Allen v Zizzi Constr. Corp.
2022 NY Slip Op 34234(U)
December 12, 2022
Supreme Court, New York County
Docket Number: Index No. 654345/2015
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOEL M. COHEN** **PART** 03M

Justice

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JEFF ALLEN, **INDEX NO.** 654345/2015

Plaintiff,

- v -

ZIZZI CONSTRUCTION CORPORATION, JAMES V. ZIZZI CONTRACTING CORPORATION, JAMES V. ZIZZI,

Defendants.

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DECISION AFTER NON-JURY TRIAL

This case concerns James V. Zizzi ("Zizzi") and Zizzi Construction Corporation's ("Zizzi Construction") (collectively "Defendants") misappropriation of construction funds belonging to 100 Halsey Street, LLC ("100 Halsey"), 510 Halsey Street, LLC ("510 Halsey"), and 951 Cobb Road West, LLC ("951 Cobb") (collectively "the Companies"). In 2013, the Companies hired Zizzi Construction to build two custom homes in the Hamptons. Over the course of two years, the Companies paid $4,258,071.86 based on invoices issued by Zizzi Construction. Zizzi represented that these funds would be used to cover the cost of subcontractors, labor and materials for those jobs, but as shown at trial, Zizzi instead diverted $1,395,369.73 of the funds toward other clients' construction jobs. As a result, the projects went over budget, subcontractors and materials suppliers went unpaid, and construction ground to a halt. When one of the Companies' owners, Plaintiff Jeffrey Allen ("Allen"), learned of Defendants' conduct, Zizzi stopped work on the projects and shut down Zizzi Construction without returning or otherwise accounting for any of the stolen funds.

For the following reasons, the Court finds that Defendants were unjustly enriched. Allen – to whom the Companies assigned their claims – proved, by a preponderance of the evidence, that (i) Defendants received a benefit of $1,395,369.73, (ii) at the Companies' expense, and (iii) that it would be against equity and good conscience to allow Defendants to retain that money. As a result, Allen is entitled to $1,064,398.09 in restitution plus statutory prejudgment interest running from December 21, 2015, through the date of judgment.

FINDINGS OF FACT

The Court makes the following findings of fact based on its review of the evidence admitted at trial (July 13–16, 2022), including its evaluation of the credibility of the witnesses who testified during the proceedings, and post-trial briefs submitted by counsel on July 18, 2022 and August 8, 2022.

1. On July 31, 2012, Allen and Cornelius "Cees" Wessels ("Wessels"), his business partner, formed 100 Halsey Lane to invest in real estate properties. (*see* Tr. 334:12–335:3; DX F, at 1). The members of 100 Halsey are UCI, Inc., a company wholly owned by Allen, and WMG Beheer BV, a corporation owned by Wessels (Tr. 240:6–16). Each company owns a 50% membership interest in 100 Halsey (*see* PX 40). Allen and Wessels were 100 Halsey's only source of funding but, as a practical matter, Allen ran the business. (Tr. 248:3–249:4; 473:4–475:11).
2. On November 22, 2013, Allen and Wessels formed 510 Halsey Lane LLC (Tr. 339:14–340:9; DX Z, at 1). 100 Halsey is the sole member of 510 Halsey (Tr. 394:12–16).
3. In January 2014, 510 Halsey purchased the property at 510 Halsey Lane in Bridge Hampton, NY (Tr. 349:14–350:25; DX D-1).

4. In 2013, Defendants began constructing a home at 510 Halsey Lane in Bridge Hampton, NY (Tr. 355:20–356:3). Several written contracts were drafted but, ultimately, the parties did not enter into a written contract governing the 510 Halsey project (Tr. 437:3–438:23). Instead, the parties opted for an "invoice program" whereby Zizzi would invoice 100 Halsey for the labor, building materials, and subcontractors necessary to complete the project and Allen would promptly pay those invoices (Tr. 251:13–252:7; 438:8–23).
5. Prior to hiring Zizzi Construction for the 510 Halsey job, Allen had hired Defendants, as general contractors, on the construction of multiple other homes (Tr. 24:22–25; *see also* Tr. 250:13–252:7).
6. From December 2013 to November 2015 Defendants invoiced, and Allen paid, $2,991,812.49 in expenses related to the 510 Halsey project (Tr. 41:23–43:4; PX 1). However, Zizzi only used approximately $2,300,000 for related expenses (Tr. 43:8–19). Zizzi diverted the remainder of 100 Halsey's funds from the 510 Halsey project to cover expenses associated with other customers' projects (*see* Tr. 27:21–29:20).
7. On February 25, 2015, Allen and Wessels formed 951 Cobb Road LLC. (Tr. 341:18–342:8; DX A). Allen and Blue Grape Merchandizing Inc., a company owned by Wessels, each own a 50% membership interest in 951 Cobb. (Tr. 343:8–17; 344:10; DX B, at 2). Allen contributed 40% of the company's funding while Wessels contributed the remaining 60%. (Tr. 345:19–22; DX B; at 2). Allen ran the business of this entity as well.
8. In March 2015, 951 Cobb purchased the property at 951 Cobb Road West in Water Mill, NY (Tr. 364:1–365:21; DX D-3).
9. Allen hired Zizzi to build a home at 951 Cobb Road West (Tr. 50:6-8). The parties drafted another written contract to govern the 951 Cobb project, but Zizzi never signed the contract

(Tr. 232:10–14). Instead, Zizzi would periodically invoice 951 Cobb for the labor, building materials, and subcontractors necessary to complete the project and Allen would pay those invoices (Tr. 250:9–252:7).

10. From March 2015 to November 2015, Allen paid $1,266,259.37 in invoices for expenses related to the 951 Cobb project (Tr. 27:3–4; 49:7–11; PX 2). However, Zizzi only used $550,000 for those expenses and diverted the remainder of the funds from the 951 Cobb project to cover expenses associated with other customers' projects (*see* Tr. 27:21–29:20, 49:23–25).

11. As a result of Defendants' misappropriation of funds, subcontractors and materials suppliers went unpaid. In November 2015, General Plumbing, a subcontractor working on the 951 Cobb project, contacted Allen and said that Defendants had not paid the sub-contractor for work that it had performed (Tr. 256:5–16).[1] Later that month, Allen and Wessels met with Zizzi in Allen's New York office. At that meeting, Zizzi explained that he had used the money paid to Zizzi Construction "to pay for other bills" and asked Allen for a $750,000 loan (Tr. 256:24–258:24).

12. Allen and Wessels refused to loan Defendants $750,000. Instead, Allen offered to continue working with Zizzi under a new fee structure under which Allen would pay construction expenses directly (Tr. 258:2–260:2). A week later, Zizzi shut down Zizzi Construction and stopped work on all its current jobs, including 510 Halsey and 951 Cobb. (Tr. 260:5–20, 30:5–7, 35:4–6).

[1] This statement was not admitted for the truth of the matter of asserted, only for the fact that this information was conveyed to Allen (Tr. 255:9-256:4).

13. For this conduct, Zizzi and Zizzi Construction were indicted, under Suffolk County Indictment Numbers 625A-2019 and 625B-2019 respectively, with Grand Larceny in the Second Degree. (Tr. 12:24–13:5; PX 21).
14. On October 24, 2019, Zizzi, in his individual capacity, pleaded guilty to Count Two of the indictment numbered 625A-2019, Grand Larceny in the Third Degree (P.L. § 155.05), arising out of Zizzi's misappropriation of funds from another victim, in full satisfaction of the indictment, in exchange for a negotiated sentence of one year imprisonment and a restitution judgment order (PX 22, at 4:19-5:17, 24:22-25:8; *see also* Tr. 25:13-18). As part of the arrangement, the portion of the indictment pertaining to Zizzi's misappropriation of Allen's funds (Count One, Grand Larceny in the Second Degree) was subsumed and a restitution judgment order in favor of Allen was submitted (PX 22, at 5:18-6:11, 20:13-25). Following Zizzi's plea, the Court dismissed the indictment against Zizzi Construction (PX 22, at 24:10-26:16).
15. On December 11, 2019, Zizzi was sentenced to one year in jail. (PX 23, at 11).
16. On December 12, 2019, the court issued a restitution judgment order (the "Restitution Judgment Order") for $330,971.65 in favor of Allen against Zizzi. (Tr. 419:14–420:5; PX 36). Allen enforced this judgment against Zizzi in Florida, and, to date, has recovered $109,331.35 on the judgment (Tr. 422:21–423:6, DX CC, at 1). Allen returned all funds recovered from Zizzi, minus attorney's fees, to 951 Cobb (Tr. 423:19–23, 470:22–25).
17. Prior to filing this lawsuit, Wessels told Allen that he had no interest in pursuing legal action against Zizzi (Tr. 470:5–18). However, Allen and Wessels agreed that Allen would prosecute the claims on the parties' behalf at his own expense and return any proceeds from the litigation to the Companies (Tr. 470:5–473:21).

18. On June 14, 2022, the Companies executed resolutions that assigned their claims in the instant action to Allen in his individual capacity (PX 37–39; Tr. 235:15–240:25, 243:4–246:13).

19. The Companies have no operating income nor any source of capital other than the monies provided by Allen and Wessels and are financed as needed. (Tr. 473:4–475:12, 488:21–489:6, 495:6–10, 525:3–6).

CONCLUSIONS OF LAW

A. Standing

Allen, in his capacity as assignee of 100 Halsey, 510 Halsey, and 951 Cobb's claim, has standing to assert the unjust enrichment claim. A plaintiff has standing to sue when he or she suffers an injury giving him or her "an actual legal stake in the matter being adjudicated," which "ensures that the party seeking review has some concrete interest in prosecuting the action" (*Socy. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772 [1991]). When a corporation is injured, "a shareholder has no individual cause of action, though he loses the value of his investment" (*Abrams v Donati*, 66 NY2d 951, 953 [1985]). As such, "a shareholder may not secure a personal recovery for alleged injury to a corporation" (*Schwartz v Nordstrom, Inc.*, 160 AD2d 240, 241 [1st Dept 1990]). [2]

[2] The Court notes Defendants previously sought to dismiss the case in its entirety on the ground that Allen was not the proper party in interest (NYSCEF 24, 3-4). The Court (Bransten, J.) granted the motion in some respects, but denied it with respect to the unjust enrichment claim (NYSCEF 55), thus arguably rejecting the argument that standing was a complete bar to recovery. However, it is unclear whether Justice Bransten actually addressed the merits of Defendants' standing argument in deciding the motion (*see id.* at 3). It is also unclear whether the Court was aware that Allen was not the sole owner of 100 Halsey, 510 Halsey, and 951 Cobb, which was established at trial. For those reasons, the Court has taken a fresh look at the question of standing, based on the evidence adduced at trial, rather than relying on law of the case based on a decision on a motion to dismiss.

If, however, a plaintiff, in their personal capacity, sues on a claim which properly belongs to a corporation, the mistake may be corrected by assigning the corporation's claim to the plaintiff (*Hon Fui Hui v E. Broadway Mall, Inc.*, 4 NY3d 790, 792 [2005]). In *Hon Fui Hui*, the plaintiff had a "good faith belief" that he had succeeded to a dissolved corporation's claims *(id.)*. As a result, he brought a claim which, unbeknownst to him, belonged to the corporation (*id.)*. By the time plaintiff discovered his mistake, the corporation was unable to sue on its claim because the statute of limitations on the claims had run (*id.)*. Nonetheless, the court found the assignment to be proper and held it related back to the initial complaint because "the assignment of the corporation's claim was simply a less cumbersome way of achieving the same result, avoiding dismissal of what appear[ed] to be an otherwise meritorious claim" (*id.*).

Although here, as in *Hon Fui Hui*, Allen lacked standing initially to pursue the Companies' claims in his individual capacity, he had a good faith belief that he was the proper plaintiff. When Defendants' misappropriation was discovered, Wessels expressed that he had no interest in seeking restitution from Zizzi. Wessels did, however, allow Allen to pursue the claim individually, at his own expense. Allen testified that any funds recovered from Zizzi will be returned to the Companies. Indeed, upon recovering approximately $109,000 from Zizzi under the Restitution Judgment Order, Allen deposited the money, minus legal expenses, into 951 Halsey's account. Importantly, Allen and Wessels were the only members and source of funding for 100 Halsey and 951 Cobb. Thus, Wessels' consent formed a good faith, albeit erroneous, belief that Allen had the right to sue on the Companies' claims. Finally, the resolutions passed by the Companies on June 14, 2022 assigned the claims to Allen and cured the defect.

Moreover, at the time of the assignments, the statute of limitations on the claims had not run (taking into account COVID-related tolling) and the Companies remained active. Therefore,

had the Companies moved to intervene or filed a separate action asserting the same claims, they would have been permitted to do so as, like in *Hon Fui Hui*, the Companies "w[ere] closely related to plaintiff and [their] claim[s] w[ere] based on the same transaction[s]" (*id.*). As such, the assignment of the claims here was "simply a less cumbersome way...of avoiding dismissal of what is an otherwise meritorious claim" (*id.*).

B. PIERCING THE CORPORATE VEIL

"New York law disfavors disregard of the corporate form" (*Sutton 58 Assocs. LLC v Pilevsky*, 189 AD3d 726, 729 [1st Dept 2020], internal citation omitted). In general, a "corporation exists independently of its owners, who are not personally liable for its obligations" (*E. Hampton Union Free Sch. Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 126 [2d Dept 2009], *aff'd* 16 NY3d 775 [2011]). However, as an exception to this general rule, piercing the corporate veil permits "the imposition of personal liability on owners for the obligations of their corporation" (*id.).*

"Generally, a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018], internal citations omitted). But, ultimately, "a decision to pierce the corporate veil in any given instance will necessarily depend on the attendant facts and equities [and] there are no definitive rules governing the varying circumstances when this power may be exercised" (*Baby Phat Holding Co., LLC v Kellwood Co.*, 123 AD3d 405, 407 [1st Dept 2014]).

"A determination as to domination and control [likewise] depends upon the attendant facts and equities of an action" (*Sandpebble Bldrs*, 66 AD3d at 131)."The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege

of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene" (*Morris v State Dept. of Taxation & Fin.*, 82 NY2d 135, 142 [1993]).

The evidence adduced at trial fails to establish Zizzi "abused the privilege of doing business in the corporate form" (*id.*). Although upon Allen's discovery of Zizzi's misappropriation of funds, Zizzi "shutdown" Zizzi Construction, halted work on all the company's ongoing construction projects and emptied the corporate accounts, rendering Zizzi Construction undercapitalized, this, without more, does not justify piercing the corporate veil (*see Art Capital Bermuda Ltd. v Bank of N.T. Butterfield & Son Limited*, 169 AD3d 426, 427 [1st Dept 2019], internal citation omitted [holding that a party "might not have sufficient assets to satisfy the judgment that [plaintiff] might obtain against them does not warrant piercing the corporate veil").

C. Director And Officer Liability

In any event, "a corporate officer who participates in the commission of a tort may be held individually liable ... regardless of whether the corporate veil is pierced" (*Fletcher v Dakota, Inc.*, 99 AD3d 43, 49 [1st Dept 2012], internal citation omitted). "In actions for fraud, corporate officers and directors may be held individually liable if they participated in or had knowledge of the fraud, even if they did not stand to gain personally." (*Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 55 [2001]). Similarly, individuals "can be held personally liable for [an] LLC's breach of contract if [an officer] took the challenged actions on the LLC's behalf and the breach involved bad-faith misrepresentations" (*Ledy v Wilson*, 38 AD3d 214, 215 [1st Dept 2007]). In the context of a Lien Law article 3-A trust, "[c]orporate officers...may be personally liable for trust funds wrongfully diverted by their corporation, provided that they knowingly participated in the diversion by the corporation" (*Kulback's Inc. v Buffalo State*

Ventures, LLC, 197 AD3d 890, 892 [4th Dept 2021], internal citations omitted; *see also South Carolina Steel Corp. v Miller*, 170 AD2d 592, 595 [2d Dept 1991]).

Here, through his active participation in the tortious conduct at issue, Zizzi is personally responsible as an officer of Zizzi Construction. When Defendants received the funds for the 510 Halsey and 951 Cobb projects, a Lien Law article 3-A trust was automatically established (*see Matter of RLI Ins. Co., Sur. Div. v New York State Dept. of Labor*, 97 NY2d 256, 262 [2002], quoting Lien Law § 70[3]). As an experienced contractor, Zizzi was aware that, at the time that he accepted the trust funds, it would be illegal for him to divert them to another project. Nonetheless, he engaged in a pattern of soliciting and diverting funds from the Companies that subjected him to personal liability.

D. Unjust Enrichment

Unjust enrichment is a "quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties" (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012], internal quotations omitted). "The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in equity and good conscience should be paid to the plaintiff" (*Corsello v Verizon NY, Inc.*, 18 NY3d 777, 790 [2012], internal quotation omitted). Stated differently, the critical inquiry "is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011], internal citation omitted).

To succeed on an unjust enrichment claim, "a plaintiff must show that (1) the other party was enriched, (2) at [the plaintiff's] expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*id.*, internal citation omitted). "Although contractual privity is not required, there must be a relationship between the parties

that is not too attenuated, and that could have caused reliance or inducement" on the part of a plaintiff. (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 26 [1st Dept 2015], internal quotations omitted). As set forth below, Allen established, by a preponderance of the evidence, that Zizzi and Zizzi Construction were unjustly enriched at the Companies' expense.

a. Defendants and the Companies Had a Sufficiently Close Relationship

Allen has shown that the relationship between Defendants and the Companies was sufficiently close. Allen is a director of the Companies who had successfully collaborated with Defendants on multiple projects in the past. In fact, with regard to the construction of the properties at issue in this case, Zizzi took direction from Allen (*see* Tr. 30:14-20, 35:14-18). Moreover, the evidence indicates Defendants induced the Companies to transfer the money directly from the Companies.

b. Defendants Received a Benefit at the Companies' Expense

A person may be enriched at the expense of another "not only where she receives money or property, but also where she otherwise receives a benefit" (*Farina v Bastianich*, 116 AD3d 546, 548 [1st Dept 2014]). "It does not matter whether the benefit is directly or indirectly conveyed" (*Mfrs. Hanover Trust Co. v Chem. Bank*, 160 AD2d 113, 117 [1st Dept 1990], *lv denied* 77 N.Y.2d 803). Thus, "a benefit may be conferred where the person's debt is satisfied or where she is otherwise saved expense or loss" (*Farina*, 116 AD3d at 548).

Here, the Companies were financed as needed with no source of capital other than monies provided by Allen and Wessels individually. Further, it is undisputed that Defendants received $4,258,071.86 in construction funds from the Companies and that Defendants only used approximately $2,850,000 of those funds on the Companies' projects. It is also undisputed that Defendants diverted the rest of the funds to pay expenses associated with other projects. Thus,

Defendants misappropriated approximately $1,395,369.73 of the Companies' funds, which spared Defendants the cost of paying expenses on other projects and enabled them to receive a benefit at the Companies' expense.

c. Equity and Good Conscience Do Not Permit Defendants to Retain Stolen Funds

In determining whether it is against equity to permit a party to retain what is sought to be recovered, "courts will look to see if a benefit has been conferred on the defendant under mistake of fact or law, if the benefit still remains with the defendant, if there has been otherwise a change of position by the defendant, and whether the defendant's conduct was tortious or fraudulent." (*Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415, 421 [1972]).

Where a defendant "has obtained money from [a plaintiff], through the medium of oppression, imposition, extortion, or deceit," the Court of Appeals has found it to be "against good conscience for [a] defendant to keep the money" (*Parsa v State*, 64 NY2d 143, 148 [1984]). Further, it is clear "equity does not favor allowing [a] defendant to escape restitution" of misappropriated funds where the defendant's conduct is "bordering on the larcenous" (*Merrill Lynch, Pierce, Fenner & Smith, Inc. v Chipetine*, 221 AD2d 284, 287 [1st Dept 1995]).

Similarly, equity does not allow a contractor to retain funds embezzled from a Lien Law article 3-A trust. (*See e.g. Cadogan Mgt. v Wright,* 38 Misc3d 1231(A) at *6-7 [Sup Ct, NY County 2011]). "Article 3–A of the Lien Law (Lien Law §§ 70—79–a) creates trust funds out of certain construction payments or funds to assure payment of subcontractors, suppliers, architects, engineers, laborers, as well as specified taxes and expenses of construction" and was "intended to insure that funds obtained for financing of an improvement of real property … will in fact be used to pay the costs of that improvement" (*Canron Corp. v City of New York*, 89 NY2d 147, 153-54 [1996], internal quotation omitted). "An article 3-A trust commences when any asset

thereof comes into existence and continues until all trust claims have been paid or discharged, or all assets have been applied for trust purposes" (*Matter of RLI Ins. Co.* 97 NY2d at 262, quoting Lien Law § 70[3]). Moreover, any "trustee of an [article 3-A trust] and any officer, director or agent of such trustee, who applies or consents to the application of trust funds ... for any purpose other than the purposes of that trust ... is guilty of larceny" (Lien Law § 79-a).

Based on the foregoing, it is against equity and good conscience to allow Defendants to retain the funds that they misappropriated from the Companies under a variety of theories. ***First***, it is inequitable for Zizzi Construction to retain payments that it accepted for work that was never performed. The Companies advanced sums of money to Defendants with the expectation that they would be used to pay specific invoiced expenses. Defendants accepted the funds but never paid the expenses listed on the invoices. Instead, they used the Companies' payments to cover expenses related to other clients. As a result, the Companies did not receive materials and labor that they had paid for, and in some instances, the Companies were forced to pay for the same item or service twice.

Second, equity does not permit Zizzi Construction, as trustee of the Companies' construction payments, nor Zizzi, as an officer of the trustee, to retain funds that it has knowingly diverted from the trust. As soon as Defendants received payments for construction work from the Companies, those funds became a part of an Article 3-A trust. Defendants misappropriated those funds, held for the benefit of subcontractors and materials suppliers (which Allen ultimately paid), to enrich themselves.

Third, equity and good conscience do not favor allowing Defendants to retain the fruit of their criminal activities. Zizzi pleaded guilty, in his individual capacity, to larceny for his

diversion of trust assets. Larceny, by definition, involves an intentional, wrongful taking of property (§ 155.05[1]). Thus, Zizzi, should not be allowed to retain the admittedly stolen funds.

Therefore, equity and good conscience do not permit Defendants to retain the benefit they have received at the Companies' expense.

E. Damages

As a result of prevailing on the unjust enrichment claim, Allen is entitled to restitution equal to the misappropriated funds less the amount owed under the Restitution Judgment Order. With respect to 510 Halsey, Zizzi received $2,991,812.49 for work associated with the project (PX 1; Tr. 41:4-43:4; 283:11-17), but only expended $2,312,702.13 (*see* Tr. 43:8-19), leaving $679,110.36 in work Allen paid for but did not receive (PX 3; Tr. 273:10-283:7). For the construction of 951 Cobb property, Zizzi received a total of $1,266,259.37 (PX 2; Tr. 49:3-18, 312:10-23), but only expended approximately $550,000 on the project (Tr. 49:3-25; 83:18-84:17) resulting in a benefit of $716,259.37 realized by Zizzi at Allen's expense. Thus, the total benefit realized by Zizzi for the two properties is $1,395,369.73. Deducting the amount awarded in the Restitution Judgment Order of $330,971.65 leaves Allen entitled to a judgment for a total amount of, $1,064,398.09, with pre-judgment interest accruing at the statutory rate from December 21, 2015 (*see* CPLR 5001, 5004).

CONCLUSION

Accordingly, it is:

ORDERED and ADJUDGED that Plaintiff Jeffrey Allen, as assignee of 100 Halsey, 510 Halsey, and 951 Cobb, is entitled to relief against Defendants on his cause of action for unjust enrichment in the amount of $1,064,398.09, with pre-judgment interest from December 21, 2015, to be calculated by the Clerk of the Court; and it is further

ORDERED that the Clerk enter judgment accordingly, upon submission by Plaintiff of a proposed judgment in proper form.

DATE: 12/12/2022 **JOEL M. COHEN, JSC**

Check One:	X **Case Disposed**		**Non-Final Disposition**
Check if Appropriate:	**Other (Specify**	)	