

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of DePetrís v. Traina

2022 NY Slip Op 07232 (N.Y. Ct. App. 2022) · No. 2020-04562; 2021-02048 · Decided December 21, 2022

SUMMARY

The New York Appellate Division, Second Department, reversed a judgment holding Joseph Traina, Jr. personally liable for a judgment against his limited liability company. The court held that although Traina dominated the LLC, the petitioner failed to establish that the domination was used to perpetrate a fraud or wrong, or that the LLC was undercapitalized or that assets were commingled. The petition to enforce the judgment against Traina was therefore denied and the proceeding dismissed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Lara J. Genovesi, J.; Deborah A. Dowling, J.; Helen Voutsinas, J.
JURISDICTION	New York
DECIDED	December 21, 2022
DOCKET	2020-04562; 2021-02048
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a decision and judgment entered after a nonjury trial in a CPLR article 52 proceeding seeking to enforce a judgment against the sole member of a limited liability company by piercing the corporate veil.
STANDARD OF REVIEW	The judgment was reviewed on the facts following a nonjury trial.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Joseph Traina, Jr. v. William B. DePetrís

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appeal from the trial court's decision was properly before the Appellate Division.
2. Whether the evidence established a basis to pierce the LLC's corporate veil and impose personal liability on its sole member for the LLC's judgment debt.

HOLDINGS

1. An appeal does not lie from a decision; the appeal from the Supreme Court's decision was dismissed.
2. The petitioner failed to establish a basis to pierce the LLC's corporate veil and hold Traina personally liable for the LLC's judgment; the petition was therefore denied and the proceeding dismissed.

KEY QUOTATIONS

"Generally, a member of a limited liability company cannot personally be held liable for any debts, obligations or liabilities of the limited liability company, "whether arising in tort, contract or otherwise""
([*1])

"Evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance" ([*1])

"Accordingly, the petitioner did not meet his burden of proof to establish that there was a basis to pierce the corporate veil under these circumstances." ([*2])

FACTUAL BACKGROUND

Joseph Traina, Jr. was the sole member of J.T. Jr. Club, LLC, which operated a bar in Sag Harbor. After the bar closed and the LLC's lease ended, the LLC left fixtures and equipment at the premises. DePetrìs obtained a default personal-injury judgment against the LLC and later sought to enforce that judgment against Traina personally by piercing the LLC's veil. The trial court found domination, deficient formalities, undercapitalization, and wrongful asset abandonment, but the Appellate Division concluded that the evidence did not establish the required abuse of the LLC form.

PROCEDURAL HISTORY

DePetrìs obtained a default personal-injury judgment against J.T. Jr. Club, LLC. He then commenced a CPLR 5225 and 5227 proceeding against Joseph Traina, Jr., seeking to hold him personally liable as the LLC's alter ego. After a nonjury trial, Supreme Court, Suffolk County, found complete domination, inadequate corporate formalities, undercapitalization, and wrongful abandonment of LLC assets, and entered judgment against Traina for \$2,378,567.90. The Appellate Division dismissed the appeal from the decision, reversed the judgment on the facts, denied the petition, and dismissed the proceeding.

DISPOSITION

reversed

CASES CITED

- Schicchi v J.A. Green Constr. Corp., 100 AD2d 509, 509-510
- Grammas v Lockwood Assoc., LLC, 95 AD3d 1073, 1074-1075
- Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 140-142
- Cortlandt St. Recovery Corp. v Bonderman, 31 NY3d 30, 47
- Conason v Megan Holding, LLC, 25 NY3d 1, 18
- TNS Holdings v MKI Sec. Corp., 92 NY2d 335, 339
- East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc., 66 AD3d 122, 127, affd 16 NY3d 775
- Bonanni v Horizons Invs. Corp., 179 AD3d 995, 1001
- Sky-Track Tech. Co. Ltd. v HSS Dev., Inc., 167 AD3d 964, 965
- Ciavarella v Zagaglia, 132 AD3d 608, 609
- Roka, LLC v Hing Lam, 126 AD3d 622
- Edward Tyler Nahem Fine Art, L.L.C. v Barral, 136 AD3d 477, 478
- James v Loran Realty V Corp., 85 AD3d 619, 619-620, affd 20 NY3d 918
- Treeline Mineola, LLC v Berg, 21 AD3d 1028, 1029