

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 3

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YH LEX ESTATES, LLC,

Petitioner,

- against -

NIR MEIR, RANEE BARTOLACCI and ERMITAGE ONE, LLC,

Respondents.

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Index No. 151267/2022

May 2, 2022 - Oral Argument

May 3, 2022 - Decision

60 Centre Street
New York, New York 10007

B E F O R E: HONORABLE JOEL M. COHEN, JSC

A P P E A R A N C E S:

SUSMAN GODFREY, LLP
Attorneys for Petitioner
1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
BY: MARK H. HATCH-MILLER, ESQ.
JENNIFER DAYRIT, ESQ.

DAVIDOFF HUTCHER & CITRIN LLP
Attorneys for Nir Meir, Respondent
605 Third Avenue
New York, New York 10158
BY: PETER M RIPIN, ESQ.
RICHARD WOLTER, ESQ.

1 APPEARANCES (CONTINUED) :

2

3

YK LAW

4

**Attorneys for Ranee Bartolacci and
Ermitage One LLC, Respondents
32 East 57th Street, 8th Floor
New York, New York 10022
BY: PANKAJ MALIK, ESQ.**

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1 THE COURT: Good afternoon, everyone.

2 I know you are all very, very busy. I didn't want
3 to get in the way of your preparation, but my view was that
4 if there is a serious issue going to whether we should have
5 a trial, it is much better to do it now than before we go
6 any further.

7 Okay. why don't we start with appearances,
8 beginning with the petitioner.

9 MR. HATCH-MILLER: This is Mark Hatch-Miller from
10 Susman Godfrey. Also on the line is Jennifer Dayrit, our
11 client representative Andrew Heymann, and our trial graphics
12 helper Matt Boles who will be there tomorrow if necessary.
13 And I am going to ask that when I make my argument that he
14 be allowed to share some graphics.

15 THE COURT: Okay. Thank you.

16 For the respondent.

17 MS. MALIK: Your Honor, Pankaj Malik from YK Law
18 LLP, 32 East 57th Street, 8th floor, New York, New York.

19 Good afternoon.

20 THE COURT: And for Mr. Meir.

21 MR. RIPIN: Peter Ripin and my colleague Rich
22 Wolter from Davidoff Hutcher & Citrin, for the respondent
23 Nir Meir.

24 THE COURT: With all the papers that came in, I
25 felt like it was something that we should hear today. And

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1 there were some near heroic efforts from Ms. Klinger here
2 who put in some large law firm hours over the weekend to get
3 me a note on this case at, I think, 10:30 last night if I'm
4 not mistaken. So thank you all, and thank you especially
5 Tiffany.

6 Mr. Hatch-Miller or Ms. Dayrit, whoever is going
7 to take the lead on this?

8 MR. HATCH-MILLER: I am ready to go, your Honor.

9 Could Mr. Boles share his screen? Thank you.

10 Thank you very much, your Honor, for hearing our
11 request for summary judgment today. We believe it's in the
12 interest of all the parties and the Court, not to mention
13 potential jurors, to resolve the main claim in the case
14 right now today.

15 The main claim is for the amount of
16 \$12,5087,387.52. The relief sought is against Ranee
17 Bartolacci and Ermitage One. The amount that Bartolacci
18 received individually is \$10,587,387.52, and the amount
19 sought from Ermitage is \$2 million even. Prejudgment
20 interest would run from the date of the distribution which
21 was April 5, 2021.

22 Here is PX 21 from our trial exhibit list to show
23 where the numbers come from, although they are not disputed.
24 This is just an example. This is the scheduled
25 distributions.

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1 So, with prejudgment interest counting today, the
2 days that have passed since April 5, 2021 at a 9 percent
3 rate -- this says 33 days, but it's 330 some days. It's
4 more than a year. Anyway, the amount comes to if
5 \$3.8 million. And that can be done if there is a judgment.

6 As we said in our papers on Friday, there is also
7 a claim regarding transfers of three cars. The value of the
8 three cars is less than a million dollars. It's less than
9 the amount of interest on the other claim. We will decide
10 what to do on that claim later, but we would not -- we don't
11 think it's in anyone's interest to go to trial tomorrow if
12 that's the claim that's left, particularly because the
13 defense that we heard last week to that claim is that
14 Ms. Bartalocci or Ermitage bought the cars using the
15 proceeds from the April 5th distribution, so we may decide
16 after this to just try to collect the cars in judgment
17 enforcement if we have a judgment on the other claim, but we
18 can decide that later.

19 Then there is a car claim against Mr. Meir. It is
20 for the turnover of his Aston Martin. I think everyone
21 agrees that's not jury triable and there's a fully briefed
22 motion in the other case. And that turnover primary issue
23 is is there a lien that's superior.

24 The last thing I will say about, just, the amount
25 at stake; under DCL 276-A there is an automatic right to

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1 attorneys' fees, so after summary judgment we would submit a
2 fee application.

3 Let's talk briefly about the standard for
4 summarily resolving a petition in a special proceeding.
5 It's the same as a summary judgment standard. Look at
6 Centerpointe Corporate Park Partnership 350 versus Mony,
7 96 AD3d 1401, a Fourth Department case from 2012 which sets
8 forth the standard.

9 We are primarily asking you to resolve the actual
10 fraud claims summarily here, although we also have and are
11 pursuing a constructive fraud claim. We can discuss that
12 too if you would like, but I want to point out there are
13 many summarily decided actual fraud cases both from New York
14 under the old statute, DCL 276, and from states that apply
15 the UVTA to New York adopted a couple of years ago.

16 Here is an example from New York, the old statute,
17 5706 Fifth Avenue LLC v Luzieh, 108 AD3d 589, from Pages 590
18 to 91. It's a Second Department case from 2013. The Court
19 said that the plaintiff presented evidence of badges of
20 fraud, and it describes what the badges are. This evidence
21 established the prima facie case, and that's that. The
22 defendants failed to raise a triable issue of fact in
23 response. So, that's a New York case. The statute has
24 changed.

25 Here is an example from a UVTA jurisdiction which

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1 shows that the question of actual fraud is often resolved at
2 summary judgment in these kinds of cases. Look at NextGear
3 Capital Inc. versus Gutierrez, 2021, WL 2137654, from the
4 Middle District of Pennsylvania last May. The Court said
5 that in examining the totality of the circumstances and
6 established facts, there are no clear genuine issues of
7 fact. The meaning would preclude summary judgment. There
8 is little doubt that the defendants intended to defraud the
9 plaintiff by transferring the Poconos property or, in the
10 alternative, that equivalent value for the property was not
11 exchanged.

12 So there is nothing controversial about deciding
13 an actual fraud claim when it's this type of a claim at
14 summary judgment. And under DCL 273-C, that's the current
15 statute, although this is a fraud claim, the ordinary
16 preponderance standard applies. That's explicit in the
17 statute.

18 Now let's talk about the substantive law that
19 governs the claim. I will show you language from our
20 proposed jury instructions on the actual fraud claim. We
21 took exactly the language from the California model jury
22 instructions. California has an identical statute. And
23 here is what the jury instructions would say.

24 Petitioner, YH Lex Estates, claims it was harmed
25 because respondent Nir Meir transferred property to

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1 respondents Raneë Bartolacci and Ermitage in order to avoid
2 paying a debt to YH. This is called actual fraud. To
3 establish the claim against respondent Bartolacci or
4 respondent Ermitage One, YH Lex must prove the following:

5 1, a right to payment from Nir Meir.

6 2, Meir transfers-ed property to the respondent.

7 3, Meir transferred the property with the intent
8 to hinder delay or defraud one or more of his creditors.

9 4, YH Lex was harmed.

10 5 Meir's conduct was a substantial factor in
11 causing YH Lex's harm.

12 This is a crucial part, your Honor, from the model
13 instructions. And under the statute to prove intent to
14 hinder delay or defraud creditors, it is not necessary to
15 show that Meir had a desire to harm his creditors. YH Lex
16 Estates need only show that Meir intended to remove or
17 conceal assets to make it more difficult for his creditors
18 to collect payment. And under the statute, it does not
19 matter whether YH Lex's right to payment arose before or
20 after the transfer, but, as I will explain, the sequence of
21 events is clear.

22 The model instructions also explain, and the
23 statute explains, the factors to consider in assessing
24 fraudulent intent. The instructions state in determining
25 whether Meir intended to hinder, delay or defraud creditors

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by transferring property, you may consider the following factors.

A, whether the transfer was to an insider.

B, whether Meir retained possession or control of the property after if it was transferred.

C, whether the transfer was disclosed or concealed.

D, whether before the transfer was made Meir had been sued or threatened with suit.

E, whether the transfer was of substantially all of Meir's assets.

F, whether Meir fled.

G, whether Meir removed or concealed assets.

H whether the value received by Meir was not reasonably equivalent to the value of the asset transferred.

I, whether Meir was insolvent or became insolvent shortly after the transfer was made.

J, whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

Evidence of one or more factors does not automatically require a finding. And it goes on to say that the presence of one or more of the factors is evidence that may suggest intent. And in our reply brief filed on Friday we pointed out case law from the various jurisdictions saying that when there is a confluence of multiple factors,

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1 Courts will grant summary judgment unless the opposing party
2 presents something.

3 So, now, here are the undisputed facts, the
4 indisputable facts. I am going to go through them based on
5 the fraud factors from the statute that are also -- that
6 would also be in the jury instructions.

7 The first one is a right to payment from Meir.
8 That can't be disputed. You know about the guaranty from
9 late 2019, the first guaranty. You know about the restated
10 guaranty from mid-2020. You know about the lawsuit we filed
11 in November 2020, of course. That was before you. And you
12 know about the judgment that you entered.

13 Much of what I will discuss today is not only, of
14 course, exchanged between the parties, but is subject to
15 judicial notice because it happened in the case already.

16 As you know from the January 31st argument, a lot
17 of the evidence is actually from things Mr. Meir filed in
18 other courts.

19 Transfer of property, okay, that's the next
20 element of the claim. Meir transferred property.

21 So, you already found that Mr. Meir is judicially
22 estopped from denying he owned EAM and EZL, and, therefore,
23 the property at 40 Meadow Lane at the time the property was
24 sold and the proceeds were distributed. That was from the
25 hearing on January 31st. Here is what you said: "It is

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1 clear to me that Mr. Meir is judicially estopped and
2 equitably estopped from denying 100 percent ownership. He
3 made representations to this Court, he made representations
4 to another the Court, both of which led had in part to
5 favorable rulings." It goes on, but I won't read all of it.
6 You said that you were not going to issue a turnover order
7 in other words to give Ms. Bartalocci a chance to appear,
8 which you did. You have given her process after process
9 after process after process, and you've seen what she has
10 done in response.

11 Here's what else you said: "There is more than
12 enough evidence to suggest that this judgment debtor has
13 acted very, very badly in a way that would be inequitable
14 for him to gain by his misconduct." And you said that,
15 however, for now you would wait for the 5225 proceeding.
16 When Ms. Bartalocci would be served, she would have her own
17 counsel, she would have an opportunity to present evidence,
18 which she has.

19 Of the next element -- I'm sorry, on the same
20 element, the transfer. You know from the previous
21 proceedings that Mr. Meir unquestionably owned 100 percent
22 of EZL, and through that entity 95 percent of the interests
23 in EAM and the 40 Meadow Lane property as of October 20,
24 2020. That date when his ownership is indisputable, it was
25 exactly two weeks before we filed our lawsuit. It was on

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1 the Presidential election day, November 3, 2020.

2 Here is the original operating agreement for EZL.
3 You have seen it before multiple times including in
4 connection with the privilege dispute that you resolved last
5 week. The original agreement says Mr. Meir owns 100 percent
6 of EZL.

7 Going to the next slide, there is another version
8 of the EZL operating agreement which you know about
9 including from the January hearing and from the privilege
10 dispute where we were all in front of you recently. This is
11 the one where a lawyer circulated a second version and made
12 some comments about it which are redacted. That was the
13 subject of the privilege dispute. If you go to the
14 attachment, it is backdated. It says it was dated as of
15 March 2019, but we all know that it was not executed, and
16 there is no extant copies of it that have been produced, any
17 time before October 20, 2021, two weeks before the lawsuit.
18 This one says Bartalocci owns 95 percent. She apparently
19 contributed \$95 to get that interest in a
20 multimillion-dollar property. And the other thing about it
21 is even though Ms. Bartolacci gets the economic interest --
22 and I will come back to this because it is highly relevant
23 to some of the frauds factors -- Mr. Meir retains control.
24 He is the manager; and under the terms of it, he can't be
25 removed without his own consent. And we will come back to

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1 this again, but one of the fraud factors is whether the
2 transferee retains control after the transfer. That's why
3 this provision is so important.

4 Now, if the second operating agreement did
5 effectively transfer ownership of EZL to Ms. Bartalocci --
6 and she did testify that she signed the agreement, although
7 it certainly doesn't look like her signature. Then a
8 transfer of LLC memberships occurred on October 21, 2020
9 those occurred. That's Ms. Baralocci's position that this
10 is an effective transfer. If that's true, you credit that
11 argument, there was a transfer by Meir of property,
12 95 percent interest in this entity. It occurred on
13 October 21, 2020, and that's a transfer that can be voided
14 under DCL 273. That's one of our two alternative theories.

15 If the second operating agreement was not
16 effective because the signature is forged or otherwise, then
17 the transfer occurred April 5, 2021 when Mr. Meir sold the
18 property and as manager directed the distribution, because
19 he still retained control over what to do with anything to
20 do with this business despite purporting to give up the
21 economics.

22 You already he know that Mr. Meir directed the
23 transfer. You saw this email, PX 31, as part of Mr. Meir's
24 deposition which was filed on the docket. There was a
25 sealing request about that. We numbered it as PX 31 in case

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1 there was a trial. This is where Meir says, I get to decide
2 where the money goes. So when Ms. Bartalocci tells you in
3 her papers there is no transfer by Mr. Meir, look at this
4 email. Mr. Meir is the one directing where the money goes.
5 The question is: Did he do it with the intent to make it
6 harder for YH to collect? Of course he did. There is no
7 other explanation, your Honor.

8 The next factor is the intent factor. Did
9 Mr. Meir transfer the property with intent to hinder, delay
10 or defraud one or more of his creditors? Here are the
11 factors.

12 The first one is: Was it to an insider? Yes,
13 indeed. Mr. Meir's wife and an entity she created --
14 actually, Mr. Meir's lawyers created, the same firm still in
15 the case. They created this Ermitage entity right on the
16 eve of the sale and distribution.

17 The next factor: Did Meir retain possession or
18 control of the property after it was transferred? Well,
19 what do we know? He kept living at the 40 Meadow Lane house
20 with his wife after October 21. Under the second operating
21 agreement he still maintained management control. He had
22 sole power to distribute the proceeds when he decided to
23 sell the house. He claimed sole authority to decide who got
24 money. And as we've explained in numerous filings, he kept
25 spending the money even after it went to Ms. Bartalocci.

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1 And they are going to tell you as they would tell the jury,
2 I'm sure, that this was just his wife being nice paying off
3 bills for him, but we all know the truth.

4 Next factor: Was the transfer concealed or -- was
5 the transfer disclosed or concealed? Here is another one
6 you know about from your own involvement in this case, your
7 Honor. The second EZL operating agreement was kept secret
8 from us for months. A month after we filed the case in
9 December, Mr. Meir sent my client a copy of the original
10 open operating agreement to prove he owned the property.
11 Then when we filed an attachment motion in March when we
12 found out the property was being sold, he -- his lawyers
13 even told you it was his house and the money wasn't going
14 anywhere. When did we find out the money actually went to
15 Bartolacci and find out about the second operating
16 agreement? Only when we started trying to collect the
17 money. It was kept secret. It was not disclosed, it was
18 concealed.

19 Next factor: Before the transfer, was Meir sued
20 or threatened with suit? Well, there were repeated threats
21 of suit before October 21, not disputed. And, of course, if
22 you view the claim from the time of the distribution, there
23 was already a lawsuit pending and, even, a motion to attach
24 the sale proceeds. You had not actually decided that at the
25 time when the same law firm representing Mr. Meir as counsel

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1 in the case was behind the scenes making sure the proceeds
2 got distributed in a way that would be unavailable to my
3 client. It's shameful, your Honor.

4 The next element is whether the transfer was of
5 substantially all of Mr. Meir's assets. There is no
6 question this is Mr. Meir's main asset. That's also clear
7 from the deposition transcript of Mr. Meir which everyone's
8 received. Here is what he said about the property. He said
9 that it was the only asset he received, basically, for his
10 participation in exchange for his contribution to the
11 company and his role in the company. He said it was
12 compensation. He complained that they never paid him
13 anything else.

14 Now, at his deposition, which is in the record, he
15 said that he had two other assets, a share of HFZ and an
16 interest in a Miami business called the Shore Club, a hotel.
17 And you might remember that around the time of the
18 attachment motion, lawyers told you Mr. Meir has \$20 million
19 of other assets. That was the Shore Club, your Honor.

20 First, his other asset, he says, was a share of
21 HFZ. It's a mirage. Mr. Meir testified there is no written
22 agreement showing he owned part of HFZ. At Page 40 of his
23 deposition he says: I never had any written contracts with
24 him -- meaning Ziel Feldman, the founder of HFZ. I trust
25 his word and his commitment to me.

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1 So, your Honor, there is no legal document giving
2 Mr. Meir an ownership interest in HFZ that he could put on a
3 balance sheet. And as you know from the other case, by
4 October 2020 when this transfer happened, HFZ was in free
5 fall. Even if Meir had an interest in it, it wasn't worth
6 anything. And as for the Shore Club -- and this has also
7 has been filed -- Mr. Meir gave up his interest in the Shore
8 Club to Monroe Capital in a settlement in March 2021.

9 So they told you he had \$20 million of assets, but
10 he actually already transferred that asset to get the last
11 5 percent of the house. And by the time of the April 5
12 distribution, Mr. Meir didn't have anything else other than
13 this property, and he gave away all that money to
14 Ms. Bartalocci.

15 Next element: Did he flee? Yes, indeed, your
16 Honor. When the house was sold and the money distributed,
17 they left for Florida. Then they fought hard to make sure
18 that we, in pursuing the judgment, would have to jump
19 through every hoop to accomplish service at the gated
20 community down in Florida that they moved to.
21 Ms. Bartalocci claims she was the one who wanted to leave.
22 Even if that was the driving factor, the question is: Did
23 they leave the jurisdiction? Yes. That made it much harder
24 for us to enforce.

25 Next factor: Did Meir remove or conceal assets?

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1 It really overlaps with C, so I won't repeat that.

2 The next factor: Was the value received by Meir
3 reasonably equivalent to the value transferred? I will talk
4 about that more in a minute, but there is zero evidence in
5 the summary judgment record of any value received in
6 exchange other than the \$95 referenced in the EZL operating
7 agreement.

8 Solvency is another factor. Now, we don't have to
9 prove this, and there will be plenty of other elements even
10 if there is dispute on this; but it he was absolutely
11 insolvent in October of 2020. We talked about his assets,
12 40 Meadow Lane. The equity is less than \$20 million. As to
13 the Shore Club -- his lawyers told you in emails that the
14 other assets were worth \$20 million. Let's credit that. He
15 has \$40 million.

16 You can take judicial notice from the many other
17 cases filed against Mr. Meir and from his own statements
18 that he had hundreds of millions of dollars. I think it's
19 nearly \$200 million of personal guaranties that he executed
20 through his time at HFZ. The only thing that changed the
21 situation was giving the money to Bartolacci from 40 Meadow
22 Lane.

23 Last is whether the transfer occurred shortly
24 before or after a debt was incurred.

25 In terms of the timing, the second version of the

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1 guaranty was executed in July 2020 and then the transfer
2 happened in, if you view the earlier date, October 2020,
3 three months later.

4 The brief filed by Ms. Bartalocci on Friday talks
5 about a good faith defense. We put that in our proposed
6 instructions as, really, a placeholder; but we think there
7 is no summary judgment evidence to support this defense.
8 Even if there is a trial, there won't be enough evidence to
9 instruct the jury on the defense.

10 Here are the instructions about the elements:

11 The respondent is not liable to YH Lex Estates on
12 the claim for actual fraud if the respondent proves both of
13 the following: The respondent took the property in good
14 faith. The respondent took the property for reasonably
15 equivalent value.

16 "Good faith" means the respondent acted without
17 actual fraudulent intent, and that the respondent did not
18 collude with Meir or otherwise actively participate in the
19 fraud scheme. If you decide that the respondent knew facts
20 showing that Meir had a fraudulent intent, then the
21 respondent cannot have taken the property in good faith.

22 I want to talk about reasonably equivalent value
23 first because that's a fraud intent factor on our proof, and
24 it's also a factor on the affirmative defense.

25 There is no evidence in the summary judgment

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1 record of equivalent value. I will say first that there are
2 cases that stand for the proposition that a release of a
3 preexisting debt can be consideration. Absolutely possible.
4 That's a theoretical possibility. But there is no evidence
5 of a debt in this case.

6 They seem to be arguing that anything a wife
7 spends on anything during a marriage creates a debt
8 obligation; but that's not the law, of course. And we sent
9 you on Friday the First Department authority, the case that
10 shuts the door to any argument that somehow they are going
11 to prove 40 Meadow Lane was marital property, and that that
12 means Raneé could keep 50 percent of the proceeds.

13 That's a lawless argument, your Honor. It is made
14 up. It is a total manipulation of what Domestic Relations
15 Law stands for.

16 Marital property is collectible when either is
17 spouse has a debt. It only gets divided and protected after
18 a divorce is finalized. That hasn't happened.

19 THE COURT: Well, let me just ask you a question
20 on the reasonably equivalent value putting the marital
21 assets to the side.

22 If, hypothetically, the respondents come in with
23 \$5 million of receipts paid for construction and upkeep and
24 the like at a time when the house was being refurbished and
25 ultimately became more valuable, how do I analyze that?

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1 MR. HATCH-MILLER: Reasonable equivalence has got
2 to be very close to the 12.6. But, your Honor, they haven't
3 come forward with that even today. They told us over the
4 weekend they had a thousand pages of some kind of
5 statements, I don't know where they are from; but you gave
6 them time and time and time and time despite all these
7 bankruptcy shenanigans and everything else. There's nothing
8 in the papers that show a penny was spent on it.

9 Mr. Boles, can you put up that affidavit that I
10 sent you a little while ago?

11 The only evidence, actually, about who paid for
12 the construction is that Mr. Meir paid for it. This is an
13 affidavit that Mr. Meir filed in the case we came across
14 this afternoon. Let's go to Paragraph 14. We pointed to
15 some suspicious transactions on Mr. Meir's account records
16 from Signature Bank. And he said there's nothing suspicious
17 about them. Look at the last bullet point under 14: Those
18 show that I was paying for the demolition and construction
19 costs for 40 Meadow Lane.

20 So that's the only evidence, your Honor. What
21 have you heard from Ms. Bartalocci's counsel? A lot of hot
22 air. There's no receipts. If they had presented in the
23 summary judgment record something close to the \$12 million
24 in receipts there would be a fact issue, but there is
25 nothing. It's just --

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1 THE COURT: That's the legal question I was
2 getting at.

3 There are some cases where household payments
4 between spouses have been taken into account, but the fact
5 patterns were very different than this. I was just curious
6 whether there is any law to the effect that, you know,
7 paying household expenses over a course of years then
8 followed by the alleged transfer, which is the transfer,
9 essentially, of the entire -- of 95 percent interest in the
10 entire home; even if they show those payments, it just
11 wasn't clear to me whether that counts as reasonably
12 equivalent value.

13 I mean, the argument I think they are going to
14 make and what I want you to address is, let's assume they
15 come in now, hypothetically, with a bunch of receipts. The
16 highest number I saw referenced in the pretrial papers was,
17 I think, \$5 million. And the argument would then be, Well,
18 I contributed \$5 million toward construction and the
19 construction enhanced the value of the home by a multiple of
20 that; therefore, you can get to the 12.6 that way.

21 MR. HATCH-MILLER: The answer, your Honor, is the
22 cases that exist that I have seen, they are all about
23 releasing at preexisting debt. So it would depend on
24 whether there was some -- on what the agreement was. When
25 the wife spent all this money, is there evidence of a

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1 promise that that was creating a debt obligation and wasn't
2 just gratuitous spending.

3 One of the things we pointed out in our reply is
4 that at the time of the construction of this house, Mr. Meir
5 didn't own the house outright. It was owned 50/50 with HFZ.
6 So if there was an agreement that Ms. Bartalocci was going
7 to get repaid, it would have been between HFZ, not Mr. Meir
8 and Ms. Bartalocci. You would need evidence that someone
9 promised to repay something close to the full amount. And
10 you wouldn't take, you know, appreciation into account.
11 It's a debt release, so it would be a question of what were
12 the terms of the agreement to repay. They have not put
13 forward any kind of evidence of such an agreement.

14 It's time to stop giving them more time to make up
15 more excuses, your Honor. That's just where we are at.
16 It's not -- I understand your reluctance to, you know, close
17 the door on them, but --

18 THE COURT: I am just asking questions.

19 MR. HATCH-MILLER: And I am just also expressing
20 that, you know, I understand the concern. They did ask for
21 due process and you gave them process. But now even the
22 briefing was delayed, discovery was delayed. There has been
23 delay after delay after delay. You can't just credit their
24 word that if you gave them more time they will find some
25 bank statements that prove this defense. It doesn't make

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1 sense, your Honor. You can use common sense and realize
2 this is her spending that --

3 THE COURT: Again, your position is that even if
4 she did contribute to the construction, it still doesn't
5 matter.

6 MR. HATCH-MILLER: It doesn't matter unless there
7 was evidence that a debt was created via that spending. And
8 it is very hard to understand how they could make that
9 argument where the construction happened and the
10 construction was paid for during a period where it wasn't
11 Mr. Meir alone. He owned the property 50/50 with his
12 employer, and Mr. Meir didn't get the other half until
13 March 2019 which was the second part, he says -- this,
14 again, is in his deposition. He was getting compensated for
15 work at HFZ by being given the other 45 percent share. So
16 there is no evidence that there was a debt created to be
17 released. If there was evidence of spending or a debt that,
18 you know, was created, it should have been provided a long
19 time ago.

20 Let's talk now about the good faith element.

21 Mr. Boles, could you go back to the slide that
22 shows the two elements. It is good faith and reasonably
23 equivalent value.

24 Did we lose Mr. Boles? Perhaps I -- no, there he
25 is. Okay. Great.

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1 So, this is, I think, related to the question you
2 had before, your Honor, so if you are unsure about
3 reasonably equivalent value; in order to prove the good
4 faith defense, you have to prove both. So there has to be
5 reasonably equivalent value and good faith. Let's talk
6 about good faith.

7 It is Ms. Bartalocci's burden to prove good faith.
8 The evidence she has put forth does not show good faith.
9 She also has totally blown off her obligations to produce
10 communications about these transfers. She's totally
11 defaulted on her discovery obligations. For that reason
12 alone she cannot carry her burden to introduce a fact issue
13 on good faith.

14 Mr. Boles, I sent you a couple of email
15 correspondences to put up, one is from early April.

16 You remember, your Honor, you ordered production
17 of emails and text messages. Back in early April
18 Ms. Bartalocci's counsel promised that this email production
19 was coming. Remember, this is the same day that Mr. Meir
20 filed at about noon the bankruptcy removal papers.
21 Ms. Bartalocci's counsel kept telling us up until minutes
22 before that she was going to produce those documents by
23 noon.

24 Do you have that email, Mr. Boles?

25 She said, you know, My office is currently

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1 reviewing the results of the searches, and we will send them
2 over when done. It will be sometime this morning.

3 That was April 6, your Honor, a month ago. Where
4 is that email production? The deadline has passed. All the
5 bankruptcy shenanigans happened. We still don't have them.

6 You can't rely on good faith and shield your
7 communications. We have no production from Ms. Bartalocci
8 of whatever communications she had about either the
9 October 2020 transfer of ownership or her role in receiving
10 the distribution in April. I have kept raising it in emails
11 and it's dodged every time I ask the question. Where is
12 that? You can't prove good faith and not comply with your
13 discovery obligations.

14 Then over the weekend there is this piece about a
15 thousand pages of bank statements that they are going to use
16 to show the reasonably equivalent value. I said, you
17 know -- and this was Saturday at 1:02, We just received a
18 thousand pages of statements we are reviewing. So that was
19 Saturday. And within minutes I demanded that they send us
20 immediately all thousand pages. It doesn't matter whether
21 they put them on the exhibit list. If they have a thousand
22 pages of statements from some source, they have to produce
23 them to us.

24 Then the next morning whenever I woke up, it was
25 like 6:05 a.m., I emailed and said, Send me those

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1 statements. I still don't have them, your Honor. It's now
2 the end of the day on Monday, we are supposed to start trial
3 tomorrow, and they are still being held.

4 They had plenty of time to prepare for this
5 bankruptcy argument where Ms. Bartalocci tried to argue
6 somehow, you know, it was against the interest of EAM and
7 EZL's estate for this trial to go forward, you know, while
8 she is paying for EAM's and EZL's lawyers and trying to
9 shield herself from a lawsuit. It's ridiculous. So they
10 had plenty of time for that but not to produce their
11 documents or comply with pretrial discovery obligations.

12 Also, your Honor, you asked for a hearing today at
13 2:30 and they suggested, Oh, we're too busy to show up.
14 What were they doing? They were getting ready, you know, a
15 last minute, strategically timed First Department supposed
16 emergency motion. That was why they couldn't show up.

17 Your Honor, it's time to put a stop to the
18 excuses. I have never seen conduct like this from opposing
19 counsel before. It's really sad, frankly. There's no focus
20 on the merits. It's all about procedural dodges. It's a
21 clear pattern of obstruction, and my client is being
22 dramatically harmed by it in terms of litigation costs.

23 THE COURT: Okay. Try to wrap-up so I can get to
24 the respondents.

25 MR. HATCH-MILLER: Sure.

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1 The last piece is bad faith evidence. Not only
2 could they prove about good faith, there is evidence of
3 Ms. Bartalocci's bad faith.

4 One, the move to Florida alone is evidence of bad
5 faith. And Ms. Bartalocci's decision to allow Meir to
6 continue spending the money, to keep finding \$300,000 a
7 month on the AMEX card is evidence of bad faith. And her
8 decision -- look back at the EZL, the second operating
9 agreement, that itself is evidence of bad faith where she
10 signed off, she claims she signed it, although, again, the
11 signature doesn't really look like hers. She signed off on
12 taking the economic interest while leaving Meir as the sole
13 manager who could only be replaced if he agrees. That's
14 evidence of bad faith. But last, your Honor, the strongest
15 evidence of Ms. Bartalocci's bad faith is her role in
16 creating Ermitage. She had Mr. Meir's lawyers create this
17 entity just a few weeks before the distribution. There is
18 no explanation for the creation of this entity other than to
19 hold the proceeds from the distribution that was coming.
20 What is the good faith explanation for that, your Honor?
21 This was just creating another hoop to jump through to make
22 it harder for us or anybody else to get the money back.
23 There is no innocent explanation for that. That's bad
24 faith, not good faith.

25 So, your Honor, respectfully, this case is not a

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1 close call. It doesn't need a jury. If we go any farther,
2 there is just going to be more tactics to try to stall.
3 Summary judgment should be granted today on the record
4 before the respondents try to take more steps to prevent you
5 from making a decision on the merits.

6 THE COURT: Thank you.

7 MR. HATCH-MILLER: Thank you.

8 THE COURT: Which of the respondents want to go
9 first? Ms. Malik, I think they are pointing generally in
10 your direction.

11 MS. MALIK: Sure, your Honor.

12 Your Honor, I am going to try to keep this as
13 organized as Mr. Hatch-Miller has, but forgive me if I am
14 not as organized. I will try to hit as many points as I can
15 in the order that makes sense.

16 At the outset I would like to start with -- the
17 same test that is applied to a motion for summary judgment
18 is used to determine a special proceeding. I am going to
19 omit citations unless your Honor specifically requests one
20 because they are all cited in our opposing papers.

21 THE COURT: That's fine.

22 MS. MALIK: Thank you, your Honor.

23 On a motion for summary judgment, the role of the
24 Court is to decide whether the case presents bona fide
25 issues of fact and not to resolve issues of credibility.

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1 Now, on multiple occasions there are issues that
2 Mr. Hatch-Miller has requested the Court to make that
3 necessarily involve a credibility determination.

4 If the trial judge is unsure whether a triable
5 issue of fact exists or can reasonably conclude that the
6 existence of fact is arguable, the motion must be denied.
7 All favorable inferences must be applied to the party
8 opposing the motion.

9 New York Courts refrain from assessing credibility
10 on summary judgment even where a party is accused of
11 fabricating an issue of fact. YH cannot rely on Carthen
12 versus Sherman which, contrary to YH's memo, did not address
13 perjury. In Carthen, the Court found the affiant's
14 testimony incredible as a matter of law because it was
15 contradicted by all the other evidence presented, and the
16 affiant contradicted herself during her deposition. YH has
17 not made and cannot make anything close to that showing
18 here.

19 I strongly dispute, as the Court is aware,
20 Mr. Hatch-Miller's repeated references to the fact that we
21 were given process after process after process after
22 process. The Court and Mr. Hatch-Miller -- I mean, the
23 Court has determined, you know, and I have to as my client's
24 attorney follow and exercise all remedies and rights
25 available to her to the full extent of the law.

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1 The Court has determined that because there was
2 this extensive discovery and proceeding against Mr. Meir, my
3 client should have known and should have been prepared if
4 with documentary evidence many months before the case
5 against her was even filed in order to defend an anticipated
6 case against her regarding these proceeds and regarding
7 collecting of evidence that she required to prove her
8 contributions to the marriage and to the property and the
9 construction. Just the fact that she was served with a
10 subpoena that your Honor quashed in that prior proceeding
11 did not, I believe, put her on that level of requirement to
12 be so super-prepared.

13 THE COURT: I won't spar as you go, but that was a
14 backdrop for why, at least it seems to me, that between
15 February and today at least the basic financial information
16 that you are still looking for of her own banks could have
17 easily been found.

18 So, you know, I'm not necessarily saying that she
19 should have been ready for trial before she was sued, but
20 both -- but Mr. Meir had an extreme incentive way back when,
21 if, in fact, this is the way the facts were, that this was
22 not some fraudulent transfer; so there were lots of people
23 who had incentive to prove that a long time ago. But even
24 if I take your point, it's still from February to now, May,
25 and we are still waiting.

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1 MS. MALIK: Well, your Honor, I am not going to
2 judge or presume what Mr. Meir was involved with his counsel
3 in defense of these actions and against him. All I know is
4 that the action against my clients was filed in February. I
5 was retained May 11 because two prior attorneys --

6 THE COURT: March 11.

7 MS. MALIK: I'm sorry?

8 THE COURT: March 11. You said May 11.

9 MS. MALIK: My apologies, march 11. Because two
10 prior counsel that she consulted with between February 10
11 and March 11 were conflicted out because of a prior
12 relationship with the principal of YH Lex, Mr. Heymann.

13 Since March 11 -- and I've made this
14 representation on the record -- I've sent out subpoenas
15 routinely on multiple cases I am involved in. Banks are
16 always requesting adjournments and extensions. They take
17 45, sometimes 60 days to come up with statements. And
18 that's with recent statements. We were asking for
19 statements from 2012 to 2021, and a lot of these accounts
20 were closed and their records were archived.

21 As far as the records coming in. We've received,
22 at this point, close to two-thousand pages from Chase, from
23 Wells Fargo, from Charles Schwab which I am still in the
24 process of reviewing and going through to pull out the
25 relevant statements and the months and to make the

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1 connections. I am not going to just send out two-thousand
2 pages of bank statements. They have to be targeted. I
3 don't want to submit that to the Court on a flash drive and
4 have the Court start looking through them tomorrow during
5 the trial.

6 In any event, let me get back to my arguments, and
7 then we can go back to it if the Court has further
8 questions.

9 We requested under CPLR 3212 that summary judgment
10 be held in abeyance to give Ms. Bartalocci additional time
11 to obtain financial records showing her contributions to
12 40 Meadow Lane over the past decade.

13 So, your Honor, YH Lex has failed to show that it
14 has a superior right to the property sought under DCL 273 in
15 three respects.

16 First, YH did not prove by a preponderance of the
17 evidence that Nir Meir had actual intent to hinder, delay or
18 defraud. We agree with petitioner that since the UVTA was
19 just adopted by New York it is necessary to look at how
20 Courts in other jurisdictions have interpreted it.

21 Petitioner is wrong to rely on the cases decided under
22 UVTA's predecessor including Kelly versus Armstrong which is
23 also inapplicable here because it addressed the trustee's
24 motion to set aside a verdict reached after trial.

25 The Court must consider all relevant circumstances

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1 surrounding any purported transfer. The mere presence of
2 purported badges of fraud is not enough. To consider the
3 totality of circumstances, it is necessary to consider how
4 the distribution of the proceeds of the sale of 40 Meadow
5 lane fits within the bigger picture of Bartolacci's and
6 Meir's management of their household financial affairs.
7 Meir's actual intent is a state of mind. It requires a
8 credibility determination that cannot be resolved on summary
9 judgment.

10 YH failed to prove actual intent to defraud with
11 respect to specific transfers alleged in the petition.
12 Bartalocci disputes YH Lex's allegations regarding intent
13 concerning the sale proceeds. These are disputes of fact
14 that can only be resolved through trial. They include the
15 following: The decision to sell 40 Meadow Lane was made by
16 the couple over Meir's initial objections due to the
17 pandemic and Bartalocci's desire to move near family in
18 Florida. Meir and Bartalocci routinely moved large sums of
19 money from one person to the other as part of managing the
20 assets of the household. The sale proceeds belong to
21 Bartalocci because she used her separate funds to contribute
22 to the purchase, demolition, and construction of the new
23 home at 40 Meadow Lane, and to the maintenance, repairs,
24 upkeep, staffing, and utilities needed for the property.

25 Second, YH Lex did not prove by a preponderance of

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1 the evidence that Nir Meir did not receive reasonably
2 equivalent value.

3 Courts interpreting the UVTA in various
4 jurisdictions have found that payments by a spouse for
5 household expenses may constitute reasonably equivalent
6 value. See, e.g., FDIC versus Amos, Federal District Court
7 in Georgia, United States versus Goforth, Sixth Circuit
8 2006, and Wiand versus Waxenberg, Federal --

9 THE COURT: I have looked at those cases. In
10 those cases there was some sort of a matching of the
11 expenses and the payments that were made by the other spouse
12 back. Do you have anything here that remotely resembles a
13 situation where the transfer is, essentially, giving title
14 to a \$40 million house in exchange for household expenses?

15 MS. MALIK: Well, it just wasn't mere household
16 expenses. This was not like, you know, a two-thousand
17 square-foot house. This was a large piece of property.
18 There was a property manager involved that involved, you
19 know, tremendous upkeep. It is on the beach. There was a
20 lot of erosion. There's maintenance and upkeep that's
21 required for a beach property. This was not just your
22 regular marital expenses.

23 THE COURT: But this is different in kind, right?
24 I mean, in the cases that you are talking about, one spouse
25 paid certain expenses and at a later the other spouse gave

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1 back some compensation for other expenses. This is giving a
2 whole asset to one spouse while the other is about to be hit
3 with a judgment. It's a very different set of facts than
4 the cases that you rely on.

5 MS. MALIK: It wasn't giving the spouse, it was
6 the net proceeds. Meir received the money from the
7 proceeds. He also paid off some liens and other debts that
8 he had from the proceeds. It wasn't 100 percent to
9 Bartalocci.

10 Bartalocci also maintained two different
11 residences in addition to this house so that the family
12 could have a place to live during the three years that the
13 construction was ongoing. Dollar for dollar I don't know
14 what the total amount is going to finally be when it's
15 revealed in these statements, and we are trying -- and
16 that's the thing. The time crunch has been extremely
17 prejudicial because to review these types of statements and
18 extrapolate them into some kind of cohesive reconciliation
19 and statements and Excel sheets and everything to be able to
20 present to the Court, we just don't have the time to do
21 that. We are just going to be pulling sheets of papers
22 paper out of a stack. That's what's going to happen.

23 I want to go back to the Waxenberg Court who
24 suggests that this is the majority view. And I did not see
25 in any of those cases where it was equivalent but may not

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1 have been dollar for dollar, because the assets involved it
2 in those cases were not to the scale of the asset involved
3 in this case. So that in and of itself it requires a more
4 in-depth analysis of why she was given the amount she was
5 given, what the relationship was.

6 Finally, going back to the arguments; YH Lex did
7 not prove by a preponderance of the evidence that transfers
8 took place. The sale proceeds were distribution assets
9 mutually held by Meir and Bartalocci.

10 In FDIC versus Amos, the district Court for the
11 Middle District Of Georgia denied summary judgment regarding
12 two cash transfers finding that a reasonable juror could
13 conclude that the transfer was a division of their mutual
14 funds and not a transfer of Amos's assets to his wife.

15 Meir submitted an affidavit in the prior
16 proceeding with documentation -- this is regarding the
17 cars -- showing that the cars, the Mercedes Benz G500
18 Cabriolet and the 2018 Porsche GT 2; that he never owned
19 those, and, also, the 2001 Mercedes Benz 500 or the
20 Porsche -- or the 2019 Porsche 911, so, consequently, could
21 never have actually transferred them.

22 YH Lex failed to show that it has a superior right
23 to the property sought under DCL 274 because YH Lex has
24 failed to show that Bartalocci had reason to believe that
25 Meir was insolvent.

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1 Bartalocci asserts in her affidavit that she was
2 unaware that Meir was insolvent, and Bartalocci
3 substantiated her claims with tax reporting statements
4 confirming her pattern of large transfers to Meir which led
5 her to believe the distribution to her and Ermitage was
6 nothing out of the ordinary.

7 Even if YH Lex had met its burden, Bartalocci's
8 defenses raise issues of fact that require denial of summary
9 judgment. Bartalocci has a defense under DCL 277(f) which
10 provides that transfers are not voidable under the DCL 274
11 if made in the ordinary course of business or financial
12 affairs of the debtor and the insider. YH fails to rebut
13 Bartalocci's tax reporting statements showing that
14 substantial financial transfers between Meir and herself was
15 a routine part of their household management. Consequently,
16 because this issue cannot being resolved on papers alone,
17 YH's claim under DCL 274 in this case should proceed to
18 trial.

19 THE COURT: Let me make sure we are on the same
20 page as to which transfer is which.

21 Their first transfer allegation is that in October
22 of 2020, 95 percent of EZL was transferred from Mr. Meir,
23 who had 100 percent, to Ms. Bartalocci. That surely was not
24 in the ordinary course of their marriage, was it?

25 MS. MALIK: Well, that's their allegation, your

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1 Honor. It is our claim, and my client testified to this at
2 her deposition, that she signed the March 2019 operating
3 agreement which makes sense in the timeframe with if Meir
4 received the 50 percent from HFZ in March of 2019, he
5 transferred the 95 percent to Rane Bartalocci.

6 THE COURT: Hang on a second. Let me make sure I
7 follow what you are saying.

8 There is a signed March 2019 operating agreement
9 signed only by Mr. Meir. Then there is another document
10 where I saw all the back and forth of the correspondence.

11 Are you saying the one your client signed was also
12 signed in March of 2019, physically signed in March of 2019
13 as opposed to October 2020?

14 MS. MALIK: Whatever the date is on the document.
15 I don't have it in front of me. I can pull it up. Whatever
16 that document was, that's the date that she signed it, and
17 she testified --

18 MR. HATCH-MILLER: That's not what she testified,
19 your Honor.

20 THE COURT: I will get back to you,
21 Mr. Hatch-Miller.

22 Ms. Malik, I would like you to really think
23 carefully about this answer, though, because the
24 correspondence record -- and we can live with the facts
25 whatever they are, but they seem to make it pretty clear

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1 that the document that your client signed was prepared in
2 October of 2020. Does your client actually say that she
3 physically signed that piece of paper in April of 2019? We
4 have all seen the correspondence with the lawyers. It was
5 prepared by Meister Seelig in October of 2020, no?

6 MS. MALIK: What my client testified is that she
7 does not recall the exact date that she signed it but that
8 that was her signature. So whatever the date on that
9 document was, she would say that's when she signed it.

10 THE COURT: It says it's dated as of April 2019.
11 I believe that's what it says. That does not mean that's
12 when it was signed. I just want to -- I mean, you are
13 familiar with the facts here and she is your client, but do
14 you believe that her testimony was that signed it a year
15 earlier? I am sure you looked at the lawyers back and
16 forth. The lawyer who prepared that document was retained,
17 it seems, in October 2020.

18 MS. MALIK: Well, your Honor, it's not a question
19 of what I believe. It's a question of what my client is
20 prepared and will testify.

21 THE COURT: Okay. So you think she is going to
22 testify that she signed the document in April of '19?

23 MS. MALIK: She is going to testify that she does
24 not remember the exact date she signed it but that she
25 signed that document.

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1 THE COURT: In any event, the documentary record
2 is pretty clear. I have seen it all.

3 Anyway, their argument is that there was a
4 transfer on that date in October of 2020. So, I guess, as
5 point one you are saying that didn't happen on that date.
6 Okay. If it did, are you saying that that was in the
7 ordinary course of their business?

8 MS. MALIK: Yes, because what my client did
9 testify to repeatedly at her deposition is that she was
10 shown that property on her 38th birthday. There was a
11 celebration on the beach to celebrate her birthday. She
12 always assumed that was her house, that 95 percent of that
13 property was hers. She testified to that repeatedly.
14 Mr. Hatch-Miller asked her in multiple different ways, and
15 that was her consistent response. It wasn't in 2019, it
16 wasn't in 2020. She believed that she owned 95 percent of
17 that house since back in 2013.

18 THE COURT: I saw that point about the birthday,
19 but doesn't that sound more like a gift than that she bought
20 it?

21 MS. MALIK: It wasn't a gift. It was presented to
22 her. That's why she was 95 percent, because he told her he
23 was going to need the money to complete the construction and
24 maintain their lifestyle and to pay for all the bills while
25 the construction was ongoing.

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1 THE COURT: So she received the property itself
2 for nothing, and then agreed to pay for some of the
3 construction?

4 MS. MALIK: Well, it wasn't that she received it
5 for nothing, your Honor. She had been transferring hundreds
6 of thousands of dollars a year since 2010, since 2009. I've
7 submitted statements showing her payment of hundreds of
8 thousands of dollars on American Express bills; transfers to
9 Nir Meir for many, many years before that point. It wasn't
10 just out of the blue. That was how they conducted business.
11 If he needed money, she would transfer it to him. If he
12 needed an AMEX bill paid, she would pay it.

13 They bought the property. This was going to be
14 their marital house. She was the one that was going to be
15 contributing. He didn't have to put all the money to pay
16 for the purchase or for the construction on his own and to
17 pay \$500,000 a year in living expenses.

18 THE COURT: In the Domestic Relations Law which
19 you referenced a little bit, and I am sure we will get to
20 next, there does seem to be some pretty strong law that
21 property acquired during the marriage is marital property
22 and can be gone after by either spouse's creditors. Isn't
23 that true?

24 MS. MALIK: That's correct. However, to the
25 extent that this portion of the house was her separate

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1 property, she is entitled to a separate property credit
2 under this UVTA. That's what we are claiming, to connect
3 her contributions to the property and to the marriage as a
4 separate property credit which is what she received the
5 \$12 million for.

6 THE COURT: So the credit is now under the
7 transfer act? I thought your argument had been she was
8 entitled to the credit under the Domestic Relations Law.

9 MS. MALIK: So, she is entitled to her -- under
10 the Domestic Relations Law she is not entitled to a separate
11 credit unless they divorce. However, the case law
12 interpreting the special proceedings for turnover
13 proceedings and UVTA that we cite in our papers show that
14 even if they don't have -- even if they are not divorced, if
15 the spouse -- the insider is the spouse, and if the spouse
16 can show direct contributions to an asset to a purchase or
17 to its improvement or whatever the case; if she can show
18 that that property is actually separate property, the Courts
19 have held that there has to be an inquiry, there has to be a
20 trial on the issues to see what, if anything, her separate
21 property credit would be.

22 THE COURT: Yeah, I've been seeing it referred to
23 as a property credit. So if I am hearing you correctly,
24 that would mean if somebody transferred to me a \$10 million
25 property and I gave them \$100,000 for it so that it's not

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1 reasonably equivalent, and let's assume it is a fraudulent
2 transfer or a voidable preference or whatever; are you
3 saying that I would get credit for the \$100,000 I provided?

4 MS. MALIK: It has to be the totality of
5 circumstances. You can't just look at that one transaction
6 in a vacuum. There is a case we cite that -- and I don't
7 recall the name off the top of my head, but there were
8 monies deposited into a joint account, cash. It was a joint
9 account with husband and wife. The wife took out a majority
10 of the cash in that account, and the Court held that that
11 was not a transfer under the UVTA because she was taking
12 whatever her share was or whatever she was entitled to out
13 of their joint assets. It was held to be not a transfer
14 under the UVTA because when looking at the totality of
15 circumstances and how they operated mutual finances, he
16 found it was not a transfer.

17 THE COURT: Okay.

18 MS. MALIK: That case is discussed in detail in
19 our surreply.

20 THE COURT: Okay. So you are not making an
21 argument under the Domestic Relations Law then?

22 MS. MALIK: Not directly, your Honor. The only
23 reason I used that is to show that all of this back and
24 forth about Meir being entitled, HFZ being entitled, EAM
25 being entitled, EZL being entitled is really irrelevant to

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1 the ownership interest that my client had has and the
2 proceeds that she was paid at the sale.

3 THE COURT: Okay.

4 Anything else?

5 MS. MALIK: Yes. May I continue, your Honor?

6 THE COURT: Sure.

7 MS. MALIK: As discussed earlier, a reasonable
8 juror can conclude that the distribution of marital assets
9 is not a transfer under the UVTA. Similarly, the Second
10 Department in Cadle Co. versus Satrap found that it was
11 necessary to hold a hearing to determine whether the vehicle
12 at issue was the wife's separate property. Therefore, the
13 Court should schedule a trial to determine -- or proceed to
14 trial to determine how much of the property sought is
15 Bartalocci's separate property.

16 After repeatedly insisting that the marital
17 residence was solely Meir's property even though technically
18 it was sold by EAM at the closing, YH suddenly changes its
19 story so it may use the presumption of marital property
20 under DRL 236 to support its claim for summary judgment.
21 However, the question explored in Hallsville Capital versus
22 Dobrish, the case that Mr. Hatch-Miller had to email to the
23 Court immediately in a very improper fashion which is
24 whether the remedy of attachment can be applied to a
25 divorcing couple's assets before equitable distribution is

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1 complete is different from the question at issue here which
2 concerns whether a distribution of property between spouses
3 is a transfer that gives rise to a cause of action under the
4 UVTA.

5 The other case is Piccarreto versus Mura cited in
6 YH's memo is, likewise, inapplicable because it was not
7 decided based on the UVTA, and the wife did not claim that
8 the property titled in the husband's name was her separate
9 property by virtue of her contributions to it.

10 I just now have a couple of points in response to
11 Mr. Hatch-Miller's arguments, if you give me a second.

12 (Brief pause)

13 Mr. Hatch-Miller went through a laundry list of
14 facts that are not in dispute. One of the facts that he
15 throws in there is that there was an undisputed transfer of
16 property. As set forth in our papers and our surreply, that
17 is a huge dispute in this case, and we definitely dispute
18 the fact whether or not a transfer under UVTA occurred.

19 THE COURT: You don't really dispute there was a
20 transfer, you dispute that it was not inappropriate.

21 MS. MALIK: Yes.

22 THE COURT: In other words, if you went from Meir
23 owning 100 percent of EZL to now Ms. Bartalocci owning
24 95 percent of it, that is a transfer of something, right?

25 MS. MALIK: Yes. We don't dispute that portion.

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1 What he is trying to say is that that transfer in an of
2 itself was voidable under the UVTA. That's his claim.

3 THE COURT: The question is whether it was
4 voidable. There is no question that there was a transfer of
5 ownership interests in that entity.

6 MS. MALIK: And the burden to prove that it is a
7 transfer under the UVTA is YH Lex's. It's not my client's
8 burden to disprove it. It's his burden to prove it.

9 THE COURT: The burden to prove that it was a
10 voidable transfer.

11 MS. MALIK: Yes.

12 THE COURT: Right.

13 MS. MALIK: As to the estoppel arguments, I just
14 want to address that under whatever theory Mr. Meir may be
15 estopped by his multiple statements in different courts,
16 those do not extend to Ms. Bartalocci. There is no theory
17 under which she is estopped from making her claim to that
18 95 percent.

19 THE COURT: Mr. Meir is the judgment creditor.
20 The question of whether he made a fraudulent conveyance
21 is -- I mean, one of the differences between 273 and 274,
22 273 which is the actual fraud voidable transfer really
23 focuses have much more heavily on the transferor, in this
24 case Mr. Meir. And in some situations, you know, the
25 conduct can be so bad that that's really all you look at.

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1 And, you know, there is an innocent buyer, a good faith
2 buyer defense. But you listed Mr. Meir's intent as one of
3 the disputed issues of fact, so doesn't that put Mr. Meir's
4 conduct front and center as relevant?

5 MS. MALIK: Right. But they have to prove by a
6 preponderance of the evidence that his intent was such that
7 as a matter of law it leads to a determination that the
8 transfer was voidable under the UVTA.

9 THE COURT: He told an awful lot of people,
10 including me and another judge, that he owned 100 percent of
11 this property at a very key time in the litigation; right?

12 MS. MALIK: We still believe that if it was a
13 transfer to his spouse that was in the ordinary course of
14 their dealings even though she was an insider, that doesn't
15 matter if he intended to transfer this to her or not. It
16 was not with the intent to defraud YH Lex or hinder or delay
17 YH Lex. They have not shown based upon the transfers we
18 have shown between them for many, many years before the sale
19 of the property ever took place that -- I mean, if this were
20 a couple that Mr. Meir controlled all of their finances and
21 there was no money transferred ever from Ms. Bartalocci to
22 Mr. Meir or vice versa; yes, then there would be no question
23 of fact. However, the affidavit and the statements that we
24 have produced I believe create a question of fact whether or
25 not badges of fraud have a different explanation; because if

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1 you take the totality of circumstances, it's not the only
2 reason and not the only explanation. That is where their
3 burden of proving this by a preponderance of evidence fails.

4 THE COURT: Thank you.

5 I would like to leave some time for Mr. Meir's
6 counsel and then for Mr. Hatch-Miller, so if you can start
7 to wrap up, please.

8 MS. MALIK: Sure. I am wrapping up.

9 I do want to just address one of the slides that
10 Mr. Hatch-Miller put up. He argues in his good faith
11 defense slide that -- in his own words it states that if you
12 decide, your Honor, that respondent knew facts showing that
13 Meir had a fraudulent intent; to make such a determination,
14 it necessarily involves a credibility determination of Rane
15 Bartalocci. It's not just a credibility determination of
16 Mr. Meir, but it's also whether or not she had any knowledge
17 that this was going to render him solvent, and whether there
18 was any knowledge on both of them that this was something
19 out of the ordinary of the transfers of funds and monies
20 between the spouses throughout their 2009 to 2022, their
21 thirteen-year marriage.

22 THE COURT: I have two things for you on that.

23 First of all, as the defense you have to show both
24 good faith and the reasonably comparable value. They make
25 the point that -- and, you know, I am a little mystified

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1 about the discovery record here. Is it, in fact, true that
2 you still have not produced any of Mr. Bartalocci's emails
3 regarding the matters at issue here?

4 MS. MALIK: If you review my emails between
5 advising the Court of our progress and then advising the
6 Southern District Bankruptcy Court our progress, there was
7 never a set deadline by which we had to make that
8 production. This was not discovery. It was in response to
9 their subpoena which we did respond to timely, on March 27
10 we responded to it. However, between the review of the
11 emails and creating the privilege logs, we never really got
12 a chance to complete everything between running to District
13 Court, running to Bankruptcy Court, running --

14 THE DEFENDANT: It's not that you didn't have a
15 chance to complete everything, you didn't produce anything.

16 MS. MALIK: We have a few small folders. There
17 were so many emails that were just not responsive.

18 You are correct, your Honor, we were unable to
19 produce any of them. However, the statements --

20 THE COURT: So some of them are responsive, yet
21 they still haven't been produced even on the eve of trial.

22 MS. MALIK: From my review of the records, the few
23 that were responsive are not anything that will help his
24 case or our case. However, you are correct, your Honor, we
25 have not produced them because we weren't sure that this

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1 trial would commence today or tomorrow. There were so many
2 other things at play.

3 THE COURT: Even if it didn't, you -- so your
4 position is that I never set any date by which the parties
5 were supposed to complete their discovery for trial?

6 MS. MALIK: Correct. We attached the transcripts
7 in response to his emails and his letter. There was no
8 date. Judge Garrity never set a date. The only dates set
9 were the date by which our answer had to be filed, our
10 opposition to his summary disposition order to show cause,
11 and the date of deposition.

12 THE COURT: I have a pretty clear recollection
13 that I said I wanted to have her deposed but that I wanted
14 the targeted discovery completed so that the deposition
15 would include any documents that were going to be produced.

16 MS. MALIK: That was the initial conference. Then
17 when we had the follow-up conferences I advised of the
18 difficulty we were having in getting everything ready. Your
19 Honor said, Okay, then you would have to consent to have a
20 continued deposition. So go ahead with the first deposition
21 even though you may not have any documents.
22 Mr. Hatch-Miller said, Yes. And we did not object. That's
23 how we had left it. There was no definitive date by which
24 these documents had to have been produced.

25 THE COURT: And you took that to mean that,

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1 essentially, you wouldn't have to produce anything even up
2 until trial?

3 MS. MALIK: The documents that we are trying to
4 put together to produce to add to our exhibit lifts are the
5 bank statements which I think are more relevant than --

6 THE COURT: I'm not talking about that. I'm still
7 talking about the fact that your client, a party in this
8 case, has not produced any of her personal documents. And
9 the position you are taking now is that you didn't think
10 that that was ever due prior to trial?

11 MS. MALIK: There was no exact date. And if you
12 know the procedural history of this case, Mr. Meir filed the
13 removal notice. He had the bankruptcy proceeding filed. We
14 have just been trying to keep up with every single new
15 development on this case.

16 THE COURT: It sounds, frankly, like what has been
17 going on is that you have been pushing it while all those
18 were going on.

19 None of those things you just mentioned -- and I
20 made this resoundingly clear -- was a stay of anything.
21 Removal is not a stay. Seeking a stay from the Bankruptcy
22 Court obviously is it not yet a stay.

23 I am really kind of dumbfounded by the position
24 that because I didn't set a new date when the first date was
25 missed, that that meant there was no due date. That is

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1 really kind of astonishing.

2 I mean, we are at trial now. I am just amazed
3 that -- I mean, I don't know whether the documents are
4 important or not, but you haven't produced any of them.
5 It's not that you haven't finished, you haven't started.
6 That's pretty problematic to me.

7 All right. Let me hear now from Mr. Meir's
8 counsel. Do you have anything to add?

9 MR. RIPIN: Your Honor, we recognize that your
10 Honor has already ruled that Mr. Meir is estopped from
11 challenging the ownership of EAM and EZL, so I will not be
12 making any arguments with respect to that. And, obviously,
13 for record purposes, we disagree with your Honor's ruling,
14 and I take exception to that.

15 I did want to note with respect to legal
16 standards, the cases with respect to an actual fraud
17 conveyance under the previous fraudulent conveyance law or
18 the voidable transactions law; almost all of them started
19 off with the statement that ordinarily the issue of
20 fraudulent intent cannot be resolved on a motion for summary
21 judgment being a factual question involving the parties'
22 state of mind. The existence of actual intent as
23 distinguished from intent presumed in law is generally a
24 question of fact which precludes summary judgment. And the
25 question of whether the defendants acted in good faith or

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1 whether they actually intended to hinder, delay, or defraud
2 the plaintiff presents a triable issue of fact. The Court
3 is not to weigh credibility on a summary judgment motion.

4 Other than that, your Honor, I am prepared to
5 address the issue of the cars, but it was not clear to me
6 whether Mr. Hatch-Miller is proceeding with respect to the
7 cars today. They are the subject of another pending motion,
8 so I would just need some clarification on that point.

9 THE COURT: I think I have what I need on the car
10 front.

11 MR. RIPIN: Well, if your Honor intends to rule
12 today, then I would go into it with respect to the cars.

13 THE COURT: The sense I am getting is that this
14 proceeding is really going to be more about the proceeds.
15 The cars strike me as something that -- certainly as to one
16 of them is better handled in the other case.

17 In any event, they're not the centerpiece. I
18 don't think anybody is going to go to trial on that
19 tomorrow, so I don't think you need to worry about that
20 argument yet. But when I take a break, I will come back and
21 let you know if I feel differently on that.

22 MR. RIPIN: I would just ask that if your Honor is
23 inclined to render a ruling today with respect to the cars
24 that I be permitted to say my piece.

25 THE COURT: Understood. Will do.

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1 All right. Mr. Hatch-Miller before I give you a
2 few minutes to respond, I'm going to take a short break for
3 both me a Rachel to rest for a second. It will just be a
4 couple minutes and we'll be right back with you.

5 MR. HATCH-MILLER: Thank you.

6 (Short recess taken)

7 THE COURT: Mr. Hatch-Miller, I will give five
8 minutes.

9 MR. HATCH-MILLER: I don't need five, your Honor.
10 I have two points, unless there's questions.

11 THE COURT: Okay. Go ahead.

12 MR. HATCH-MILLER: I have a point about the timing
13 of the signing of the October 21 document.

14 Mr. Boles, can you show the deposition on the
15 screen?

16 Ms. Bartalocci did not say -- I just want to make
17 sure this is clear. Ms. Bartalocci did not say it was
18 signed before October 21. She said she didn't know when it
19 was signed:

20 Have you ever seen another version? She couldn't
21 remember.

22 Was there an earlier version with Meir as the
23 member? She didn't know about it.

24 Go to the next page. No, keep going down. It's
25 much farther down. Sorry about this. There it is.

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1 She never heard of the lawyers involved. And when
2 she was asked about the one from October 21, she said she
3 signed it. What year did you sign it? I don't recall.

4 So there is nothing in the record to contradict
5 that this document first came into existence in
6 October 2020.

7 Then the only other point, your Honor --
8 Mr. Boles, could you show Section 277(f), which is the
9 ordinary course of business defense that we heard a lot
10 about.

11 That's a defense to a claim under Section 274(b).
12 If you go to 274(b), it's a different statute, your Honor.
13 This is not a defense to an intentional fraudulent transfer
14 claim. It's a defense to this different claim about a
15 transfer to an insider for an antecedent debt.

16 Go now to 273 of the statute.

17 273(a) is the actual fraud statute, so the defense
18 that you heard so much about, your Honor, doesn't apply to
19 this claim.

20 That's all I have, your Honor.

21 THE COURT: Okay. Thank you very much.

22 MS. MALIK: Your Honor, if I might address that
23 one point real quick?

24 THE COURT: Okay.

25 MS. MALIK: The case we cited, the Georgia Federal

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1 District case, that is the one that spoke about the transfer
2 defense because 274 and 273 are no longer -- you know, now
3 New York has adopted the UVTA, so that's why we used that.

4 THE COURT: Well, 274 and 273 are the UVTA
5 sections. That defense is as a defense to the constructive
6 fraud -- the constructive claim under 274. There is still a
7 defense. There is still a good faith defense to 273, a good
8 faith acquirer for fair value or whatever the right words
9 are. That defense applies to 273, but it is true that the
10 ordinary course of business defense is a defense to 274.
11 And they have made claims, to be fair, under both 273 and
12 274. I think Mr. Hatch-Miller's point is that this one is
13 not a defense to the 273 claim.

14 All right. Thank you all very much.

15 I am going to grant summary judgment on the claim
16 with respect to the transfer of the interests in EZL, then
17 in the alternative, the subsequent transfer of the proceeds
18 of the sale.

19 I do not have time right now to give you all the
20 reasoning. I will ask you to come back virtually tomorrow.
21 We are not going to have the trial tomorrow. You were going
22 to come back at 10:00. I would ask that we do it at 11:00,
23 and I will give you a bit more of a description of how I got
24 where I got.

25 At that point we can also talk about what to do

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1 with these stray issues regarding cars. I am not entirely
2 sure how they all fit in here. I did hear at one point that
3 at least to have cars were acquired with the proceeds, so
4 there is an overlapping amount. We can get into more of
5 that later. I don't want to give --

6 MR. HATCH-MILLER: Your Honor, I can probably help
7 resolve all of that quickly. My client propos would propose
8 or I propose the following -- I have authority to propose
9 the following:

10 We will drop right now with prejudice the claim
11 for the transfer of the three cars. Their defense is those
12 were purchased with the proceeds. We want judgment entered
13 as quickly as possible, then we will seek turnover of those
14 cars.

15 As to the car claim against Mr. Meir, it's fully
16 briefed in the other case, so we would ask that the portion
17 of the petition in this case seeking turnover of the Aston
18 Martin be dismissed without prejudice to pursue the pending
19 motion in the other case.

20 With that, I think that wraps up everything in the
21 case other than an attorneys' fee application.

22 THE COURT: That's fine. I figured that might be
23 the way the car issue would resolve itself.

24 Okay. We will send an invite. I guess I can say
25 that I know you are all free tomorrow at 11:00 since you

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1 were supposed to be here. So we will send around an invite
2 for 11:00, and I will give you the reasoning behind the
3 decision. We will then go from there.

4 Thank you very much. I know you have all been
5 working very hard. It would have been ideal to give you
6 this decision a little sooner than now, but, obviously,
7 things moved quickly, and I appreciate your efforts.

8 I will see you all tomorrow at 11:00.

9 MS. MALIK: Thank you, your Honor.

10 THE COURT: Thank you.

11 (The following decision was given May 3, 2022.)

12 THE COURT: Good afternoon, everyone.

13 I guess you all were on with the First Department.
14 I actually don't know that it would have mattered because
15 all I was going to do was just complete the job I started
16 yesterday afternoon and give the explanation for what I have
17 already done; but since you now had this conversation, can
18 somebody please report on the current state of play at the
19 First Department?

20 MR. HATCH-MILLER: Justice Kennedy advised us that
21 the stay is lifted and that there will be an order docketed
22 shortly. It reverses the thing that was signed this
23 morning.

24 THE COURT: Ms. Malik, is there anything to add on
25 that?

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1 MS. MALIK: No. That's what happened, your Honor.

2 THE COURT: Okay.

3 Again, all I plan to do today because we ran out
4 of time yesterday is to give some explanation for the
5 decision that I gave yesterday. So unless there is
6 something else that I need to do first, I was just going to
7 go ahead and do that.

8 As discussed yesterday, the motion for summary
9 judgment is granted with respect to the petition under
10 CPLR 5225(b), and, in particular, on Petitioner's claims
11 under Debtor & Creditor Law, DCL 273.

12 CPLR 5225(b) authorizes the institution of a
13 special proceeding against a transferee of property from a
14 judgment debtor where it is shown that the judgment debtor
15 is entitled to the possession of such property or that the
16 judgment creditor's rights to the property are superior to
17 those of the transferee.

18 In a summary proceeding such as a turnover
19 proceeding, a Court is authorized to make a summary
20 determination upon the pleadings, papers, and admissions to
21 the extent that no triable issues of fact are raised.
22 That's from, among other courts, the Centerpointe case,
23 96 AD3d 1401, Fourth Department, 2012. A Court in a
24 turnover proceeding will apply summary judgment analysis,
25 and absent a factual issue requiring a trial, the matter

Decision

1 will be summarily determined on the papers presented. Same
2 case.

3 I think the parties agree that the summary
4 judgment standard is the appropriate one to apply here.

5 Now, before I get to the details and background,
6 the underlying lawsuit against Mr. Meir and two codefendants
7 began, simply, with a motion for summary judgment in lieu of
8 complaint. The judgment against him was relatively
9 straightforward in the amount of roughly \$20 million based
10 on a personal guaranty he executed in favor of Petitioner,
11 YH Lex, on a loan to the commercial real estate firm in
12 which Mr. Meir was a managing principal.

13 An early flashpoint related to the sale of his
14 house in the Hamptons which Petitioner sought to attach,
15 that is the very property that is the subject of this
16 proceeding. Based on representations that persuaded me that
17 proceeding with the proposed sale of the home would actually
18 be a positive event for creditors, and having been assured
19 that this was Mr. Meir's asset and that the proceeds would
20 be available to satisfy a judgment if that occurred and
21 that, in any event, Mr. Meir had millions more in ready
22 assets available to satisfy a judgment, I denied
23 Petitioner's motion. In retrospect, my reliance on Mr. Meir
24 and his counsel was misplaced. After the house was sold and
25 judgment was entered against Mr. Meir, a new narrative

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1 surfaced from him that beneficial ownership of the home, in
2 fact, belonged to his spouse, Ms. Bartalocci, through an
3 entity by virtue of what turned out to be an October 2020
4 signed operating agreement for an entity called EZL. That
5 agreement was signed months before the hearing in front of
6 me and backdated to 2019 which was the date of the original
7 agreement confirming that Mr. Meir, in fact, owned the
8 entity that owned the home in which he had represented not
9 only to me but also to another judge in Suffolk County in a
10 related case.

11 So that new narrative then forced Petitioner to
12 pursue Ms. Bartalocci which they first did in the context of
13 the underlying action against Mr. Meir in 2021 beginning
14 with various fraudulent conveyance claims that were asserted
15 in August of 2021 culminating in a January 2022 hearing.

16 The record shows that Ms. Bartalocci, represented
17 at the time by the same counsel who represented Mr. Meir
18 throughout the litigation, did not take steps to bring
19 evidence or facts to light that might explain the chain of
20 events that led to her ownership of the Hamptons home. One
21 would have thought Mr. Meir would have had every incentive
22 to make such arguments in his own behalf as well as his
23 wife's if they had any merit, and there were many
24 opportunities for both Mr. Meir and Ms. Bartalocci to do so.
25 Instead, subpoenas were resisted and actions in Florida

Decision

1 initiated to shift the forum for determination of some of
2 the issues that were being litigated in this court, most
3 importantly the ownership of the EZL entity that owned the
4 Hamptons house.

5 Ultimately, in that January 2022 hearing I
6 concluded that Mr. Meir was estopped from challenging his
7 ownership of the entity that owned the Hamptons home given
8 his representations to me and to the Suffolk County Supreme
9 Court in another action concerning the property, both of
10 which representations led to decisions in his favor, but was
11 again persuaded by counsel to give Ms. Bartalocci the
12 benefit of the doubt; so I declined to enter a turnover
13 order against her, although I believed I could have done so
14 based on the record. Instead I concluded it would be better
15 practice for there to be a separate proceeding in which she
16 could participate as a party. That proceeding, which is
17 this case, began in February of 2022.

18 Once again my reliance was misplaced. Given that
19 the issues were relatively narrow and contained, the plan
20 was for a period of targeted discovery followed by a
21 hearing. Based on the evidence, the discovery was to focus
22 mostly on events and facts that would be in Ms. Bartalocci's
23 possession, including her -- any payments she had made to
24 Mr. Meir or any other financial arrangements that might be
25 relevant here.

Decision

1 From the outset, Petitioner mainly just wanted to
2 depose Ms. Bartalocci as the documentary record appeared to
3 be fairly straightforward. What followed was the
4 continuation of a frustrating process in which procedural
5 machinations including forays into bankruptcy court by
6 nonparties and two failed attempts to remove this case to
7 are federal court, both of which were quickly denied,
8 prevailed over the substantive progression of the case.

9 I was particularly astonished to learn yesterday
10 that Ms. Bartalocci has still not produced any email
11 discovery in this case despite her heavy reliance on a good
12 faith defense on which she has the burden of proof.
13 Counsel's suggestion that there was no requirement or
14 deadline for such production is flatly wrong.

15 Petitioner also provided substantial and growing
16 evidence that despite claims of penury by Mr. Meir, money
17 was being spent by the couple at an alarming and seemingly
18 escalating rate. It was and is clear to me I needed to get
19 this matter to resolution promptly so that the parties'
20 rights could be declared one way or another and that both
21 sides had plenty of time to prepare their cases if they had
22 focused on doing so. And, again, the information needed
23 from Ms. Bartalocci's purported defenses are or should be in
24 her possession or could have been obtained from her banks or
25 other parties well in advance of trial. At this point,

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1 further delay was and is unacceptable and entirely
2 unjustified. Nevertheless, even then I agreed to give
3 Ms. Bartalocci and her counsel the benefit of the doubt. I
4 agreed to put off the trial, but only if Respondents posted
5 a bond or other security to ensure against dissipation of
6 assets necessary to satisfy a judgment if that was the
7 result of the trial. They declined, so we proceeded toward
8 summary judgment and, if necessary, a trial. Here we are.

9 So the motion for, effectively, summary judgment
10 was made, fully briefed. I then gave each side an
11 opportunity to file supplemental briefs to address arguments
12 that had been raised by the other side, and that all led to
13 the oral argument yesterday.

14 Based on the full record, I find that YH has
15 established a prima facie case under DCL 273(a)(1) which
16 provides for avoidance of any transfer made by a debtor where
17 the transfer was made with actual intent to hinder, delay,
18 or defraud any creditor of the debtor. As the Second
19 Department noted in 5706 Fifth Avenue versus Louzieh, 108
20 AD3d 589, applying the predecessor statute to DCL 273,
21 direct evidence of fraudulent intent is elusive and, thus,
22 Courts will consider badges of fraud which are circumstances
23 that accompany fraudulent transfers so commonly that their
24 presence gives rise to an inference of intent. The Court in
25 that case reversed the trial Court and granted summary

Decision

1 judgment to the creditor based on evidence that the debtor
2 transferred property to his wife for inadequate
3 consideration and continued to reside in the premises. The
4 Court found that defendant's conclusory assertions
5 explaining the transfer were insufficient to raise a triable
6 issue of fact. The same is true here.

7 The threshold question is whether there was a
8 transfer by Mr. Meir to Respondents Bartolacci and Ermitage
9 which there clearly was. In fact, there were two of them.

10 First, in October 2020 based on a clear
11 documentary record, Mr. Meir and, seemingly, Ms. Bartalocci
12 signed an operating agreement providing that Ms. Bartalocci
13 would hold 95 percent of the membership interests in an
14 entity called EZL which, in turn, owned 95 percent of the
15 Hamptons home. Prior to that time, the evidence clearly
16 shows that Mr. Meir was the sole member of EZL by virtue of
17 an operating agreement from March 2019. So that was one
18 transfer. And second, once the Hamptons house was sold in
19 2021, Mr. Meir as managing member of EZL directed that the
20 proceeds be paid to Ms. Bartalocci and Ermitage despite
21 having represented to this Court months earlier that he
22 owned the property and that these proceeds would not be
23 dissipated.

24 So there were transfers. The next issue is
25 whether one or both of them were voidable transfers within

Decision

1 the meaning of Debtor & Creditor Law Section 273.

2 To determine actual intent, DCL 273(b) lists
3 eleven factors for consideration. Based on case law from
4 other jurisdictions and common sense, not any one factor is
5 controlling. Rather, the Court is to look at the entire
6 circumstances surrounding the transfers. Here the factors
7 weigh overwhelmingly in Petitioner's favor.

8 The first factor is whether the transfer was to an
9 insider. There is no dispute about that. An insider in
10 dealing with an individual includes a relative of the
11 debtor, so here the transfer was to Mr. Meir's wife.

12 The second factor is whether the debtor retained
13 possession or control of the property transferred after the
14 transfer. Here again, Mr. Meir retained control of the
15 property following the transfer by entering into
16 transactions and representing that he was the sole owner.
17 Additionally, under this new EZL operating agreement,
18 Mr. Meir was still the managing member and could only be
19 removed with his own consent. And with respect to the
20 property, it's certainly the case that from October 2020 on,
21 the time of the first transfer, Mr. Meir was continuing to
22 exercise dominion over the house and engaging in
23 transactions. Then after the second transfer of funds to
24 Ms. Bartalocci and to Ermitage, Mr. Meir, based on the
25 record in front of me, continued to receive the fruits of

Decision

1 that transfer as well in that the marriage is ongoing and
2 there is a -- even as Ms. Bartalocci's counsel pointed out,
3 there is a free flow of funds back and forth between the
4 spouses. So it's similar to the Fourth Department case I
5 just referenced in that regard, 5706 Fifth Avenue.

6 The third factor is whether the transferor
7 obligation was disclosed or concealed. That is very much
8 the case here. As noted, Mr. Meir appeared in this court
9 and represented that this was his property. As noted, the
10 transfer of the 95 percent ownership or the purported
11 transfer of the 95 percent ownership of EZL to
12 Ms. Bartalocci happened approximately October 21, 2020,
13 which was months before the hearing in front of this Court.
14 That fact was concealed from this Court at a key moment in
15 this case when Meir's ability to proceed with the sale of
16 the property was being threatened as Mr. Meir had
17 represented that he was the sole owner of EZL. So this was
18 material concealment from -- at a key point in this case.

19 The next factor is whether the transfer was
20 made -- whether before the transfer was made the debtor had
21 been sued or threatened with suit. Again, that is strongly
22 in favor of a finding of fraud here. YH sent a series of
23 default notices to Meir and to his company beginning in
24 August 2020 through October 2020 advising him of his
25 liability under his personal guaranty and that a lawsuit

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1 would be and soon would be filed. The purported transfer to
2 Bartalocci took place in October, and YH filed this suit on
3 November 3. There is no doubt Mr. Meir was threatened with
4 suit at the time of the transfer.

5 The next factor of the transfer is was it
6 substantially all of the debtor's assets. Mr. Meir seems to
7 be representing here and at his deposition that this was
8 substantially all of his assets along with the cars, but
9 it's unclear if that is truly the case. He answered point
10 blank a question at his deposition and suggested that the
11 Hamptons house was it.

12 The next question -- the next factor is whether
13 the debtor absconded after the transfer. I don't know that
14 moving from New York to Florida is absconding as such, but
15 it was a movement out of the jurisdiction. In fact, the
16 move, even though within the United States, did present
17 potential jurisdictional issues, it lead to satellite
18 litigation in Florida courts. So, you know -- and
19 especially, you know, I think one of the things that was
20 described at that hearing early on was that the money was
21 not going to leave the jurisdiction and be hard to find, and
22 that's exactly what happened. So I think that, you know,
23 that fits within that category of the debtor absconding
24 after the transfer.

25 The next factor is whether the debtor removed or

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1 concealed assets. Here I think it is fair to say that
2 Mr. Meir has concealed assets and that the proceeds the
3 40 Meadow Lane sale were transferred out of state through
4 Ermitage. Further, he represents to the Court now that he
5 is -- seems to be insolvent yet appears to be spending
6 thousands of dollars in ways that is inconsistent with that
7 representation. So you have somebody who seems to have
8 transferred their main asset yet continues to be living
9 through his wife on the proceeds of that sale.

10 The next factor is whether the value of the
11 consideration received by the debtor was reasonably
12 equivalent to the value of the asset transferred or the
13 amount of the obligation incurred. This one is a more
14 involved question.

15 At the most basic level, in the October 2020 EZL
16 operating agreement signed in October 2020 which was the
17 initial transfer, Ms. Bartalocci received a 95 percent
18 interest in EZL in exchange on its face for a \$95 capital
19 contribution which by itself, obviously, cannot be
20 considered reasonably equivalent value. And Ms. Bartalocci
21 asserts a defense under another section of the statute which
22 I will get into later, but the evidence simply is not there
23 to show reasonably equivalent value.

24 There is an argument that she hasn't had time to
25 dig up the evidence to show exactly what she contributed to

Decision

1 the construction and maintenance of the home. I reject
2 that. I think the record will make that very clear. But
3 even if there had been some contributions, I do not think
4 that the defense has raised a triable issue of fact that any
5 prior contributions would be reasonably equivalent to the
6 value of the asset transferred which in October of 2020 was
7 a share of the Hamptons house with what turned out to be
8 equity in the rough amount of \$12.5 million.

9 So even today after, apparently, receiving
10 documents close to trial, there is really been no evidence
11 presented; but I think even if I credit the notion that
12 Ms. Bartalocci as part of the marriage contributed some
13 portion to the -- some amount of money to the upkeep and
14 construction of the house, it would still not be reasonably
15 equivalent to the value of the asset transfer.

16 I would note in a recent opinion by Justice
17 Masley, Board of Managers of 11 Beach Street versus HFZ,
18 which, parenthetically, is the real estate developer also
19 involved in this case. She went through all of these
20 factors and noted on this front that transactions made with
21 actual intent to hinder, delay, or defraud any creditor are
22 voidable without regard to the debtor transfers, financial
23 condition, or consideration received by the debtor. Again,
24 here all of the other factors point in favor of a voidable
25 transfer, so I don't need to go quite that far.

Decision

1 The next factor is whether the debtor was
2 insolvent or became insolvent shortly after the transfer was
3 made or the obligation was incurred. This overlaps an
4 earlier claim. According to Meir, again, one of his main
5 assets was his beneficial ownership in this Hamptons
6 property. The specific question asked of him at his
7 deposition, which is NYSCEF 602 at Page 185:

8 "QUESTION: Other than the assets of HFZ, the
9 40 Meadow Lane property, what are your other significant
10 assets, if any?

11 "ANSWER: Nothing."

12 I think it was clear at this point that the assets
13 of HFZ don't seem to have any tangible value. It was really
14 all in that property.

15 The next factor is whether the transfer occurred
16 shortly before or shortly after a substantial debt was
17 incurred. Again, this evokes an earlier phrase. Here the
18 transfer occurred shortly before creditor YH sought to hold
19 Meir liable under a guaranty. So the default on the debt
20 occurred in August 2020 and the liability was clearly right
21 in front of his eyes at the time of these transfers.

22 The final point referenced in the statute is not
23 relevant here. It's whether the debtor transferred the
24 essential assets of the business to a lienor or transferred
25 the assets to an insider of the debtor. That's just not

Decision

1 applicable here.

2 So the overwhelming evidence presented, certainly
3 enough for a prima facie case, supports that ten of the
4 eleven factors give -- really all ten of the relevant
5 factors give rise to a strong inference of actual intent to
6 defraud. Once there is clear evidence and clear inference
7 of a fraudulent intent, the non-moving party, in this case
8 Ms. Bartalocci and Ermitage, may not rest upon the mere
9 allegations or denials of its pleading but must instead show
10 a genuine dispute by citing to particular parts of materials
11 in the record including depositions, documents,
12 electronically-stored information, affidavits or
13 declarations, stipulations, admissions and the like -- and
14 not conclusory ones -- to show that there is a genuine
15 dispute of fact. So let's turn to that now.

16 I find that respondents have failed to raise any
17 genuine issues of material fact. First, they make some
18 attempt to argue that there were no transfers. Again, this
19 argument which we went through at some length during oral
20 argument yesterday is just flatly contradicted by the
21 documentary evidence.

22 We have two operating agreements for EZL. They
23 both seem to have a date in the 2019 timeframe. But the
24 documentary evidence is crystal clear what happened. The
25 document that was signed in 2019 was version of the

Decision

1 operating agreement in which Mr. Meir was the sole owner.
2 The communications in 2020 leading up to the October 20 back
3 and forth between Mr. Meir and counsel make it clear that
4 the agreement was modified in October of 2020 to change the
5 ownership of EZL such that Ms. Bartalocci owned 95 percent
6 of it. Then there's an email exchange on October 20 where
7 signature or executable versions were printed out and then
8 circulated of with signatures on them.

9 Ms. Bartalocci testified she doesn't remember what
10 year they were signed, but I think the documentary evidence
11 is very clear that that agreement was signed in October --
12 at the earliest, October 21 of 2020. So that, seems to me,
13 definitively shows that there was a transfer.

14 Now, in her deposition she testified that the EZL
15 and the Hamptons property was hers from the start; that,
16 quote, "we," close quote, bought the property and it was a
17 birthday present for her. She went on to testify that she
18 had no idea who paid for the house when it was purchased and
19 didn't recall if she signed a contract to buy the house but
20 she always thought of it as her house.

21 Ms. Bartalocci also testified that she had no
22 knowledge of the property being transferred to HFZ and then
23 back again to Mr. Meir, which is another fact I didn't get
24 into; but there was a shift in the ownership between Meir
25 and HFZ for a time.

Decision

1 Ms. Bartolacci's belief that she was the owner of
2 the property from the beginning is contradicted flatly by
3 the documentary evidence and by the deposition testimony of
4 her husband and his counsel -- and at the time hers -- his
5 counsel's representations to this Court. Meir testified
6 that he bought the house and that the contract was under his
7 name; that prior to closing, he assigned it to EAM in 2013;
8 that EZL was created in 2019; and that he was aware of
9 various documents over the years transferring the ownership
10 of EAM from HFZ to him and EZL. While Mr. Meir testified
11 that it was always the plan that he and his wife own EZL,
12 neither Mr. Meir nor Ms. Bartalocci had been able to provide
13 any evidence supporting that contention, and the record at
14 this point is clear.

15 Rather, discovery has further revealed that this
16 purported superseding operating agreement, as I said, was
17 created in October 2020. Even assuming Ms. Bartalocci
18 actually signed that document, there can be no argument that
19 this was anything other than a transfer under the UVTA. Any
20 distributions arising afterwards are directly related to
21 that transfer. And when the proceeds came in, there was yet
22 another transfer because Mr. Meir, the judgment debtor, had
23 the discretion to direct the payment of those funds wherever
24 he decided. In fact, there is an email in the record making
25 that point crystal clear. And despite the existence of the

Decision

1 judgment, despite the representations made to this Court, he
2 made the decision to have those funds sent to Ms. Bartalocci
3 and to Ermitage.

4 The principal defense that Ms. Bartalocci raises
5 is under Section 277(a) of the Debtor & Creditor Law. That
6 can be a defense to an otherwise voidable transfer under
7 Section 273. It provides specifically that a transfer or
8 obligation is not voidable under 273(a)(1) against a person
9 that took in good faith and for a reasonably equivalent
10 value given the debtor or against any subsequent transferee
11 or obligee.

12 This defense protects a bona fide purchaser for
13 value. That is the typical scenario in which it arises.
14 Transferees who have exchanged equally equivalent value
15 without knowledge of the debtor's intent and avoidance of
16 creditors are protected from that remedy. Basically, they
17 can keep that which they paid for.

18 Here there has been no showing by Mr. Meir or
19 Ms. Bartalocci that there was reasonably equivalent value
20 received by Meir for the transfer of the EZL interests or
21 for the receipt of the proceeds of the sale. Ms. Bartalocci
22 asserts that she made expenditures over time totaling
23 approximately \$400,000 to \$600,000 per year or an estimated
24 \$5 million of own money towards the home during the
25 purchase, construction, and upkeep phases. But, again, at

Decision

1 this point we have been promised evidence of that and
2 haven't seen anything. I think there was plenty of time to
3 produce it. I do think, though, that even if those were
4 proven out, it simply does not fit within the fact patterns
5 that have ever been used to support a defense under this or
6 equivalent statutes.

7 DCL 272 provides that value is given for a
8 transfer if, in exchange for the transfer, property is
9 transferred or an antecedent debt is secured or satisfied,
10 but value does not include an unperformed promise made
11 otherwise than in the ordinary course of the promisor's
12 business to furnish support to the debtor or another person.

13 There is no case law in New York interpreting
14 whether under the UVTA reasonably equivalent value can
15 include household expenses or expenditures to property.
16 Ms. Bartalocci cites to a number of cases that arise under
17 the equivalent of DCL 274 which are the constructive fraud
18 cases. They include *FDIC versus Amos*, 2017, US District
19 Lexis 118291.

20 Those cases to me -- and I have read all of
21 them -- are inapposite. First of all, they involved
22 allegations under the constructive fraudulent conveyance
23 statute, not the actual fraud statute. That distinction is
24 relevant in that under 273 fraud, which is what we have
25 here, is Ms. Bartalocci's or respondent's burden to

Decision

1 establish by a preponderance of the evidence a defense of
2 good faith and reasonably equivalent value. A claim
3 under 274 for constructive fraud, by contrast the absence of
4 reasonably equivalent value is an element of the claim
5 itself. And, secondly, the transfers in the cases cited by
6 the respondents were similar in size and nature to the
7 alleged marital contributions by the receiving spouse. It
8 was a clear sense of unfairness about one spouse supporting
9 the other and then voiding the transfer to pay it back in
10 kind.

11 There was nothing remotely similar in those cases
12 to the transfer -- the transfers at issue here which was,
13 effectively, the beneficial ownership of the equity in a
14 \$40 million home worth roughly \$10 million or \$12.5 million
15 on the eve of a lawsuit based on a series of as yet
16 unsubstantiated expenses over the course of a number of
17 years, including normal upkeep of the home. There is just
18 nothing remotely similar to the cases that have been cited.

19 I found of interest and, sort of, a useful
20 rejoinder to that a case from Michigan, Dillard versus
21 Schlusel, Mich. App. 429, Michigan Court of Appeals from
22 2014, rejecting a broad reading of the outcome in the United
23 States versus Goforth case which the defendant relies on
24 which, quote, "would freely permit a debtor and his or her
25 spouse to avoid liability for an otherwise fraudulent

Decision

1 transfer simply by spending the money on themselves," close
2 quote.

3 When viewing the evidence in the light most
4 favorable to Ms. Bartalocci and even assuming she could have
5 come up with some evidence during the trial to support the
6 claim that she paid substantial funds toward construction
7 and upkeep, and even assuming that the past expenditures
8 toward the property could be considered value under New York
9 law, it still does not show and is not sufficient to create
10 a material issue of fact in support of a defense that her
11 contributions were of reasonably equivalent value to the
12 \$12.6 million of equity that she received right on the
13 edge of -- on the verge of this lawsuit being filed.

14 Again, those assumptions that I just made, I
15 think, are not really accurate because I won't recount all
16 of the circumstances; but if there was evidence to show the
17 substantial payments, they were in Ms. Bartalocci's
18 possession or in her control. During the roughly nine
19 months in which allegations of fraudulent conveyance had
20 been made, both Ms. Bartalocci and Mr. Meir had an
21 extraordinarily strong incentive to dig up this information
22 from their own banks. And, frankly, the first time I heard
23 any detail at all about Ms. Bartalocci's premarital wealth
24 and her contributions to this house were in the last week or
25 so. And the notion that there wasn't enough time to gather

Decision

1 that, I just reject it.

2 I have been watching this case for a long time. I
3 know Ms. Bartalocci hasn't been a party until February.
4 However, even if that were the beginning date, there was
5 plenty of time to get the information, especially when you
6 add in the months and months before when there was every
7 incentive for both of -- all the respondents, frankly, to
8 gather this information, it rings very hollow in my ears to
9 hear that there was not enough time to find out -- to prove
10 information that was readily within her control.

11 Finally, there's the question of whether even if
12 it had been reasonably equivalent value was Ms. Bartalocci
13 acting in good faith, which is the second half of the
14 de-finance. Ordinarily that would be a fact issue. I think
15 here I am very troubled by the fact that somebody who is
16 asserting a claim of good faith has failed to produce a
17 single document during discovery dealing with emails or any
18 other kinds of documents around the time of the transfers,
19 before the transfers, or since the transfers. There would
20 be no way of knowing whether there are documents one way or
21 the other that would support this claim. It does, sort of,
22 facially seem -- it's a bit farfetched that all this was
23 going on and Ms. Bartalocci had absolutely no idea. Again,
24 normally good faith you would permit to go to a jury, but
25 not where the party asserting that defense has failed to

Decision

1 comply with discovery as utterly as occurred here. So that
2 is an independent basis for denying that defense as a matter
3 of law.

4 The next defense that the respondents have raised
5 is under Section 277(f) of the Debtor & Creditor law.
6 Reliance on that defense is unavailing. That defense is
7 relevant only to a claim brought under DCL 274(b) for
8 constructive fraud. It provides that a transfer is voidable
9 which provides that -- I'm sorry. 274 provides that a
10 transfer is voidable if it was made to an insider for
11 antecedent debt, the debtor was insolvent at the time, and
12 the insider had reason to believe that the debtor was
13 insolvent. The defense under 277(f) provides that a
14 transfer would not be voidable under that section if made in
15 the ordinary course of business or financial affairs of the
16 debtor and the insider.

17 Now, putting aside the fact that that defense
18 really is not a very good fit in any circumstances in this
19 marital context that we are talking about, but it is
20 completely irrelevant here because the only claim on which
21 summary judgment is being granted is the claim under DCL
22 273, and this is not a defense to that action.

23 I should note that at one point in her main
24 opposition to summary judgment, the respondents claimed
25 rights to a marital credit under the Domestic Relations Law.

Decision

1 During oral argument on the motion for summary judgment
2 counsel conceded, I think correctly, that such an argument
3 has no merit. The spouses do not have a right to marital
4 credit under the Domestic Relations Law while they are still
5 married. In fact, the default rule is that property of one
6 spouse, if it's marital property, is subject to the
7 creditors of either spouse.

8 I am just looking through my notes to see if there
9 is anything else I want to add.

10 Okay. Accordingly, I am granting summary judgment
11 under 273 of the DCL and will ask petitioner to submit a
12 proposed judgment.

13 I would ask to meet and confer briefly and try to
14 get comments from the respondents, but I think this is
15 pretty straightforward.

16 The statute also provides for attorneys' fees, so
17 you can include that in the judgment. There will have to be
18 some process to arrange that.

19 As Mr. Hatch-Miller stated on the record, I think
20 the claims with respect to automobiles and the like have
21 been put to the side for now, so I think this wraps up most
22 if not all of what is in this case. I will let
23 Mr. Hatch-Miller tell me if I have missed any claims.

24 MR. HATCH-MILLER: You have not, your Honor.

25 The Mercedes and two Porsches that we allege were

Decision

1 additional fraudulent transfers, we will dismiss that part
2 of the petition; and upon entry of judgment, we plan to
3 pursue collection of those cars from Ms. Bartalocci or
4 Ermitage, whoever claims to own them.

5 As for the claim against Mr. Meir for turnover of
6 the Aston Martin, that motion is fully briefed and awaiting
7 your decision under the other docket number.

8 As for the claim for attorneys' fees; as you have
9 seen, your Honor, and commented, any opportunity for delay
10 will be taken advantage of and so --

11 THE COURT: We lost you, Mr. Hatch-Miller. You
12 were talking about attorneys' fees and then you froze.

13 MR. HATCH-MILLER: Am I back?

14 THE COURT: You are back.

15 MR. HATCH-MILLER: On the attorneys' fees, given
16 the amount of the judgment and the difficulties we faced in
17 judgment collection so far, we've decided it's in our best
18 interest to speed up the process of entry of judgment; so,
19 your Honor, we will seek the statutory costs but our
20 proposed judgment will be for the amount of the April 5
21 transfers plus interest. We will not be going through the
22 process of trying to agree on reasonable attorneys' fees or
23 then having to come back for a hearing because, frankly,
24 that will create more opportunity for delay.

25 THE COURT: That's fine. So, then, it sounds like

Reporter Certification

1 the proposed judgment will be extremely simple. I would ask
2 you to submit a proposed judgment as soon as possible.

3 MR. HATCH-MILLER: We will do it this week, your
4 Honor.

5 THE COURT: Okay.

6 Anything further from the respondents?

7 MS. MALIK: No, your Honor. Thank you.

8 MR. RIPIN: No, your Honor.

9 THE COURT: Okay. Therefore, we are adjourned.
10 Thank you very much.

11
12 * * *

13 The foregoing is hereby certified to be a true and
14 accurate transcript of the proceedings.

15
16 Rachel Simone-Ivanac

17 Rachel C. Simone-Ivanac
18 Senior Court Reporter
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"ANSWER: [1]
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"QUESTION: [1]
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HATCH-MILLER
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MS. MALIK: [43]
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