| **Knopf v Sanford** |
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| 2019 NY Slip Op 30269(U) |
| February 4, 2019 |
| Supreme Court, New York County |
| Docket Number: 652743/2018 |
| Judge: Gerald Lebovits |
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**NEW YORK STATE SUPREME COURT**
**NEW YORK COUNTY: PART 7**

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NORMA KNOPF and MICHAEL KNOPF,

Petitioners,

-against-

MICHAEL H. SANFORD and PURSUIT HOLDINGS, LLC,

Respondents.

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Index No: 652743/2018
**DECISION AND ORDER**
Motion Sequence Number 01

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing the petition of petitioners, Norma Knopf and Michael Knopf, for an order and judgment holding respondent Michael H. Sanford personally liable for the judgment debt owed to the Knopfs by Sanford's wholly owned limited-liability company, Pursuit Holdings, LLC (Pursuit).

| **Papers** | **Numbered** |
|---|---|
| Notice of Petition, Petition, and Related Exhibits | 1 |
| Sanford's Affidavit in Opposition to Petition | 2 |
| Sanford's Verified Answer and Affirmative Defenses in Opposition to Petition | 3 |
| Sanford's Affidavit Attaching Exhibits in Opposition | 4 |
| Reply Affirmation in Support of Petition | 5 |
| Sanford's Affidavit of Good Cause for Lateness and Facts in Opposition to Petition | 6 |
| Sanford's Memorandum of Law in Opposition to Petition | 7 |
| Parties' Dec. 2018 & Jan. 2019 Letters Responding to Court's Email Requests | 8 |

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*Berry Law PLLC*, New York (Eric W. Berry of counsel), for petitioners.
*Michael H. Sanford, pro se*, for respondent.

**Gerald Lebovits, J.**:

In this proceeding, petitioners, Norma Knopf and Michael Knopf (Knopfs), seek, under CPLR 5225 (b), an order and judgment holding respondent Michael H. Sanford personally liable for the judgment debt owed to the Knopfs by Sanford's wholly owned limited-liability company, Pursuit Holdings, LLC (Pursuit). Pursuit filed for bankruptcy relief on September 12, 2018, in the United States Bankruptcy Court for the Southern District of New York. Aside from opposing the relief the Knopfs request in the petition, Sanford argues that the automatic stay available to Pursuit in its bankruptcy case is extended also to stay the instant proceeding against him. For the reasons below, the relief requested in the petition is granted.

## I. Background

Sanford is the sole owner and member of Pursuit, a Delaware limited-liability company qualified to do business in New York (NYSCEF # 1, Petition, ¶¶ 3-4). On February 22, 2018, a Supreme Court money judgment was entered in a related action pending in this court entitled *Knopf v Sanford*, index no. 113227/2009 (Related Action) (Petition, ¶ 8, exh. 1). This court awarded the Knopfs $9,867,832.61 (Judgment) as against Pursuit. The Judgment arose principally from the loans the Knopfs made to Pursuit and Sanford to enable Pursuit to buy two real-estate properties in New York City (*id.*, ¶ 9). Specifically, in January 2006, the Knopfs lent Pursuit $1,690,860 to finance its purchase of a penthouse apartment (PHC) located at East 67th Street (*id.*, ¶ 9; exh. 2). The parties agreed that Pursuit would repay the loan and deliver a mortgage for the PHC to the Knopfs to collateralize the loan (*id.*, exhs. 3 and 4). Pursuit completed the PHC purchase, as reflected by the deed for the transaction (*id.*, ¶ 10, exh. 5). In May 2006, the Knopfs entered into another agreement; it provided that they would lend Sanford and Pursuit $3,250,000 for Sanford to purchase, through Pursuit, three townhouse apartments (Townhouse) located at 10 Bedford Street in New York County (*id.*, ¶ 11, exh. 6). The agreement provided that "Sanford and Knopf will execute a long form document memorializing both [loans and]. . . . [u]ntil which time such agreement is executed. . . . Sanford shall not sell, hypothecate or otherwise encumber the real property [the PHC and the Townhouse] without the express written permission of Knopf" (*id.*). Pursuit obtained the deed granting title for the Bedford Street transaction (*id.*, exh. 7).

Despite the agreement, Pursuit did not provide the mortgages for the PHC and the Townhouse or repay the underlying loans. Thus, the Knopfs commenced the Related Action in 2009 to enforce the loans, along with three other loan agreements (Petition, ¶ 12, exh. 8). On December 11, 2014, the First Department reversed the trial court's order of August 16, 2013 (then-Justice Milton A. Tingling, Jr.) and granted summary judgment in the Knopfs' favor with respect to their breach-of-contract claims, including claims against Pursuit and Sanford for breaching the loan agreements (*id.*, ¶ 13, citing *Knopf v Sanford*, 123 AD3d 521 [1st Dept 2014], exh. 9). The First Department did not assess damages or direct the entry of a judgment (*id.*). On July 23, 2015, then-Justice Richard Braun referred the damage claims to the late Hon. Ira Gammerman, then a judicial hearing officer (JHO) (*id.*, ¶ 14, citing *Knopf v Sanford*, 150 AD3d 608, 609 [1st Dept 2017]), which resulted in JHO Gammerman's February 8, 2016, conference report determining that Sanford owed the Knopfs "$10,937,850, and of that amount, [that] Pursuit and Sanford were jointly liable for $8,336,488" (*id.*, ¶ 14, exh. 10, report at 12). Justice Braun recused himself, and this action was randomly referred to this court. On February 9, 2018, this court issued a decision in the Related Action that confirmed the damages award as against Pursuit but not the damages award as against Sanford, for the reasons in the order (*id.*, ¶ 15; *Knopf v Sanford*, 2018 NY Slip Op 30611 [U] [Sup Ct, NY County 2018]).

While interrelated cases have been pending in the state courts against Sanford, Pursuit, and related Sanford-owned business entities, the Knopfs began separate federal actions in the

District Court against Sanford, Pursuit, and others. These actions include *Knopf v Meister Seelig & Fein*, LLP, 15 civ 50290 (DLC) (Meister Action); *Knopf v Phillips*, 16 cv 6601 (DLC) (Phillips Action); and *Knopf v Esposito*, 17 cv 5833 (DLC) (Esposito Action) (see *Knopf v Phillips*, 2017 WL 6561163, at *1 [SD NY Dec. 22, 2017] [summarizing background facts]). In the Phillips Action, commenced in August 2016, the Knopfs sued Michael Phillips, the individual who purchased the PHC from Pursuit in February 2016, as well as Pursuit and Sanford. The Knopfs asserted claims sounding in constructive and actual fraudulent conveyances, breach of fiduciary duty, and alter-ego liability. In the Esposito Action, the Knopfs alleged, among other things, that Sanford conspired with his lawyers to violate their civil rights by obtaining an ex parte advisory opinion from a (now-former) First Department court attorney. That advisory opinion enabled Pursuit to sell the PHC to Phillips for $3 million without using or escrowing the sale proceeds to repay the Knopfs' loans. Discussed below are decisions from the Phillips and Esposito Actions, particularly those the District Court (Judge Denise L. Cote) rendered in December 2017 and in 2018.

To execute on the February 22, 2018, Judgment that the Knopfs obtained against Pursuit in the Related Action, the Knopfs scheduled for September 12, 2018, a public sheriff's auction of the Townhouse (Related Action docket NYSCEF # 297). On the morning of the auction, Sanford caused Pursuit to file in the Bankruptcy Court (Judge Martin Glenn) a petition for reorganization relief under chapter 11, title 11, of the United States Code (Bankruptcy Code). On the same day, Sanford wrote to this court that Pursuit filed for bankruptcy relief and contended that this proceeding is automatically stayed until further notice (NYSCEF # 158, bankruptcy filing notice).

## II. Pursuit's Bankruptcy Stay Does Not Stay Alter-Ego Claim Against Sanford

On December 11, 2018, this court requested, sua sponte, that the parties address whether the automatic stay in Pursuit's bankruptcy case would stay the Knopfs' alter-ego claim against Sanford in this proceeding, given that Pursuit only, and not Sanford himself, sought bankruptcy protection. Counsel for the Knopfs responded that "an alter ego claim against a principal of the debtor is not stayed by the debtor's own bankruptcy filing" (NYSCEF # 159, citing caselaw and attaching exhibits). In opposition, Pursuit's bankruptcy counsel and Sanford responded that "this entire matter is stayed as petitioners' requested relief would violate the [automatic stay in section 362 of the Bankruptcy Code], irrespective of Mr. Sanford's status as a non-bankrupt individual" (NYSCEF ## 162-163, without citing caselaw).

Section 362 of the Bankruptcy Code provides that filing a bankruptcy petition automatically stays a judicial or administrative action against a debtor from starting or continuing, or of enforcing against the debtor or property of the debtor's estate a judgment obtained before the petition is filed (11 USC § 362 [a] [1], [2]). But an automatic stay protects only the debtor, not non-debtor entities (*Pavers & Road Builders Dist. Council Welfare Fund v Core Contracting of N.Y., LLC*, 536 BR 48, 51 [Bankr ED NY 2015]). The *Pavers* court found that "[j]ust because two entities are alter egos does not make them both debtors under the

Bankruptcy Code. It simply means they are liable for each other's debts. If the non-debtor entity wants that protection, it need only file its own petition" (*id.* at 51). Many courts have echoed that holding (*see e.g. Matter of RCS Engineered Prods. Co.*, 102 F3d 223, 227 [6th Cir 1996] [holding that automatic stay does not apply to creditor's state court alter-ego action against non-debtor]; *Matter of R.H.N. Realty Corp.*, 84 BR 356, 359 (Bankr SD NY 1988] [holding that creditor's claim against non-debtors as debtor's alter egos for money owed under a judgment against debtor does not constitute a recovery of assets from debtor's estate that will trigger automatic-stay protection]; *Performance Food Group. Co., LLC v Arba Care Ctr. of Bloomington, LLC*, 86 NE3d 1042, 1052 [Ill App 3d 2017] [quoting *Pavers*]).

Despite that caselaw, Pursuit, through counsel, argues that a ruling about whether the automatic stay applies to the instant alter-ego claim against Sanford "would naturally be under the purview of the bankruptcy court" and that "the Knopfs have not filed a motion to lift the [§] 362 stay and instead, appear to be improperly asking this Court to do it for them" (NYSCEF # 163, at 1, 2 [emphasis omitted]). The argument is meritless: "It is well-established that non-bankruptcy courts have concurrent jurisdiction with the bankruptcy court to determine the scope of the automatic stay" and that "nothing in the Bankruptcy Code require[s] the state court to extend the protection of the automatic stay to entities that might or might not be the debtor's alter egos" (*Pavers*, 536 BR at 51 [internal citations omitted]; *accord Performance Food*, 86 NE3d at 1052 [citing *Pavers*]).

Sanford notes that during the hearing of the United States trustee's motion to convert or dismiss Pursuit's bankruptcy case, the Bankruptcy Court stated that "creditors can certainly feel free to bring on a properly supported motion to lift the automatic stay" (NYSCEF # 163, at 2 [emphasis omitted]). His point — that creditors must file lift-stay motions regardless of their nature — mischaracterizes the Bankruptcy Court's statement: At no point in the hearing or in the hearing transcript (NYSCEF # 161) did the Bankruptcy Court suggest that an automatic stay protects a non-debtor like Sanford. The Bankruptcy Court's statement meant only that Pursuit's creditors would have to file a Bankruptcy Court motion to lift the stay if they want to pursue in the state courts claims against Pursuit or its property. Conversion of a chapter 11 case to a chapter 7 case does not end an automatic stay. It ends only if the bankruptcy case is dismissed (11 USC §§ 348-349).

Notably, the Bankruptcy Court converted Pursuit's chapter 11 case to a chapter 7 case and appointed a trustee to liquidate its assets (NYSCEF # 160, conversion order dated November 19, 2018). The conversion of Pursuit's case to chapter 7 is noteworthy because only in "unusual circumstances," such as when a non-debtor defendant made significant contributions to the debtor's efforts resulting in a successful reorganization, would an automatic stay be extended to protect the non-debtor defendant (*see e.g. Teachers Ins. & Annuity Assn. of Am. v Butler*, 803 F2d 61, 65 [2d Cir 1986]). Pursuit is in a chapter 7 liquidation, not a chapter 11 reorganization. The burden is on a non-debtor like Sanford to seek Bankruptcy Court relief, and "absent an injunction from the federal bankruptcy court, a state trial court is free to determine whether an automatic bankruptcy stay applies to certain non-debtor entities in the case before it and whether

the trial court shall proceed to judgment in that case" (*Performance Food*, 86 NE3d at 1052 [citing *Pavers*]). Pursuit and Sanford's bankruptcy arguments turn the law on its head.

### III. Sanford's Liability with Respect to the Judgment Against Pursuit

In this proceeding, the Knopfs seek to hold Sanford, Pursuit's sole owner and member, personally liable for the Judgment they obtained against Pursuit. They base their argument on an alter-ego or veil-piercing theory. In their moving papers, the Knopfs assert that "the First and Second Departments have repeatedly and definitively stated that CPLR 5225 (b) may be used for this purpose" (Petition, ¶ 5, citing, among other cases, *Matter of WBP Cent. Assocs., LLC v DeCola*, 50 AD3d 693, 694 [2d Dept 2008]; *O'Brien-Kreitzberg & Assocs. v K.P., Inc.*, 218 AD2d 519 [1st Dept 1995]). Sanford neither disputes this assertion nor cites any contrary proposition of law. Instead, he replies that the assertion is a "legal conclusion" for which "no answer is required" (NYSCEF # 45, Sanford answer at 2).

In support of the alter-ego or veil-piercing theory, the Knopfs argue that under Delaware law — Pursuit is a Delaware LLC — veil piercing is appropriate when there is fraud or when the LLC is a "mere instrumentality or alter ego of its owner" (Petition, ¶ 17, citing *NetJets Aviation, Inc. v LHC Communications, LLC*, 537 F3d 168, 176 [2d Cir 2008] [applying Delaware law]).

New York law is similar to Delaware law on alter-ego liability (*see e.g. Baby Phat Holding Co. v Kellwood Co.*, 123 AD3d 405 [1st Dept 2014]). In *Baby Phat*, the First Department has found that the elements needed to plead liability based on the alter-ego theory include "complete domination" of the company and that "such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*id.* at 407 [internal quotation marks and citations omitted]). The First Department has also found that veil piercing depends on various "attendant facts and equities" and that "there are no definitive rules governing the varying circumstances when this [veil piercing] power may be exercised" (*id.*). Other appellate courts agree with these rulings (*see e.g. Grigsby v Francabandiero*, 152 AD3d 1195, 1197 [4th Dept 2017] [finding that judgment creditor adequately alleged that the sole owner and member of judgment debtor LLC, through his dominating the LLC, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against creditor, thus warranting enforcing domesticated judgment against sole owner and member under alter-ego or veil-piercing theory]; *Peery v United Capital Corp.*, 84 AD3d 1201, 1202 [2d Dept 2011] [finding that veil piercing was proper when owners "exercised complete domination of the corporation" and that "such domination was used to commit a fraud or wrong against the plaintiff"; court listed various "indicia" that warranted veil piercing, such as failure to comply with corporate formalities]).

As an initial matter, the Knopfs point out that, in the past, Sanford has acknowledged that Pursuit is a "disregarded," or pass-through, entity for tax purposes and that this factor, though not dispositive, favors veil piercing or alter-ego liability (Petition, ¶ 19). In response, Sanford avers that he was advised that all single-member LLCs are disregarded entities for tax purposes and

accordingly that this factor has "no bearing on the relief sought" (Sanford answer at 5). The averment is unpersuasive. Persuasive caselaw shows that permitting a single-member LLC to elect to be disregarded as a separate tax entity "does not suggest that doing so may not be considered as evidence of alter ego liability," but when this factor is combined with other conduct, such as the failure to segregate the LLC's finances from the sole member's own finances, it could be considered in making an alter-ego determination (Petition, ¶ 19, citing *Kirner v Explorer I Ambulance & Med. Servs., LLC,* 2015 WL 3406816, at *6 [Cal Ct App, 2d Dist 2015]).

Next, the Knopfs observe that Sanford, in the Phillips Action, admitted on the record that "Pursuit's assets are the same as mine" (Petition, ¶ 20, exh. 13, at 8) and that Sanford used Pursuit's bank account for his own purposes (*id.*, exh. 14, Sanford affidavit, ¶ 28 [Sanford drew on Pursuit's account to pay his litigation expenses]). While not denying that he made these statements, Sanford claims that "these statements were presented by the Knopfs to [SD NY] Judge Cote at summary judgment in the Phillips [Action] and the [District] Court thereafter dismissed the alter ego claim for relief with prejudice on February 5, 2018" (Sanford answer at 5). Sanford's claim is inaccurate. The District Court dismissed the Knopfs' federal alter-ego claim on procedural (as opposed to substantive) grounds.

The Knopfs also contend that, in the Meister Action, Sanford stated that Sanford created Pursuit to hold title to "my personal residential real estate" and that he was "jointly responsible for most if not all of its liabilities. So there's no distinction that I am benefitting from, due to the LLC status" (Petition, ¶ 21, exh. 15, court transcript at 14, 17). Sanford does not deny making these statements. He states that they provide no basis to pierce the corporate veil, because the District Court ultimately dismissed the alter-ego claim against him in the Phillips Action (Sanford answer at 5). The District Court's dismissal of the alter-ego claim in the Phillips Action on procedural grounds does not preclude this court from finding alter-ego liability in this proceeding on substantive grounds.

The Knopfs further observe that Sanford admitted in an affidavit that only he, not Pursuit, would be obligated to repay the mortgage loans, because "all of the monies that I received from [the Knopfs] were in fact to me, personally, and were not intended to provide them with any interest whatsoever in the real estate that was exclusively purchased by Pursuit" (Petition, ¶ 23, exh. 17, at ¶ 9). Sanford admits that he made these statements in the Phillips Action (Sanford answer at 6). In this regard, the Knopfs also assert that because Sanford failed to cause Pursuit to give them the mortgage interests in the real properties, as the parties' underlying contractual agreements required, Sanford should be held liable for Pursuit's debts as its alter ego (Petition, ¶ 24, citing *Matter of Gucci*, 174 BR 401, 403 [Bankr SD NY 1994] [finding that owner of corporate entities formed entities as alter egos with the intent to shield owner's assets from creditors]).

The Knopfs assert, in addition, that Pursuit failed to comply with corporate formalities, including failing to pay franchise taxes or file tax returns during the relevant years; that Pursuit

was insolvent at all relevant times, as reflected in the JHO's report that Pursuit's debt exceeded its assets; and that in spite of the insolvency, Sanford paid himself and his lawyers, including Frank Esposito, Esq., with proceeds from the PHC's sale (Petition, ¶¶ 25-30). While generally denying these allegations, Sanford repeatedly avers that the District Court's dismissal of the alter-ego claims against him invalidates all the allegations (Sanford answer at 6-7).

Sanford's averment is wrong. The Inspector General's Office of the New York State Office of Court Administration (OCA) prepared an extensively documented report of its internal investigation into a former First Department court attorney's alleged misconduct (Petition, ¶ 30, exh. 27, OCA Report, Mar. 16, 2018). The Report gives a timeline of relevant events. On January 12, 2016, two of Sanford's lawyers telephoned the court attorney ex parte; they called on her line directly. Although she had no Court-related connection to the *Knopf v Sanford* matter — as the Pre-argument Mediation Program Director, she was assigned only to mediations — she rendered to Sanford's lawyers a surreptitious non-Court-approved "advisory opinion," or interpretation, of certain First Department orders. The court attorney (married to Esposito, another Sanford lawyer) told Sanford's lawyers over the telephone that no Appellate Division, First Department, order in force at that time required Sanford to deposit the PHC sale proceeds into escrow. One of Sanford's lawyers who spoke to the court attorney wrote a memo to file that day that the court attorney told him that "[o]nce full panel [of the First Department] decided motion and entered the November 12, 2015 Order, all restraints were vacated" (OCA Report, Attachment F). The court attorney's opinion enabled Sanford to close on the sale. Without their placement into escrow, the sale funds went unprotected from disbursement, and the Knopfs lost a $3 million asset on which to collect a judgment.

Without much addressing the OCA Report's recitations of fact, Sanford argues that the First Department approved the PHC sale and thus that "Pursuit had every legal right to sell PHC at any time after November 2015, which was two full months before the telephone call discussed in the OCA Report" (Sanford answer at 8). Sanford also argues that in dismissing the federal claim alleging that Sanford conspired with his lawyers to violate the Knopfs' civil rights in the Esposito Action, the District Court's December 2017 decision noted that "any confusion" related to the 2015 state-court decision "vanished after the Appellate Division issued its June 2016 order explaining that there were no restraints on the sale of the PHC after the November 2015 order" (District Court's December 2017 Decision, referencing Esposito Action docket # 106; and citing First Department amended order of June 16, 2016).[1] Sanford's arguments are unavailing, in light of the District Court's later decisions in the Esposito Action.

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[1] Sanford's assertion that no court-ordered restraint prevented him from selling the PHC rests on two court decisions: The first is the District Court's December 2017 order. In it, the District Court, citing the First Department's June 16, 2016, amended order, sanctioned the Knopfs and their counsel $88,928.75 for, in part, frivolous litigation. The second is the First Department's June 16, 2016, amended order itself. Referencing the Court's order of November 12, 2015, the June 16 amended order found that "the TRO was vacated once plaintiff's prior motion for a preliminary injunction was denied." For that reason, the Court denied the Knopfs' motion (1) to hold Sanford and his counsel in contempt for allegedly violating Court's escrow orders and (2) to disgorge $500,000

paid to a law firm from the sale proceeds. The Knopfs made that motion after Sanford closed on the PHC without an escrow deposit.

Sanford is correct that the First Department allowed him to sell the PHC. Yet the Knopfs' petition and Sanford's opposition raise a related issue: Whether Sanford disregarded a court order to escrow the sale proceeds of his PHC, and what consequences resulted from that, if true.

The Knopfs' petition seeks to hold Sanford personally liable for a judgment debt Pursuit owes the Knopfs. To resolve the petition, this court need not, and will not, decide in this order whether Sanford violated a court order to escrow. This discussion is thus relegated to a footnote. But some mention of the complex procedural history between the Knopfs and Sanford in the First Department might help untangle the question.

The First Department's October 22, 2015, interim order (Justice John W. Sweeney) denied the Knopfs' motion to stay the PHC's sale but required Pursuit and Sanford to escrow the sale proceeds "pending further court order" (*see* OCA Report at 3, Attachment A). (That meant, as the Knopfs might see it, that the escrow order would remain in place while the entire matter was pending, or until the Court said otherwise. As Sanford might see it, "pending further court order" might mean that the temporary restraining order terminated when the Court next decided anything in his case.) In November 2015, the Knopfs moved for a preliminary injunction enjoining Pursuit and Sanford from selling the PHC. The First Department (full panel) denied the motion in a November 12, 2015, order (*see id.* at 4). That order did not address the October 22, 2015, escrow requirement, and the Knopfs contend that it could not have superseded the October 22 order, because the November 12 order resolved a motion made before the October 22 order. On December 29, 2015, the Knopfs moved to reargue the First Department's October 6, 2015, order affirming Justice Tingling's cancellation of the notices of pendency. Pursuit and Sanford cross-moved to vacate the Court's October 22, 2015, escrow order. The First Department (full panel) denied both the motion and the cross motion in a December 29, 2015, order that re-affirmed its October 22, 2015 escrow order (*see id.*, Attachment C). As the Court wrote on December 19 in keeping the escrow requirement in place post the Court's November 12 order, "[t]he cross motion for vacatur of the interim order dated October 22, 2015 is denied (M-5942)." (*Id.*). Then, after Sanford sold the PHC without depositing the funds into escrow, the Knopfs moved the First Department on February 25, 2016, for interim relief compelling Pursuit and Sanford to put the funds into escrow and for a stay to prevent further dissipation of assets. That same day, the Court (then-Justice Karla Moskowitz) issued a handwritten order confirming the existence of a continuing escrow requirement (*Knopf v Esposito*, 2017 WL 6210851, at *4 [SD NY 2017]; Esposito Action, docket # 37-9 [Feb. 2016 interim order]). The Court's order: "Money remaining as of today at 3:45 PM from sale of 1 bedroom apartment shall be placed in escrow as had been directed by Justice Sweeney in his 10/22/15 interim order, vacatur of which was denied by this Court's 12/29/2015 order (M-5459, M-5940). . . ." (*Id.*)

Given that procedural history, the Knopfs argue that the First Department court attorney, without Court approval, authority, justification, or knowledge, countermanded the court's orders of October 22 and December 29, 2015, both judicially recognized in the Court's order of February 25, 2016. The Knopfs see these orders as having compelled Sanford to escrow the sale proceeds. According to the Knopfs, the court attorney surreptitiously and ex parte countermanded the Court's orders when she rendered, in January 2016, a clandestine personal opinion disavowing any escrow requirement. Her opinion, the Knopfs claim and the OCA Report confirms, caused the PHC's sale to close without an escrow deposit. And Sanford (and perhaps others), the Knopfs allege, violated the Court's orders of October 22 and December 29, 2015, confirmed by the Court's February 25 order, by not escrowing the sale proceeds. Instead of escrowing the proceeds, Sanford used $500,000 of the funds to pay legal fees on February 6, 2016, to Dechert LLP to retain the services of yet another lawyer, a retired First Department justice, and Dechert partner, for whom the court attorney clerked at the Appellate Division from 2009-2012 (OCA Report at 5). That sum does not include the $102,500 in proceeds that Sanford paid attorney Esposito, the court attorney's husband (OCA Report at 15, n 23).

In the Esposito Action, the District Court dismissed the Knopfs' sole federal claim against defendants and declined to exercise supplemental jurisdiction over their state-law claims (*see Knopf v Esposito*, 2017 WL 6210851 [SD NY Dec. 7, 2017]). Thereafter, the District Court granted, in part, defendants' requests for sanctions against the Knopfs and their counsel (*see Knopf v Esposito*, 2018 WL 1226023 [SD NY Mar. 5, 2018]). While these two decisions were on appeal to the Second Circuit, the District Court, on April 20, 2018, received from the Inspector General a copy of the OCA Report. The Report revealed that OCA conducted a detailed investigation into the allegations of misconduct by the First Department court attorney. The OCA Report contains a redacted paragraph that discussed the investigator's recommendation for dealing with the court attorney's misconduct (Esposito Action, docket # 129, District Court's decision dated Apr. 23, 2018). After it received the OCA Report, the District Court, in its April 2018 decision, invited the parties to move to reconsider its earlier decisions dismissing the Knopfs' federal claim and imposing sanctions (*id*). On May 18, 2018, the Second Circuit granted the Knopfs' motion to remand to allow the District Court to entertain a motion to vacate or modify the judgment and sanctions (Esposito Action, docket # 136). On May 21, 2018, the Knopfs filed a motion to set aside the judgment and sanctions and for leave to file a second amended complaint (*id.*, docket # 138). In its July 25, 2018, decision (*Knopf v Esposito*, 2018 WL 3579104 [SD NY 2018]), the District Court granted the Knopfs' motion in part. The court vacated its $20,000 sanctions award in Esposito's favor and reduced its award in favor of the law firm of Dorsey & Whitney LLP from $177,857.50 to $88,928.75, to be paid by the Knopfs and their counsel, jointly and severally (*id.*, docket # 160).

While an appeal of the District Court's July 25, 2018, decision (in part) was pending before the Second Circuit, Sanford, on September 12, 2018, caused Pursuit to file for bankruptcy relief. That filing stayed the Esposito Action (*id.*, docket # 164). While appearing at the November 19, 2018, hearing before the Bankruptcy Court in response to the U.S. trustee's motion to dismiss or convert Pursuit's bankruptcy case, Sanford stated on the record that "I have protected Pursuit for the last 10 years. . . . [Your Honor is] not aware that [the Knopfs] got sanctioned $200,000 this year for a pattern of vexatious litigation against me and Pursuit. You're also not aware, your Honor, that I am personally responsible for this judgment" (Bankruptcy Court docket # 40, hearing transcript at 21). Sanford did not disclose to the Bankruptcy Court the essence of the OCA Report or the District Court's recent decisions in the Esposito Action. Moreover, Sanford's explicit admission that he is "personally responsible" for Pursuit's acts and this court's money-judgment award supports applying in this proceeding the alter-ego or veil-piercing theory.

Sanford repeatedly avers that the dismissal of the alter-ego claim against him, as reflected in the District Court's 2018 decision in the Phillips Action (*Knopf v Phillips*, 2018 WL 1320267 [SD NY Feb. 1, 2018] [February 2018 Decision]), bars or precludes the Knopfs' claims against him in the instant proceeding. In dismissing the claims against Sanford in the Phillips Action, however, the District Court wrote this:

> "The crux of the lawsuit, from its initiation through the filing of the SAC [Second Amended Complaint] . . . was the sale of PHC by Pursuit to Phillips. The revised theories presented in plaintiffs' pretrial order seek to transform the litigation and to introduce transactions and events not mentioned in the SAC. *It would be highly prejudicial to Sanford to permit plaintiffs to amend the SAC or alter their theories in this way on the eve of trial.* The claims against Sanford on which this lawsuit was initiated having been abandoned, they must be dismissed." (2018 WL 1320267, at *3 [emphasis added].)

The District Court dismissed the claims against Sanford because the Knopfs sought to alter their theories of recovery against Sanford on the eve of trial, and that prejudiced Sanford. The dismissal was not on the underlying claims' merits but on the way they were presented to the District Court for determination. Notably, the prosecution of the Knopfs' appeal of the District Court's February 2018 Decision in the Phillips Action to the Second Circuit has been stayed due to the September 2018 filing of Pursuit's bankruptcy petition.

With respect to the ruling in its earlier decision and order, which found that Sanford is Pursuit's alter ego (*Knopf v Phillips*, 2017 WL 6561163 [SD NY Dec. 22, 2017] [December 2017 Decision]), the District Court wrote in its February 2018 Decision the following: "The SAC did not seek a declaration that Sanford was an alter ego of Pursuit, but rather a judgment that Sanford was liable for any liability of Pursuit. The default [judgment] against Pursuit must be vacated, since no other party has been found liable in this proceeding for activities in connection with the sale of PHC. *Since Pursuit has no liability in the current proceeding, the question of Sanford's liability for any judgment entered against Pursuit in this action is moot.*" (2018 WL 1320267, at *3 [emphasis added].)

According to the District Court, the reason it entered a default judgment against Pursuit was that "no attorney had entered an appearance on Pursuit's behalf" (*id.* at *2). Moreover, the District Court in its December 2017 Decision noted that the reason Phillips was not held liable for the constructive-fraudulent-conveyance claim in connection with the PHC sale was that "plaintiffs had failed to show that the sale of PHC had not been for fair market value" and that "Phillips was entitled to summary judgment on his affirmative defense of good faith on plaintiffs' actual fraudulent conveyance claim" (*id.*). Hence, the District Court concluded that because Pursuit had no liability in the "*current proceeding*," Sanford's liability for any judgment against Pursuit in "*this action*" was academic (*id.* [emphases added)]. The District Court did not conclude that Sanford has no liability for any judgment against Pursuit in other court actions or proceedings, such as the Judgment the Knopfs obtained against Pursuit in the Related Action. Sanford's reliance on the District Court's February 2018 Decision is misplaced.

Although the District Court's February 2018 Decision dismissed the alter-ego claim against Sanford on procedural grounds, in its earlier December 2017 Decision the District Court found that Sanford is an alter ego of Pursuit and should be held personally liable for any

judgment against Pursuit (*see Knopf v Phillips*, 2017 WL 6561163, at *11-13). The District Court found, based on the relevant facts and applicable law, that Sanford repeatedly conceded on the record that Pursuit's assets are the same as his; that Pursuit is a disregarded entity for tax-reporting purposes; that Sanford used Pursuit's bank accounts to pay his own litigation expenses; that Sanford and Pursuit operated as a single entity and that he continued to treat Pursuit as interchangeable with himself; that Sanford used Pursuit's corporate form to shield himself from personal liability in connection with the loans borrowed in the acquisition of the real-estate properties; and that he refused to give the Knopfs any mortgage interests in the properties, even though the underlying agreements obligated him to do so (*id.*). These findings resemble the assertions the Knopfs make against Sanford in this proceeding.

Furthermore, Sanford repeatedly admits that, with respect to the Judgment amount against Pursuit in the Related Action, he is personally liable for the PHC and Townhouse loans in the aggregate amount of approximately $5 million, plus interest (Sanford answer at 3 and 5; Sanford opposition brief at 1 and 2). Still, he failed to cause Pursuit to deliver to the Knopfs the contractually promised mortgage interests.

In addition, the Knopfs assert that because Sanford used the LLC form to hold title to the properties, but refused to grant them the mortgage interests, they were forced to protect their interests by paying $270,000 in delinquent real-property taxes. If unpaid, that would have resulted in New York City tax liens and a foreclosure action against the properties and Pursuit, the title owner (Petition, ¶¶ 33-36, exh. 32). In this regard, the Knopfs assert that the critical issue in determining whether alter-ego liability exists is not just subjective "motive, but control, and whether [respondent] used this control to commit a fraud or other wrong resulting in an unjust loss or injury to [petitioners]" (*id.*, ¶ 39 [internal quotation marks and citations omitted]).

Sanford does not deny that the Knopfs paid the tax liens to avoid tax foreclosures. Rather, he contends that "the Knopfs took advantage of the fact [that] Sanford purchased his units in Pursuit's name for privacy" (Sanford answer at 10-11). He also avers that due to the Knopfs' "fraud upon Pursuit by vexatiously suing it and its attorneys," the District Court imposed sanctions against them and their counsel in the Esposito Action (*id.*). Based on the above discussions, the OCA Report, and the District Court's more recent decisions, these averments are unavailing: This court will not countenance Sanford's attempts to obfuscate truth. Sanford used his control over Pursuit to shield himself from personal liability from the loans. That resulted in an unjust loss and injury to the Knopfs. The alter-ego or veil-piercing theory applies to the claim against him.

## IV. The Affirmative Defenses Are Inadequately Pleaded

In his answer, Sanford interposed 12 affirmative defenses, such as failure to state a claim, fraud, fraudulent concealment, unclean hands, statute of limitations, judicial estoppel, unenforceable documents, and others. Sanford's affirmative defenses are unsupported by any recitation to the specific fact or applicable law, other than a general reference to two voluminous

exhibits of documents his lawyer submitted in other actions, including an action pending before the First Department (Sanford answer at 12-13, referencing NYSCEF # 47- 68 and 71-101 [approximately 50 exhibits]). These boiler-plated defenses are inadequately pleaded and will not be considered (*see Scholastic Inc. v Pace Plumbing Corp.*, 129 AD3d 75, 80-81 [1st Dept 2015] [holding that although defendant was permitted to plead affirmative defenses hypothetically, it was not authorized to plead each and every defense that might exist without regard to relevance to the claims presented; permitting that conduct would be akin to approving defendant's deception, intentional or otherwise, thereby avoiding CPLR's notice requirement and prejudicing plaintiff]).

## V. Conclusion

Based on all the foregoing, it is hereby

ORDERED AND ADJUDGED that the relief sought in the petition — to hold respondent Michael H. Sanford personally liable for the judgment debt owed to petitioners by respondent's wholly owned limited-liability company, Pursuit Holdings, LLC, based on an alter-ego or veil-piercing theory — is granted; and it is further

ORDERED that petitioners shall submit to this court a proposed form of judgment in their favor (with supporting documentation) reflecting the relief granted herein, with a copy to respondent; and it is further

ORDERED that petitioners shall serve a copy of this decision and order with notice of entry on all parties and on the County Clerk.

2/4/2019
DATE

Gerald Lebovits
GERALD LEBOVITS, J.S.C.

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| CHECK ONE: | [X] | CASE DISPOSED | | [ ] | NON-FINAL DISPOSITION | | |
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| APPLICATION: | [ ] | SETTLE ORDER | | [X] | SUBMIT ORDER | | |
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