefit from your input and would appreciate it. The article does not have to be complicated or long- a succinct piece of general interest and importance would be best.

If you are able to submit an article for the Newsletter it should be sent via email to sabrina@rocklandbar.org by the 15th of the month so that the Executive Board may review it.

Thank you!



Monthly
Newsletter

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
ANNOUNCEMENT FOR BANKRUPTCY JUDGESHIP**

The United States Court of Appeals for the Second Circuit invites applications from qualified candidates for a 14-year appointment as United States Bankruptcy Judge for the Southern District of New York, with a duty station in either Manhattan or White Plains, New York. The selection process will be confidential and competitive. Applicants will be considered without regard to race, color, religion, sex, national origin, age, sexual orientation, or disability.

The current annual salary of a United States Bankruptcy Judge is \$201,112.

The Second Circuit uses an open and competitive selection process. All applications are screened by a Merit Selection Committee. The Committee will review applicants using the following criteria: legal competence evidenced by experience with complex legal issues; an aptitude for legal scholarship and writing; familiarity with the courts and court processes; commitment to equal justice under the law; characteristics indicative of a sound judicial temperament; a reputation for integrity, good character and ethical behavior; and physical and mental health sufficient to meet the demands and tenure of the position. The Merit Selection Committee will select a limited number of applicants for interview and will conduct appropriate due diligence inquiries into the candidates' backgrounds and qualifications. Upon a majority vote of the Second Circuit Judicial Council, the Council will forward the Merit Selection Committee's Report with any recommendations or comments to the active judges of the Court of Appeals. The selected nominee will be required to satisfy FBI and IRS background investigations prior to appointment.

Basic qualifications for consideration include:

1. Membership in good standing of at least one state bar, the District of Columbia bar, or the Commonwealth of Puerto Rico bar, and never other than membership in good standing of every bar of which the applicant has been a member; and
2. A minimum of five years of legal practice experience.

Application forms are posted on the Court's website at <http://www.ca2.uscourts.gov> or may be obtained by calling (212) 857-8700.

Completed application packages must be in the format required by the Second Circuit and received no later than December 3, 2021.

ASSISTANT DISTRICT ATTORNEY
ROCKLAND COUNTY DISTRICT ATTORNEY'S OFFICE

The County of Rockland is seeking a candidate to perform professional and legal work of a complex nature involving the responsibility for representing the people in criminal court cases and in the performance of other legal work. General supervision is received from the District Attorney and/or a higher-level Assistant District Attorney. The work requires the incumbent to be on call at night and on weekends. Does related work as required.

Candidates must possess good knowledge of criminal law and court procedures; ability to perform legal research and prepares written documents (e.g. briefs); ability to express arguments of the law by written and spoken word; ability to deal effectively with people.

MINIMUM QUALIFICATIONS: Possession of a license to practice law in the State of New York or formal approval under the Rules of the Court of Appeals, Part 520.9 (e) (3), to practice law in New York State. Approval under the latter is for an 18-month period only.

NOTE: Must provide a current certificate of good standing.

SPECIAL REQUIREMENT: License to practice law in the State of New York must be maintained throughout the course of employment in this title.

Please email resume to: bulusanc@rocklandda.org

Government Lawyer Ethics Convocation – October 14, 2021

Watchdogs or Lap Dogs? The Ethical Challenges Facing Government Lawyers

Dear Colleague:

the New York State Judicial Institute on Professionalism in the Law and the New York State Commission to Reimagine the Future of New York's Courts are pleased to invite you and your colleagues to our 2021 Convocation, which will be held virtually on **Thursday, October 14, 2021, from 11:00am – 4:00pm ET.**

We are excited to kick-off the event with a conversation between Paul D. Clement and Neal Katyal, both well-known government lawyers, having led the U.S. Solicitor General's Office during past administrations. Three additional panels panel discussions by distinguished and experienced lawyers and academics will follow. Three free New York State CLE ethics credits are pending approval.

Convocation Information:

- [Agenda](#)
- [Registration](#) (there is no charge to attend; please register no later than October 11, 2021)
- [About the Convocation](#)

In today's highly charged political climate, government lawyers at all levels face unprecedented ethical challenges. Whether they are employed by elected officials with agendas or government agencies untainted by politics, government lawyers often must make decisions that reflect a clash between what the ethical rules require and what their superiors demand. We hope you can join this discussion on the 14th.

Please feel free to share this invitation with your colleagues who you think would be interested in attending.

Paul C. Saunders

Chair, NYS Judicial Institute on Professionalism in the Law

Henry M. Greenberg

Chair, Commission to Reimagine the Future of New York's Courts.

CLE CORNER

PLAN YOUR YEAR OF CLEs NOW

2021 CLE TITLE	DATE & TIME
<p>CLE ONLINE - What Attorneys Can Do to Plan for Their Professional and Personal Future</p>	<p>Thursday, October 14, 2021 12:00PM - 1:00PM</p>
<p>CLE ONLINE -The New Discovery Law: How Rockland Courts are Responding</p>	<p>Wednesday, October 20, 2021 12:00PM - 1:00PM</p>

NEW CLE REQUIREMENT

In addition to ethics and professionalism, skills, law practice management, and areas of professional practice, a new category was added for diversity, inclusion and elimination of bias courses. This category of credit is effective January 1, 2018.

Experienced attorneys due to re-register on or after July 1, 2018 must complete at least one credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement. The transitional CLE requirement for newly admitted attorneys remains unchanged. For more information about the CLE Rules, visit nycourts.gov/Attorneys/CLE.

CLE REQUIREMENTS

Newly admitted attorneys must complete 32 credit hours of accredited “transitional” education within the first two years of admission to the Bar. Sixteen (16) credit hours must be completed in each of the first two years of admission to the Bar as follows: 3 hours of Ethics and Professionalism; 6 hours of Skills; 7 hours of Practice Management and/or areas of Professional Practice.

Experienced Attorneys must complete 24 credit hours of CLE during each biennial reporting cycle: 4 credit hours must be in Ethics and Professionalism. The other credit hours may be a combination of the following categories: Ethics and Professionalism, Skills, Practice Management or Professional Practice.

FINANCIAL HARDSHIP POLICY:

RCBA members and non-members may apply for tuition assistance to attend Association continuing legal education programs based on financial hardship. Any member or non-member of our Association who has a genuine financial hardship may apply in writing, no later than five working days prior to the program, explaining the basis of his/her hardship, and, if approved, may receive tuition assistance, depending on the circumstances.

COMMITTEE CORNER

Your Committee Chair will contact you regarding any upcoming remote meetings.

Need a Place to Meet in New City?

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CLASSIFIED ADS



SHADOWING OPPORTUNITY

College Student Looking for an Unpaid Shadowing Opportunity My name is Jenny Dorlus and I am a 21-year-old political science major at Long Island University. I am currently in search of shadowing opportunities at a local law firm — preferably a short term, unpaid opportunity where I'd be able to learn firsthand what it takes to work at a law firm/in the field. I am willing to assist with projects and take on basic day to day operations. However, I would appreciate anything that you are capable of offering! If you would like to contact me, my return email is jennydorlus@gmail.com and my mobile number is (845)-300-5635.

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Office building for sale on 44 South Main Street in New City near the Rockland County Courthouse. The first floor, 1326 sqf is suitable for an attorney's office. The second level, 967 sqf, is a residential 2 bedroom apartment. Call Moses Schwartz at KW Realty 845-783-0313, moses@mosesthebroker.com

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Office within law office suite for rent at 10 Esquire Road, New City. Includes use of free Wifi, conference room, restroom and waiting area. One level building and ample parking. Available September 1, 2019. No security or fee required. Call Dave at 638-2889

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TRIAL ATTORNEY WANTED

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ATTORNEY NEEDED

Rockland, Westchester, and Orange County Plaintiff Personal Injury and Medical Malpractice Firm seeks attorney 3+ years' experience preferred. Spanish speaking a plus. Resident of Rockland County, Westchester County, Orange County or local New Jersey area preferred. Salary commensurate with experience. Good benefits. Please write to: Mellman@beldockandsaunderslaw.com

LEGAL ASSISTANT NEEDED – PART-TIME

Plaintiff Personal Injury Firm
Job entails all aspects of working in a law office. Employment options available. Please email resume to admin@injurylaw-ny.com.

PARALEGAL WANTED

Paralegal for plaintiff's personal injury law firm. Experienced all phases of litigation from intake through discovery and trial preparation. Bilingual a plus. Computer Savvy with good interpersonal skills. Send resume to lawyers@pilaw.com.

SEARCHING FOR LAST WILL & TESTAMENT

Search for Last Will & Testament of Carmela Lamparelli Medvinsky of Congers, NY. Please contact Sean Hobbs 845.634.2752 sean@kfhobbslaw.com

PART-TIME PARALEGAL

Looking for a part time paralegal or legal secretary for estate work for local practitioners with computer skills for a few hours a week - flexible hour. Please contact Tom O'Connell at 845-729-4460 or email him at 8457294460@gmail.com.

ATTORNEY NEEDED

NYS funded Immigration Organization serving clients with immigration and citizenship issues seeks part-time immigration attorney to collaborate with Dept. of Justice accredited staff. Organizational activities are in both Rockland and Westchester counties. If interested, please submit resume in confidence to agency Pres/CEO at: patricia.rajala@gmail.com.

LEGAL ASSISTANT PART-TIME

Legal/administrative assistant for small law firm in New City. This is a part-time entry level position suitable for someone interested in gaining practicable and invaluable job experience in the legal area. Good computer skills, detailed oriented, knowledge of basic office procedures and Internet savvy candidate preferred. Students are encouraged to apply. Please fax resume to 845-517-0671.

ASSOCIATE ATTORNEY NEEDED

3-5 years litigation experience for busy Rockland County firm. Please forward resume to phabas@barpc.com or fax to 845-359-5577

ATTORNEYS SEEKING PARALEGALS

Rockland Community College ABA approved Paralegal program can assist attorneys with filling their open job positions for both part and full time employment opportunities. We have students that range from entry level to experienced Paralegals. Paralegals are not permitted to practice law, which means they cannot give legal advice, represent clients in court, set a legal fee or accept a case. All RCC students are trained to work virtually and proficient in virtual computer programs. Contact Amy Hurwitz-Placement Coordinator at (845) 574-4418 or email at ahurwitz@sunyrockland.edu

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