

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

**TOCCI CORPORATION AND WILLIAM TOCCI
Intervenor-Plaintiffs / Cross-Appellants**

v.

**JOHN TOCCI,
Defendant-Appellee**

**APPLICATION OF APPELLANTS
TOCCI CORPORATION AND WILLIAM TOCCI
FOR DIRECT APPELLATE REVIEW**

**Appeals Court Docket No. 2021-P-0674
On Appeal from the Superior Court, Middlesex County**

Katherine S. Kayatta (BBO# 675487)
kkayatta@pierceatwood.com
Gavin G. McCarthy (BBO# 657522)
gmccarthy@pierceatwood.com
Kyle Noonan (BBO# 705713)
knoonan@pierceatwood.com
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Tel. 207-791-1100
Fax. 207-791-1350

I. REQUEST FOR DIRECT APPELLATE REVIEW.

Pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure, Intervenor-Plaintiffs / Appellants Tocci Corporation and William Tocci hereby request direct appellate review of the Middlesex County Superior Court's judgment. Direct appellate review is appropriate because this appeal raises two novel questions of law:

First, whether the equitable remedy of surcharge authorizes a court to order reimbursement of the prevailing party's attorneys' fees and costs from a defendant liable for breach of fiduciary duty to a close corporation. The trial court did not analyze that question, stopping after noting that no Massachusetts court had yet addressed that precise question. This Court should grant direct review to determine whether surcharge can be applied in the close corporation context that is based on trust law, under the same analysis employed by the United State Supreme Court in recognizing the applicability of surcharge in the ERISA context. *See CIGNA Corp. v. Amara*, 563 U.S. 421, 442 (2011).

Second, whether all relevant factual findings made following a bench trial in one phase of a case are conclusively established for later phases. The trial court, while recognizing that the findings from an earlier trial were the law of the case, limited the binding factual findings from the earlier trial to a small fraction of the actual findings, including omitting dozens of factual findings demonstrating in

detail how John Tocci intentionally sought to cover up his wrongful takings of money from Tocci Corporation. *See* Decision and Order dated January 6, 2020 (Dkt. No. 132) (Exh. D).¹ This Court should grant direct review to determine whether all of the findings should have been conclusively established.

The Supreme Judicial Court should accept direct review of this appeal and answer these novel questions of law.

II. PRIOR PROCEEDINGS.

A. Tocci Corporation's claims.

On April 4, 2014, John Tocci ("John") and Tocci Building Corporation ("TBC") filed a complaint against Michael Tocci ("Michael") seeking declaratory and injunctive relief to prevent Michael from reviving Tocci Corporation, which John had administratively dissolved in the 1990s. Michael filed an answer and counterclaim.

On March 23, 2016, Tocci Corporation and William Tocci ("William"), individually and derivatively on behalf of Tocci Corporation, filed their intervener complaint. On June 29, 2017, Tocci Corporation filed its second amended intervener complaint (the operative complaint in this case), which included claims for conversion (Counts I, II); breach of fiduciary duty (Count III); fraud (Count

¹ Exhibits to this brief are enclosed with the addendum filed herewith. The addendum includes material required by Mass. R. A. P. 11(b) and 16(a)(13) as well as portions of the record cited in this application.

IV); negligent misrepresentation (Count V); c. 93A, § 11 (Count VI); unjust enrichment (Count VII); negligence (Count VIII); tortious interference with business relations (Count IX); accounting (Count X); declaratory judgment (Count XI); fraudulent transfer (Count XII); and reach and apply (Count XIII).

B. 2019 bench trial on the 1993 “Deed of Transfer.”

In August 2019, in an effort to narrow the issues to be tried to the jury and with the consent of the parties, the court conducted a jury-waived trial solely on the threshold question of whether Michael validly executed a 1993 “Deed of Transfer” and thereby relinquished his interest in Tocci Corporation to John. Justice Rosemary Connolly presided over a four-day bench trial on this issue. At the parties’ request to “streamline the jury process ... and narrow what would be left for the jury to decide,” (Bench Trial Transcript (“BTT”) Day 1 at 5:10-17) (Exh. B), the court made written factual findings, included in a 28-page Decision and Order dated January 6, 2020 (Dkt. No. 132) (Exh. D). The Decision and Order made detailed findings regarding John’s efforts to mitigate his legal risk stemming from his self-dealing transactions through a series of misrepresentations, concluding that John fraudulently induced Michael to sign the Deed of Transfer such that it was unenforceable. *Id.* The court determined that Michael “remained one third (1/3rd) shareholder of Tocci Corp after signing the 1993 Deed because

that instrument did not validly transfer Michael Tocci's shares in Tocci Corp to John Tocci.” *Id.* at 28.

C. 2020 jury trial and verdict.

The remaining claims were set for trial in March 2020. In advance of the trial, Tocci Corporation requested that the court establish as binding for the upcoming trial 61 factual findings made by Justice Connolly at the 2019 trial. Dkt. No. 139.1. Ultimately, the jury trial court drafted its own set of twelve findings, which it read to the jury at the start of the case. Jury Trial Transcript (“JTT”) Day 2 at 262:8 – 265:5 (Exh. C). Those findings omitted virtually all of the relevant factual findings about John’s particular efforts to cover up his self-dealing.

On March 2, 2020, a nine-day jury trial before Justice H  l  ne Kazanjian commenced on Tocci Corporation’s claims against John for conversion and breach of fiduciary duty, with all other remaining claims reserved for the Court’s decision. The jury returned verdicts in favor of Tocci Corporation on both claims and awarded it \$1,000,000.

D. Post-trial briefing and motion for new trial.

After the jury trial, the parties submitted post-trial briefing to the trial court concerning remaining equitable claims that were not decided by the jury, along with proposed findings of fact and conclusions of law. Tocci Corporation requested that the court apply the equitable remedy of surcharge to require John,

who the jury found had breached his fiduciary duties to Tocci Corporation, to reimburse Tocci Corporation for its attorneys' fees and costs. Dkt. No. 157. The court declined to order such a remedy: "Tocci Corporation cites no Massachusetts cases applying [surcharge] outside the context of trusts and trustees, or to the payment of attorney's fees. For this reason alone, the court declines to order such a remedy here." Omnibus Memo. dated Jan. 29, 2021 (Dkt. No. 161) at 10 (Exh. E). The court denied all other post-trial relief sought by Tocci Corporation relevant to this appeal. *Id.* at 12.

Tocci Corporation then moved pursuant to M. R. Civ. P. 59 for additur or a new trial on remedy because the jury's award of \$1,000,000 was against the great weight of the evidence. Dkt. No. 174.² The court denied Tocci Corporation's motion. *See* Order dated May 21, 2021 (Exh. F).

Tocci Corporation and William Tocci timely filed their Notice of Appeal.

III. STATEMENT OF FACTS.

A. Formation of Tocci Corporation and TBC.

Valentino Tocci built a successful construction company in Massachusetts called John Tocci & Sons. Valentino sought to set up his sons John, Michael, and William in their own building and construction company through the creation of a company ultimately called Tocci Corporation. Each of the three sons—John,

² The trial court docket incorrectly identifies this motion as having been filed by John and TBC.

Michael, and William—received a one-third ownership interest in Tocci Corporation. Valentino named himself president and treasurer of Tocci Corporation and named four directors of the company: himself, Michael, William, and John. Over time, Valentino turned over the day-to-day operations of Tocci Corporation to John and relied on him to run the business.

In 1985, John created another construction business which he named Tocci Building Corporation (“TBC”). Neither Michael nor William had any ownership or management interest in TBC. Instead, John incorporated TBC as its 100% owner.

B. Over time, John transferred all monies from Tocci Corporation to himself or TBC.

Between 1984 and 1995, John caused all of Tocci Corporation’s assets to be transferred to John or TBC. The principal transactions by which he accomplished that were the following: a \$500,000 bonus he paid to himself in 1984 (the “Bonus”); (b) \$1.1 million in proceeds from settlement of litigation with the FDIC that John paid to TBC in 1991 and 1992 (the “FDIC Payment”); and (c) all of Tocci Corp.’s remaining assets of about \$70,000 upon its dissolution, paid by John to TBC in 1995 (the “Dissolution Distribution”). At trial, John did not dispute that he caused these amounts to be transferred to himself or to TBC.

C. As the trial court found in the first phase of the litigation, John sought to insulate himself from this self-dealing by lying to Michael to induce him to sign a document that purported to transfer Michael's ownership interest to John.

Justice Connolly found that, through the late 1980s and into the 1990s, John unilaterally changed the corporate documentation of Tocci Corporation to show himself as the sole owner and director even though such was not true. On its late 1980s and early 1990s federal tax returns, for example, John represented that he was the 100% owner of Tocci Corporation, though John had not acquired the shares owned by William and Michael. Similarly, John eliminated Valentino, Michael, and William as directors in corporate filings though there had been no decision by the company to make those changes.

In early 1991, Tocci Corporation settled litigation with the FDIC (the "FDIC Litigation") that resulted in a payment to Tocci Corporation of over \$2.5 million. John signed the settlement agreement on Tocci Corporation's behalf, certifying that the settlement was approved by both Tocci Corporation's Board of Directors and its shareholders. In fact, John did not even tell Michael or William about the settlement.

Instead of telling Michael and William that the company they owned 2/3 of had received \$2.5 million – and aware of the exposure to them for taking that money without authorization – John sought to cover up the takings. He first attempted to purchase his brothers' ownership interest in the company with

agreements backdated to a time prior to the company's receipt of the settlement proceeds. When Michael would not do so without reviewing the company's financials, John refused to provide the financials and instead resorted to outright fraud.

Playing on Michael's sense of familial loyalty, in 1993 John told Michael that he needed a backdated document showing that John had acquired Michael's shares to "satisfy the bean counters." John told Michael the document would not mean anything, and he convinced Michael there were no net proceeds from the FDIC Litigation. In truth, with the document "in hand, John believed he could manage Michael and get him to stop asking difficult questions about Tocci Corp." Decision and Order (Exh. D) at 19. In reliance on John's statements, Michael signed a "Deed of Transfer" that purported to transfer his shares to John. As he intended, John then used the Deed of Transfer in 2012 to argue that Michael had no interest in Tocci Corporation.

D. At the jury trial, John sought to defend the self-dealing as intrinsically fair because of John's efforts on behalf of Tocci Corporation, despite the evidence being uniform that the market value of his efforts did not justify the takings.

John made no effort to defend the Dissolution Distribution. He sought to defend the remainder of the takings principally based on an argument that he had earned the monies. Though John offered evidence describing what he did, he offered zero evidence, expert or otherwise, as to the market value of those services.

The only evidence of the market value of John's services came from Stephen Kirkland, an expert on compensation, who testified that the takings did not reflect anything close to market compensation. John also contested that he was motivated to try to purchase his brothers' shares and to obtain the Deed of Transfer by the risk posed by his self-dealing, as Justice Connolly had found.

IV. ISSUES RAISED BY THE APPEAL.

The following two issues are raised by Tocci Corporation's appeal and merit direct appellate review:

1. Whether the equitable remedy of surcharge authorizes a court to order reimbursement of the prevailing party's attorneys' fees and costs from a defendant liable for breach of fiduciary duty to a close corporation.
2. Whether all relevant factual findings made following a bench trial in one phase of a case are conclusively established for later phases.

Both of the issues above were raised and properly preserved in the trial court. As to the first issue, Tocci Corporation requested in its post-trial brief—which addressed equitable claims reserved for the court rather than the jury—that the court apply the equitable remedy of surcharge to require John, who had breached his fiduciary duty to Tocci Corporation, to reimburse Tocci Corporation for its attorneys' fees and costs. Dkt. No. 157. The trial court declined to order such a remedy for the sole reason that no Massachusetts courts had applied the

remedy “outside the context of trusts and trustees, or to the payment of attorney’s fees.” Exh. E at 10.

As to the second issue, Tocci Corporation requested that the Court provide the jury with all 61 relevant factual findings made by the bench trial court, which the jury trial court denied in favor of reading the jury its own summary of twelve factual findings. Dkt. No. 139.1; Exh. C (JTT) Day 2 at 216:5-13 (“I know that’s not exactly how you want to proceed... Your record is made on that.”).

Tocci Corporation also raises a third issue in its appeal, though it does not involve a novel issue of law: whether the court erred by denying Tocci Corporation’s motion for additur or a new trial on remedy on grounds that the jury award was against the great weight of the evidence. John presented no evidence, expert or otherwise, of the fair market value for the services he purportedly provided to Tocci Corporation in exchange for the Bonus or the FDIC Payment, as is required by Massachusetts law. *See Chelsea Indus., Inc. v. Gaffney*, 389 Mass. 1, 14 (1983). In fact, the only evidence about the value of John’s services was presented by Tocci Corporation’s expert. Nor did John present any evidence disputing Tocci Corporation’s expert testimony on the current value of John’s takings from Tocci Corporation, which occurred in the 1980s and 1990s. Nonetheless, the jury award reflected much less than the value of the takings, even before including interest to reflect the current value of the funds. Accordingly, the

jury award was against the great weight of the evidence, and a new trial on damages is warranted.

V. ARGUMENT.³

A. The surcharge remedy should be available to parties who prevail on breach of fiduciary duty claims involving close corporations.

Surcharge is “the imposition of personal liability on a fiduciary for wilful or negligent misconduct in the administration of his fiduciary duties.” *Moitoso v. FMR LLC*, 451 F.Supp.3d 189, 218 (D. Mass. 2020) quoting Black's Law Dictionary 1441 (6th ed.1990); *accord* 90A C.J.S. Trusts § 611. It is well established under Massachusetts law that a court can surcharge a trustee who breaches his or her fiduciary duty. *See, e.g., Shear v. Gabovitch*, 43 Mass. App. Ct. 650, 652 (1997); *In re Will of Crabtree*, 449 Mass. 128, 153 (2007). No Massachusetts court has yet addressed whether surcharge may be applied to require reimbursement of a prevailing party’s attorneys’ fees in the case of breach of fiduciary duties involving close corporations, or whether surcharge is strictly limited to the trust context or may also be applied in areas of law that are based on trust law principles. The law is uniform outside of Massachusetts, however, that courts can do both.

³ The arguments contained here focus on the issues raised by the appeal that are most pertinent to the Application for Direct Appellate Review in order to comply with the applicable page limits. Mass. R. A. P. 11(b).

One specific use of surcharge employed by various courts across the country—and endorsed by the Restatement of Trusts—is to require payment by the breaching fiduciary of a successful plaintiff’s attorneys’ fees and costs. *See* Restatement (Third) of Trusts § 100 (Liability of Trustee for Breach of Trust) (2012) (“The ‘make whole’ objective” of recovery from trustee that commits breach of trust “may include, in an appropriate case, the attorney fees and other litigation costs of a successful plaintiff.”); *see also Heller v. First Nat. Bank of Denver*, N.A., 657 P.2d 992, 999 (Colo. App. 1982); *Crutcher v. Joyce*, 146 F.2d 518, 520-21 (10th Cir. 1945); *Allard v. Pac. Nat. Bank*, 99 Wash. 2d 394, 408 (Wash. 1983). We are aware of no case anywhere in the country considering and rejecting this application of surcharge.

The United States Supreme Court has squarely addressed the issue of whether surcharge can be applied not only to trustees but also to other fiduciaries under laws that are based on trust principles. In *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), the Supreme Court expressly found that, because ERISA was based on trust principles, it would be appropriate to apply surcharge to an insurer that was the fiduciary under a welfare benefit plan even though the insurer was not a trustee. *See id.* at 442 (“insofar as an award of make-whole relief is concerned, the fact that the defendant in this case ... is analogous to a trustee makes a critical difference”). Other courts have reached the same conclusion. *See, e.g., Silva v. Metro. Life Ins.*

Co., 762 F.3d 711, 722 (8th Cir. 2014); *Miller v. Am. Tel. & Tel. Co.*, 507 F.2d 759, 761 (3d Cir. 1974).

Massachusetts' body of law governing corporate fiduciaries emerges from the law of trusts. As the Supreme Judicial Court noted nearly a century ago, "[t]he directors of a business corporation have often been called trustees." *Albert E. Touchet, Inc. v. Touchet*, 264 Mass. 499, 507 (1928). Early Massachusetts cases establishing the fiduciary duties owed in the corporate context drew directly from trust law. For example, in *Durfee v. Durfee & Canning*, 323 Mass. 187, 203 (1948), a shareholder derivative suit, the Court described a corporate director's duty to disclose a self-dealing transaction as implicating the "trustee's duty of disclosure." *Id.* at 203. In so holding, the Court relied on Scott on Trusts and on caselaw addressing duties owed by "traditional" trustees, such as estate executors. *Id.*, citing *Ball v. Hopkins*, 268 Mass. 260, 262 (1929)).

As the law developed around fiduciary duties owed in the corporate context, Massachusetts courts have consistently looked to trust law. *See, e.g., Elliott v. Baker*, 194 Mass. 518, 522 (1907) ("The directors of a corporation act in a strictly fiduciary capacity. Their office is one of trust and they are held to the high standard of duty required of trustees."); *Reed v. A.E. Little Co.*, 256 Mass. 442, 448 (1926) ("Directors are trustees for the stockholders and are bound to act solely for the benefit of the corporation"); *In re Allen-Foster Willett Co.*, 227 Mass. 551,

556-57 (1917) (a corporate director “is not permitted to serve two masters; his personal pecuniary interests in whatever form they may arise are, as between himself and the company subordinate to his paramount obligations as trustee, to the faithful performance of which he is strictly accountable in a court of equity,” and holding that because no fiduciary duties existed after corporation was dissolved, the court was “unable to perceive that ... [defendant] committed a breach of trust”); *Broomfield v. Kosow*, 349 Mass. 749, 756 (1965) (determining fiduciary relationship existed among business partners after extensive discussion of Bogert, *Trusts and Trustees*, and noting Bogert’s statement that “equity has continued to take an active interest in the fostering and protection of these intimate relationships which it calls fiduciary”) (internal quotations omitted); *Demoulas v. Demoulas Super Markets, Inc.*, 424 Mass. 501, 526 (1997) (breach of fiduciary duty claims against corporate fiduciary were “ground on a breach of trust” and equitable relief was available “[c]onsistent with the trust theory”). It makes good sense that the duties owed by corporate fiduciaries emerge from trust law, as corporate directors “have control in a trust character” over corporate property. *Elliott v. Baker*, 194 Mass. 518, 522 (1907).

There are particularly compelling reasons to extend the remedy of surcharge to the close corporation context, where shareholders “must discharge their management and stockholder responsibilities in conformance with [a] strict good

faith standard,” which is even more stringent than the fiduciary duties owed by fiduciaries in the general corporate context. *Donahue v. Rodd Electrottype Co. of New England*, 367 Mass. 578, 593 (1975); *see also Demoulas v. Demoulas Super Markets, Inc.*, 424 Mass. 501, 528–29 (1997) (same).

Furthermore, Massachusetts courts have long recognized the importance of deterring misconduct by corporate fiduciaries. *Demoulas v. Demoulas Supermarkets, Inc.*, 1995 WL 476772 (Mass. Super. March 13, 1997) at * 97 (*quoting Angoff v. Goldfine*, 270 F.2d 185, 192 (1st Cir. 1959)) (“It is well recognized that the minority stockholder’s derivative right of action is not only his legal remedy for corporate mis-management but also is a powerful deterrent to greedy corporate management generally.”). As the *Angoff* court noted, the “prophylactic aspect of suits of this kind has been held to warrant a liberal attitude in awarding fees.” 270 F.2d at 192. This case provides a good example. It is established that John stole money from his brothers and committed fraud in an effort to cover it up. Because of the litigation fees and costs associated with pursuing a six-year litigation involving two trials to establish those facts, Tocci Corporation itself will keep little of the remedy awarded by the jury.

The trial court declined to order surcharge for the sole reason that no Massachusetts courts had applied the remedy “outside the context of trusts and trustees, or to the payment of attorney’s fees.” Exh. E (Omnibus Memo.) at 10.

However, the trial court did not find that Massachusetts courts rejected this application of surcharge; it did not analyze how this Court would likely address the issue; and it did not discuss the policy reasons supporting application of the remedy here. The Supreme Judicial Court should accept direct appellate review and hold that surcharge is available against a fiduciary that breaches duties owed in the close corporation context to pay a prevailing party's costs and attorneys' fees.

B. All factual findings made at the earlier bench trial should have been conclusively established.

A second, independent reason exists for the Supreme Judicial Court to grant direct appellate review of this case: the decision by the court overseeing the jury trial (Kazanjian, J.) not to give conclusive effect to the full factual findings made by the earlier court (Connolly, R., J.) following the bench trial.

Under Massachusetts law, it is well established that facts established in one proceeding are conclusively established for purposes of another action between the same parties, and that the jury should be told as much. *See Alba v. Raytheon Co.*, 441 Mass. 836, 841 (2004) (determination made in first proceeding “is conclusive in a subsequent action ... whether on the same or a different claim”) (emphasis added); *Martinez v. Waldstein*, 89 Mass. App. Ct. 341, 347, 49 N.E.3d 245, 250 (2016); *Red Rock Trading Co. v. Shutzer*, 92 Mass. App. Ct. 1110 at *1 (2017); Restatement (Second) of Judgments § 27 at cmt. d; Mass. Sup. Ct. Civil Prac. Jury Instr. § 13.10.

And the parties and the judges from both phases of the case recognized this was so. As John's counsel told the court at the outset of the bench trial:

[B]ecause there are several fact issues that will be decided in connection with this particular part of the case that overlap with some of the remaining facts, we felt that Your Honor having heard the evidence would be in a position to make findings of fact that would then streamline the jury process. Our entire intent here was to try to narrow what ultimately would be left for the jury ... to decide.

Exh. B (BTT) Day 1 at 5:10-17. After a short colloquy, Justice Connolly explained to the parties that:

[I]f there are certain facts that are found here, you don't [get] to reargue them at the jury trial. ... [H]ypothetically, if in order to decide this case I find that the light was red, you don't get to relitigate in the jury trial that the light was red at the time of the accident.

Exh. B (BTT) Day 1 at 7:2-13; *accord* Exh. C (JTT) Day 4 at 716:1-6 (recognition by jury trial judge that findings were law of the case).

Yet, rather than provide the jury with all relevant factual findings made at the earlier bench trial, the jury trial court condensed the bench trial court's 13 pages of factual findings into only twelve findings. *See* Exh. C (JTT) Day 2 at 262:8 – 265:5. Many of the findings that the court omitted were centrally relevant to the jury trial. One of the principal issues in the jury trial was whether John's taking of the proceeds of the settlement of the FDIC Litigation was justified. It would be highly probative of whether the takings were justified that John sought to

hide their existence from his brothers, because that would suggest that even John did not believe that they were justified – otherwise, why hide them? And there were numerous findings specifically addressing this cover-up. Indeed, virtually the entire decision sets forth in detail the scheme John employed to do so. As just one example, the court found: “John knew he had potential exposure to his fellow shareholders for what they may contend was self-dealing or breach of the duties he owed them as shareholders. Consequently, John saw an opportunity in 1993 when Michael returned to work at Tocci Corporation to accomplish two things: he wanted to protect himself from Michael’s claims and demands on Tocci Corp. and he wanted to protect himself from any third parties challenging his representation as the sole owner. To accomplish this former goal, John played on Michael’s attachment to family and his deep loyalty to John...” Exh. D (Decision and Order) at 24-25.

These facts were established by the first trial. Plaintiffs were entitled to have the court instruct the jury at the outset that they were established and to argue to the jury that even John himself had effectively admitted through his conduct that the takings were wrongful. This Court should grant direct review to clarify that all relevant factual findings from a prior phase of the case are conclusively established.

VI. REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE.

Direct appellate review is warranted here because the case presents two novel questions of law that have not been decided by Massachusetts courts: *first*, whether the equitable remedy of surcharge can be applied to require a defendant liable for breach of fiduciary duty in the close corporation setting to reimburse the prevailing party's attorneys' fees and costs; and *second*, whether all material factual findings made by the first court after the bench trial should have been provided to the writing in the subsequent jury trial.

A. Whether the surcharge remedy is available in Massachusetts against corporate fiduciaries is a novel question of law.

The trial court denied Tocci Corporation's post-trial request for attorneys' fees and costs, stating that no Massachusetts court has applied the surcharge remedy "outside the context of trusts and trustees, or to the payment of attorney's fees." Exh. E (Omnibus Memo.) at 10. That is accurate, but incomplete: in fact, no Massachusetts authority appears to address, one way or the other, whether surcharge is available against a breaching close corporation fiduciary. Similarly, no Massachusetts authority appears to address, one way or the other, whether surcharge may be applied to require a breaching fiduciary to pay attorneys' fees and costs. The Supreme Judicial Court should grant direct appellate review and, consistent with principles of equity and the law of fiduciary duties, hold that

surcharge is available to require a breaching close corporation fiduciary to pay the attorneys' fees and costs of prevailing plaintiffs.

B. The appropriate standard for determining the relevance of binding findings from a prior proceeding is not expressly addressed by Massachusetts law.

The trial court never clearly articulated the standard by which it condensed the bench trial findings into the 12 findings that it read to the jury. It appears that the trial court employed a novel relevance standard in deciding which findings from a prior phase of the case would be binding in the subsequent trial. No Massachusetts authority appears to address this situation. However, this situation may occur with increasing frequency as the Superior Court's docket continues to grow. (The limited bench trial here was scheduled in response to repeated cancellations of the jury trial on all claims, which was first scheduled for January 2019; then rescheduled for August 2019; then rescheduled again for March 2020.)

Where factual findings are made that bind a jury that is subsequently impaneled, the Court should apply a traditional relevance standard in determining which findings are binding, rather than some heightened standard. To do otherwise risks wasting the effort that went into preparing the factual findings. It also risks the jury making findings inconsistent with the findings already made. The Supreme Judicial Court should accept direct appellate review to provide guidance to the trial courts.

VII. CONCLUSION

For all the foregoing reasons, Tocci Corporation and William Tocci respectfully request that this Honorable Court grant direct appellate review on their appeal of the judgment and rulings of the Middlesex Superior Court.

Respectfully submitted,

**TOCCI CORPORATION AND
WILLIAM TOCCI**

By their attorneys,

/s/ Katherine S. Kayatta

Katherine S. Kayatta (BBO# 675487)

kkayatta@pierceatwood.com

Gavin G. McCarthy (BBO# 657522)

gmccarthy@pierceatwood.com

Kyle Noonan (BBO# 705713)

knoonan@pierceatwood.com

Pierce Atwood LLP

Merrill's Wharf

254 Commercial Street

Portland, ME 04101

Tel. 207-791-1100

Fax. 207-791-1350

Date: August 17, 2021

CERTIFICATE OF COMPLIANCE WITH RULE 16(k)

Pursuant to Mass. Rules of Appellate Procedure 11(b), 16(k), and 20(a), I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16(a)(13) (addendum);
Mass. R. A. P. 16(e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and
other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 11(b) because it is produced in proportional font Times New Roman in size 14, contains 4849 total words, and the Argument section contains 1953 total words, as counted using the word count feature of the Microsoft Word program.

Dated: August 17, 2021

/s/ Katherine S. Kayatta
Katherine S. Kayatta
BBO#675487
kkayatta@pierceatwood.com
Pierce Atwood LLP
254 Commercial Street
Portland, Maine 04101
(207) 791-1100

*Counsel for Intervenor Plaintiffs /
Appellants Tocci Corporation and
William Tocci*

CERTIFICATE OF SERVICE

Pursuant to Mass. R.A.P. 13(e), I, Katherine S. Kayatta (BBO #675487), counsel for Intervenor Plaintiffs / Appellants Tocci Corporation and William Tocci in the matter *Tocci Building Corp. et al. vs. Michael J. Tocci*, Appeals Court No. 2021-P-0674, hereby certify that the Application for Direct Appellate Review of Intervenor Plaintiffs / Appellants Tocci Corporation and William Tocci is being served on the following counsel of record by email and through the Supreme Judicial Court's electronic filing system on August 17, 2021:

Bradley Croft
Ruberto Israel & Weiner
255 State St, 7th Fl.
Boston, MA 02109
BLC@riw.com

Roger Smerage
Ruberto Israel & Weiner
255 State St, 7th Fl.
Boston, MA 02109
rls@riw.com

John Edwards
Winer & Bennett, LLP
111 Concord St
PO Box 488
Nashua, NH 03061
Jedwards@winerbennett.com

Michael Tocci, *pro se*
2332 Antioch Rd.
Scottsville, VA 24590
tocci@reagan.com

/s/ Katherine S. Kayatta
Katherine S. Kayatta
BBO#675487
kkayatta@pierceatwood.com
Pierce Atwood LLP
254 Commercial Street
Portland, Maine 04101
(207) 791-1100

*Counsel for Intervenor Plaintiffs /
Appellants Tocci Corporation and
William Tocci*

ADDENDUM

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- D. Decision and Order after Jury Waived Trial (Jan. 2, 2020)
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1481CV03261 Tocci Building Corp. et al vs. Tocci, Michael J.

- Case Type:
- Equitable Remedies
- Case Status:
- Suspended-Covid-19
- File Date
- 04/04/2014
- DCM Track:
- F - Fast Track
- Initiating Action:
- Other Equity Action
- Status Date:
- 04/04/2014
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Judgment](#) [Subsequent Action/Subject](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/04/2014	Complaint & civil action cover sheet filed	1	
04/04/2014	Origin 1, Type D99, Track F.		
04/04/2014	Plaintiffs' Ex-Parte MOTION for Temporary Restraining Order and Short Order of Notice	2	
04/16/2014	Plaintiff's MOTION for appointment of special process server Ulrich Litigation Support, LLC. Motion ALLOWED (Gordon, J.). Copy given in hand.	4	
04/17/2014	(P#2) Following a review of the Plaintiff's submissions and a hearing held on April 17, 2014 (at which the Plaintiff appeared and argued pro se), the Court has determined that the Plaintiff's have demonstrated a substantial likelihood of success on the merits of their claims and immediate and irreparable harm if injunctive relief in not entered. Accordingly, a 10 day TRO shall enter, enjoining Michael J. Tocci (together with any persons acting with him or on his behalf) from making application to the Secretary of the Commonwealth for revival of Tocci Corporation pursuant to Mass.G.L. c. 156B, Sec. 108. The parties shall be heard on Plaintiff's Application for Preliminary Injunction on Friday, April 25, at 10:00 a.m. (Gordon, J.). Copy given in hand.		
04/17/2014	TEMPORARY RESTRAINING ORDER issued in accordance with Court order; \$90.00 received, returnable 4/25/2014 at 10:00 a.m. in Courtroom 520 (Gordon, J.).	5	
04/24/2014	ANSWER by Michael J. Tocci to COMPLAINT (claim of trial by jury reqstd)and counterclaim	6	
04/24/2014	COUNTERCLAIM of Michael J. Tocci v Tocci Building Corp., John L. Tocci		
04/24/2014	Plaintiffs' Reply Brief in Support of Preliminary Injunction	7	
04/25/2014	Motion (P#2) By stipulation of the parties, the terms of the restraining order are extended for 30 days, or until further order of the Court. (Robert B. Gordon, Justice). Notices mailed 4/25/2014		
05/16/2014	Defendant's petition for the appointment of receivership of Tocci Building Corporation	8	
05/16/2014	Defendant's MOTION for Summary Judgment	9	
05/16/2014	Defendants, requests production of documents from Plaintiff Tocci Building Corp. under rule 34	10	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/16/2014	Defendant's Motion As Plaintiff In Counterclaim, To Add Parties As Defendants in Counterclaim	11	
05/23/2014	Motion (P#8) DENIED, without prejudice for failure to comply with Superior Court Rule 9A (Robert B. Gordon, Justice) Notices mailed 5/23/2014		
05/23/2014	Motion (P#9) DENIED, without prejudice for failure to comply with Superior Court Rule 9A (Robert B. Gordon, Justice) Notices mailed 5/23/2014		
05/23/2014	Motion (P#10) No action taken. The defendant is advised that discovery request are not filed as pleadings in Superior Court. (Robert B. Gordon, Justice). Notices mailed 5/23/2014		
05/23/2014	Motion (P#11) DENIED with prejudice for failure to comply with Superior Court Rule 9A (Robert B. Gordon, Justice) Notices mailed 5/23/2014		
06/19/2014	Plaintiffs, Emergency MOTION For Extension Of Time To File Certain Pleadings.	12	
06/23/2014	Motion (P#12) ALLOWED, for good cause shown. The Defendant is advised that, going forward, the Court will expect greater professionalism and civility in accomodating unexpectional requests for extension such as those at issue in this motion. See attached Order. (Robert B. Gordon, Justice, Dated: 6/23/2014) Notices mailed 6/23/2014		
06/23/2014	ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE CERTAIN PLEADINGS: This matter, having come before the Court on the Plaintiffs' Emergency Motion for an Extension of Time to File Certain Pleadings, is hereby agreed and ORDERED that Plaintiffs Tocci Building Corp. and John L. Tocci are granted an enlargement of time to July 2, 2014 to respond to the Defendant's Motion to Appoint Receivership and Motion to Add Third Party; to July 15, 2014 to respond to Defendant's Motion for Summary Judgment; to July 14, 2014 to respond to Defendant's Request for Production. BY THE COURT: (Robert B. Gordon, Justice, Dated: 6/23/2014) Entered and copies sent 6/23/14	13	
06/25/2014	Defendant's Objection to Plaintiffs' Motion for Extension of Time to File Certain Pleadings and Request for Entry of Order.	14	
07/03/2014	JOINT Motion To Transfer To Business Litigation Sessions	15	
07/09/2014	Motion (P#15) ALLOWED Joint motion. The Clerk is directed to promptly notify, that is bring this motion to the attention of the BLS Administrative Justice, who will either allow or deny the motion. The case is not to be transferred to BLS without the approval of the BLS Administrative Justice. See Superior Court Administrative Directive No. 09-1. (Rosalind H. Miller, Justice, Dated: 7/8/2014) Notices mailed 7/9/2014		
07/15/2014	Notice of Denial of Acceptance Into The Business Litigation Session: This case came before the court for review after the parties filed a joint motion to transfer to the Business Litigation Session. However, after review, acceptance into the Business Litigation Session is denied. This case is referred to the Clerk's Office for reassignment. (Janet L. Sander, Justice, Dated: 7/11/2014) Entered and copies sent 7/15/14	16	
07/25/2014	Case status changed to 'Needs status review' at service deadline review		
08/04/2014	Defendant's MOTION, as plaintiff in counter-claim, to Add parties as third party defendants in counterclaim, Def't's statement in support.	17	
08/04/2014	Defendant Michael J. Tocci's MOTION for Summary Judgment, pursuant to Mass.R.Civ.P. 56, Statement in support, Statement of material facts in support, Opposition of plff.	18	
08/11/2014	Motion (P#17) DENIED without prejudice to refiling after service upon the proposed new party pursuant to Superior Court Rule 9A See Srebnick vs Lo-Law Transit Management, Inc., 29 Mass.App.Ct.45,51 (1990) (Rosalind H. Miller, Justice) Notices mailed 8/12/2014		
09/25/2014	ORDER REFERRING CASE FOR MEDIATION(Rosalind H. Miller, Justice)	19	
09/25/2014	Hearing on (P#18) Summary Judgment held, matter taken under advisement. (Rosalind H. Miller, Justice)		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/30/2014	Motion (P#18 endorsement on Opposition of Plaintiff to Motion) DENIED. There is at a minimum, a material question of fact as to whether the defendant was a member of the Board of Directors or whether the plaintiff John L. Tocci was the sole member of the Board of Directors, at the time of the stock transfer. (Rosalind H. Miller, Justice, Dated: 9/29/2014) Notices mailed 9/30/2014		
10/09/2014	ANSWER by Tocci Building Corp., John L. Tocci to COUNTERCLAIM of Michael J. Tocci and demand for jury trial	20	
01/05/2015	MOTION of William R. Tocci to Intervene, Statement in support, Affidavit of facts, Notice of no objection.	21	
02/17/2015	Endorsement on Motion to intervene (#21.0): ALLOWED without opposition. (Dated: 2/10/2015) notice sent 2/17/15		
05/11/2015	Plaintiff Tocci Building Corp., Michael J. Tocci's Joint Motion to amend the Tracking Order	22	
05/18/2015	Endorsement on Motion to extend tracking deadline(s) (#22.0): ALLOWED (Dated: 5/15/15) notice sent 5/18/15		
05/18/2015	Appearance entered On this date Thomas Paul Gorman, Esq. added for Plaintiff-Intervenor William R. Tocci		
08/19/2015	General correspondence regarding Request from defendant William Tocci's attorney, Thomas Gorman, Esquire dated August 18, 2015 pursuant to Superior Court Rule 9A(a)(3) for leave to file a Reply concerning plaintiff's Opposition to defendant's Motion to Compel	23	
08/24/2015	Defendant William R Tocci's Motion to compel production of documents by Plaintiffs.	24	
08/24/2015	William R Tocci's Memorandum in support of his motion to compel.	24.1	
08/24/2015	Tocci Building Corp., John L. Tocci's Memorandum in opposition to the motion to compel.	24.2	
08/24/2015	General correspondence regarding "Declaration of John L Tocci."	24.3	
08/24/2015	Defendant Michael J. Tocci's Motion to join with defendant William R Tocci's motion to compel production of documents by the Plaintiffs.	24.4	
08/24/2015	Michael J. Tocci's Memorandum in support of of his motion to join.	24.5	
09/09/2015	The following form was generated: Notice to Appear Sent On: 09/09/2015 15:25:05		
10/22/2015	Event Result: The following event: Motion Hearing to Compel scheduled for 10/22/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled		
10/23/2015	Endorsement on Motion of Defendant William R. Tocci's Motion to Compel Production of Documents by Plaintiff (#24.0): Other action taken By agreement: Plaintiff to produce audited financial statement for last 12 years, subject to parties entering into confidentiality agreement. (Dated: 10/22/15) notice sent 10/23/15		
11/05/2015	Attorney Matthew C. Moschella, Esq., Thomas Paul Gorman, Esq.'s motion to withdraw as counsel of record for party Assented-to) Applies To: Tocci, William R (Plaintiff-Intervenor)	25	
11/17/2015	Endorsement on Motion to Withdraw as Counsel for Defendant William R. Tocci (#25.0): ALLOWED (Dated: 11/16/15) notice sent 11/17/15		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
11/17/2015	Appearance entered On this date Thomas Paul Gorman, Esq. dismissed/withdrawn for Plaintiff-Intervenor William R. Tocci		
11/17/2015	Appearance entered On this date Matthew C. Moschella, Esq. dismissed/withdrawn for Plaintiff-Intervenor William R. Tocci		
01/27/2016	Plaintiff Tocci Building Corp.'s Joint Motion for Entry of Confidentiality Agreement as an Order of the Court	26	
01/28/2016	The following form was generated: Notice to Appear Sent On: 01/28/2016 09:54:40		
02/03/2016	Appearance entered On this date Gavin McCarthy, Esq. added for Plaintiff-Intervenor William R. Tocci		
02/03/2016	Appearance entered On this date Katherine Kayatta, Esq. added for Plaintiff-Intervenor William R. Tocci		
02/09/2016	Endorsement on Motion for Entry of Confidentiality Agreement as an Order of the Court (#26.0): ALLOWED See Agreement and Order of same date. (Dated: 2/3/16) notice sent 2/9/16		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/09/2016	<p>ORDER: CONFIDENTIALITY AGREEMENT AND ORDER:</p> <p>The parties to this Action have agreed to the following terms; accordingly, it is ORDERED:</p> <p>1. This Agreement and Order is entered in connection with certain audited financial statements that will be produced, pursuant to the Court's Order of October 22, 2015, by Tocci Building Corp. pursuant to the discovery requests of William Tocci seeking financial records of Tocci Building Corp.</p> <p>2. Tocci Building Corp. will produce to counsel for William Tocci and to Michael Tocci, who is appearing pro se, its audited financial statements for the past twelve (12) fiscal years. The documents so produced will bear the legend "CONFIDENTIAL." In the event that any document marked as CONFIDENTIAL has been or in the future becomes available in the public domain, it shall lose any status as CONFIDENTIAL under the terms of this Order.</p> <p>3. Documents produced pursuant to paragraph 2 (the "Documents") shall solely be used by, handled by, shared by, disclosed to or described to the following:</p> <p>(a) Counsel who represent William Tocci and/or Michael Tocci in this action, employees of such counsel, Michael Tocci, and William Tocci ("Parties") solely for use in accordance with this action;</p> <p>(b) Experts or consultants not in the regular employ of the Parties as necessary to assist counsel and/or the Parties in connection with the litigation;</p> <p>(c) Witnesses or deponents and their counsel, during the course of or, to the extent necessary, in preparation for depositions or testimony in this litigation;</p> <p>(d) The Court and Court personnel and employees;</p> <p>(e) Court reporters employed in connection with this litigation;</p> <p>(f) Any person that has previously been given or shown the documents by the Producing Party; and</p> <p>(g) Any other person only upon order of the Court or upon the written consent of the Producing Party.</p> <p>The entities and individuals described in Paragraph 3(a) & (g) herein will be referred to as the "Authorized Recipients."</p> <p>4. (a) The Documents may be provided to persons listed in Paragraphs 3(c) above to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution of this litigation, provided that such person is using the Documents solely in connection with this litigation and further provided that such person signs an undertaking in the form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and conditions of this Agreement and Order, consenting to the jurisdiction of the Court for purposes of the enforcement of the terms of this Agreement and Order, and agreeing not to disclose or use any of the Documents in a manner or for purposes other than those permitted hereunder.</p> <p>(b) Every person given access to the Documents or information contained therein shall be advised that the information is being disclosed pursuant and subject to the terms of this Agreement and Order and may not be disclosed other than pursuant to the terms thereof.</p> <p>5. The Documents may only be filed with the Court under seal.</p> <p>6. In producing the documents, Tocci Building Corp. will not be held to have waived any privilege or work product protection that attaches to any documents in its possession or the possession of its lawyers.</p> <p>7. The Authorized Recipients shall make reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL pursuant to the terms of this Agreement and Order. The Authorized Recipients (as required by paragraph 4 of this Agreement and Order) shall maintain the originals of the form appended hereto signed by each Authorized Recipient acknowledging their obligations under this Agreement and Order for a period of three years from the date of signing.</p> <p>8. All copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies") of documents designated as CONFIDENTIAL under this Agreement and Order, or any individual portion of such a document, shall be affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Agreement and Order. The term "copies" shall not include indices, electronic databases or lists of documents provided these indices, electronic databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.</p> <p>9. Obligations on Conclusion of Litigation.</p> <p>(a) Agreement and Order Remains in Effect. Unless otherwise agreed or ordered, this Agreement and Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.</p> <p>(b) Return of the Documents. Within thirty days after dismissal or entry of final judgment not subject to further appeal, the Documents including copies as defined in ¶ 8, shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the Parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so.</p> <p>10. This Agreement and Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter.</p> <p>11. This Agreement and Order shall take effect when last executed by the Parties and the Court and shall be binding upon all counsel and their law firms, the Parties, and persons made subject to this Agreement and Order by its terms.</p> <p>So Ordered: (Peter B. Krupp, J., Dated: 2/3/16) Entered and copies sent 2/9/16</p>	27	Image
03/01/2016	Plaintiff Tocci Building Corp.'s Motion to Intervene	28	
03/01/2016	Tocci Building Corp.'s Memorandum in support of Plaintiff Tocci Building Corp.'s Motion to Intervene	28.1	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/01/2016	Affidavit of Micheal J. Tocci in support of Plaintiff Tocci Building Corp.'s Motion to Intervene and Motion To Amend scheduling order	28.2	
03/01/2016	Affidavit of William Tocci in support of Plaintiff Tocci Building Corp.'s Motion to Intervene	28.3	
03/01/2016	John L. Tocci's Memorandum in opposition to Plaintiff Tocci Building Corp.'s Motion to Intervene and the Motion Of William Tocci To Amend Claims Against Plaintiffs	28.4	
03/01/2016	Affidavit of John M. Edwards in support of the Plaintiffs' opposition to defendants. Tocci Building Corp.'s Motion to Intervene, William Tocci's Motion to Amend Case Schedule William Tocci's To Amend Scheduling Order	28.5	
03/01/2016	Brief filed: Reply On Its Motion To Intervene Applies To: Tocci Building Corp. (Plaintiff)	28.6	
03/01/2016	Defendant William R Tocci's Motion to amend the Scheduling Order	29	
03/01/2016	William R Tocci's Memorandum in support of Plaintiff William R Tocci's Motion to amend the Scheduling Order	29.1	
03/01/2016	Affidavit of In Support Of Tocci Corporation's Motion To Intervene And Motion To Amend Scheduling Order	29.2	
03/01/2016	John L. Tocci, Tocci Building Corp.'s Memorandum in opposition to Defendant William R. Tocci To Amend Scheduling Order	29.3	
03/01/2016	Affidavit of John M. Edwards in support of the Plaintiffs' opposition to defendants, Tocci Corporation's Motion to Intervene, William Tocci's Motion To Amend Case Schedule, William Tocci's Motion To Amend Scheduling Order	29.4	
03/01/2016	Defendant William R Tocci's Motion to Amend Claims Against Plaintiffs	30	
03/01/2016	William R Tocci's Memorandum in support of Motion to Amend Claims Against Plaintiffs	30.1	
03/01/2016	John L. Tocci, Tocci Building Corp.'s Memorandum in opposition to Motion To Intervene and the Motion Of William Tocci To Amend Claims Against Plaintiffs	30.2	
03/01/2016	Brief filed: Reply William Tocci's Reply Brief On Motion To Amend Scheduling Order Applies To: Tocci, Michael J. (Defendant); Tocci, William R (Plaintiff-Intervenor)	30.3	
03/02/2016	Event Result: The following event: Rule 16 Conference scheduled for 03/02/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
03/03/2016	The following form was generated: Notice to Appear Sent On: 03/03/2016 08:06:09		
03/10/2016	Brief filed: Surreply of Plaintiffs in opposition to Motion to Intervene Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	31	
03/18/2016	Endorsement on Motion of Tocci Corporation to Intervene (#28.0): ALLOWED After hearing and review of the parties' filings, ALLOWED. The Clerk shall docket the complaint of Tocci Corporation and William Tocci. (Dated: 3/14/16) notice sent 3/18/16		
03/18/2016	Endorsement on Motion to amend the Scheduling Order (#29.0): Other action taken After hearing, ALLOWED in part as follows: Plaintiffs shall respond to the complaint of Tocci Corp. and William Tocci by 4/4/16. All non-expert discovery shall be completed by 8/19/16. No party shall expect an extension of this discovery period. The court will conduct a Rule 16 conference on 8/10/16 at which additional dates shall be set including for briefing any Rule 56 motions and for trial. (Dated: 3/14/16) notice sent 3/18/16		
03/18/2016	Endorsement on Motion to Amend Claims Against Plaintiffs (#30.0): ALLOWED After hearing, ALLOWED. See endorsement on Docket #28. (Dated: 3/14/16) notice sent 3/18/16		
03/18/2016	The following form was generated: Notice to Appear Sent On: 03/18/2016 15:20:11		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/23/2016	Appearance entered On this date Katherine Kayatta, Esq. added for Plaintiff-Intervenor Tocci Corporation		
03/23/2016	Appearance entered On this date Gavin McCarthy, Esq. added for Plaintiff-Intervenor Tocci Corporation		
03/23/2016	Intervenor complaint filed.	32	
03/31/2016	The following form was generated: Notice to Appear Sent On: 03/31/2016 14:45:22		
04/11/2016	Plaintiff, Plaintiff Tocci Building Corp., John L. Tocci's Motion for Partial Summary Judgment	33	
04/11/2016	Tocci Building Corp., John L. Tocci's Memorandum of Law in support of the Motion for Partial Summary Judgment	33.1	
04/11/2016	Statement of Undisputed Facts Statement of Material Facts in support of the Motion for Partial Summary Judgment Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)		
04/11/2016	Opposition to paper #33.0 Defendant, Michael J. Tocci's objection to Plaintiffs' Motion for Partial Summary Judgment and CROSS-MOTION for Summary Judgment filed by Applies To: Tocci, Michael J. (Defendant)	33.2	
04/11/2016	Statement of Undisputed Facts Deft's Statement in support of objection to Pliffs' Motion for Partial Summary Judgment Applies To: Tocci, Michael J. (Defendant)	33.3	
04/11/2016	Statement of Undisputed Facts Deft's Statement of Material Facts in support of his Cross-Motion for Summary Judgment Applies To: Tocci, Michael J. (Defendant)	33.4	
04/11/2016	Affidavit of Michael J. Tocci	33.5	
04/11/2016	Opposition to paper #33.2 Memorandum of Pliffs/Defts' in counterclaim in opposition to the Cross-Motion for Summary Judgment of Michael Tocci filed by Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	33.6	
04/11/2016	Affidavit of John L. Tocci (Declaration) in support of his opposition to Cross-Motion	33.7	
04/11/2016	Statement of Undisputed Facts Plaintiffs' response to Deft's Michael J. Tocci's Statement of Material Facts in support of his Cross-Motion for Summary Judgment Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	33.8	
04/14/2016	Received from Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation: Answer to original complaint;	34	
04/14/2016	Received from Plaintiff-Intervenor Tocci Corporation: Answer to original complaint;see pleading #34		
04/14/2016	Plaintiff, Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion to allow separately filed papers in support of Pliffs' Motion for Summary Judgment and in opposition to Deft, Michael Tocci's Cross-Motion for Summary Judgment	35	
04/20/2016	General correspondence regarding letter from Michael Tocci re: objection to request of Plaintiff's request for leave to file Motion for Partial Summary Judgment dated April 20, 2016		
04/22/2016	Opposition to paper #35.0 Plaintiffs Emergency motion to file untimely summary judgement filed by Michael J. Tocci	36	
04/26/2016	Event Result: The following event: Rule 56 Hearing scheduled for 04/26/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/27/2016	Brief filed: Reply Of Plaintiffs in support of Emergency Motion To Separate File Summary Judgment Papers Applies To: Tocci Building Corp. (Plaintiff)	37	
05/09/2016	ORDER: ORDER After a hearing on the plaintiffs' motion for partial summary judgment and the defendant Michael J. Tocci's cross-motion for summary judgment, the defendant Michael J. Tocci requested leave to file an opposition memorandum, which was granted. Thus, such opposition shall be filed with the Court and directed to my attention by May 20, 2016. BY THE COURT, Dennis J. Curran Associate Justice Dated: 5/6/16 Entered and copies sent 5/9/16	38	Image
05/09/2016	Event Result: The following event: Rule 16 Conference scheduled for 08/10/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
05/09/2016	The following form was generated: Notice to Appear for Trial Sent On: 05/09/2016 15:06:09		
05/18/2016	The following form was generated: Notice to Appear Sent On: 05/18/2016 09:48:07		
05/19/2016	Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Request for leave to Submit Response in Connection with Michael Tocci's Cross-Motion For Summary Judgment	39	
05/19/2016	Brief filed: Reply brief in support to his cross motion fo rsummary judgment, inter alia. Applies To: Tocci, Michael J. (Defendant)	40	
08/16/2016	Endorsement on Motion for Partial Summary Judgment of Plaintiffs, John L. Tocci and Tocci Building Corp. (#33.0): DENIED After review, this motion is DENIED. See accompanying Memorandum of Decision. (Dated: 8/9/16) notice sent 8/16/16		
08/16/2016	Endorsement on Statement of Reply Brief of Defendant Michael J. Tocci in Support of His Cross Motion For Summary Judgment, Inter Alia (#40.0): DENIED After review, this motion is DENIED. (Dated: 8/9/16) notice sent 8/16/16		
08/16/2016	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER (which see 2 pages) ORDER: For these reasons, the motion for partial summary judgment is ALLOWED insofar as it encompasses all counterclaims of Michael J. Tocci, and as to the counterclaim of William R. Tocci, is ALLOWED as to his claim that he is owed money under a promissory note or loan. Summary judgment shall also issue in behalf of the plaintiff John L. Tocci as to any counterclaim that alleges he breached his fiduciary duties. BY THE COURT, DENNIS J. CURRAN Associate Justice August 9,2016 Entered and copies sent 8/16/16	41	Image
08/29/2016	General correspondence regarding Letter received from Michael Tocci re: request for transcript of Rule 56 hearing, dated August 26, 2016		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/14/2016	Plaintiff-Intervenor Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Assented to Motion for Status Conference	42	
09/14/2016	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation's Assented to Motion to Vacate Decision Granting Partial Summary Judgment On The Claims Of William Tocci	43	
09/15/2016	Defendant Michael J. Tocci's Notice of Appeal of order/judgment entered on August 16, 2016.	44	
09/15/2016	On 09/15/2016, Defendant Michael J. Tocci filed a Notice to Appeal from the Final Judgment which was entered on 08/16/2016. Copy of Notice of Appeal mailed to all counsel of record.. Applies To: Gorman, Esq., Thomas Paul (Attorney) on behalf of William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Moschella, Esq., Matthew C. (Attorney) on behalf of William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Edwards, Esq., John M (Attorney) on behalf of Tocci Building Corp. (Plaintiff); McCarthy, Esq., Gavin (Attorney) on behalf of William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Kayatta, Esq., Katherine (Attorney) on behalf of William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor)		
09/29/2016	Event Result: The following event: Final Trial Conference scheduled for 01/02/2017 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
09/29/2016	The following form was generated: Notice to Appear Sent On: 09/29/2016 11:34:57		
10/04/2016	Endorsement on Motion to Vacate Decision Granting Partial Summary Judgment of the Claims of William Tocci (#43.0): ALLOWED Assented to motion allowed. (Dated: 9/29/16) notice sent 10/4/16		
10/13/2016	CD of Transcript of 04/26/2016 02:00 PM Rule 56 Hearing received from Elizabeth Hayes. (PAPER TRANSCRIPT)	45	
10/18/2016	Defendant Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Motion to Compel Production of documents and for appointment of discovery referee	46	
10/18/2016	Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Memorandum in support of Motion to Compel production of documents and for appointment of Discovery referee	46.1	
10/18/2016	John L. Tocci, Tocci Building Corp.'s Memorandum in opposition to the Motion of defendants William R. Tocci and Tocci corporation to compel the production of documents and for appointment of a discovery referee	46.2	
10/18/2016	Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Reply Memorandum in support of Motion to compel production of documents and for appointment of discovery referee	46.3	
10/18/2016	Defendant Michael J. Tocci's Motion to Join in support of Intervenor William R. Tocci and Tocci corporations motion to compel production of documents by plaintiffs and for the appointment of a discovery referee	47	
10/18/2016	Michael J. Tocci's Memorandum in support of Intervenor William R. Tocci and Tocci corporation's motion to compel production of documents by plaintiffs and for the appointment of a discovery referee	47.1	
10/20/2016	Plaintiff Tocci Building Corp., John L. Tocci's Motion for Clarification Of Clerk Notice Of Docket Entry	48	
10/20/2016	Defendant Michael J. Tocci's Response to Plaintiff Opposition To His Motion For Reconsideration To Vacate Order And For DenovO Hearing Of Its Order Dated August 16, 2016.	48.2	
10/20/2016	Opposition to Plaintiff Tocci Building Corp., John L. Tocci's Motion for Clarification Of Clerk Notice Of Docket Entry together with the Defendant's Motion To Reconsider To Vacate Judgment And For A DeNovo Hearing filed by	48.1	
10/20/2016	Michael J. Tocci's Memorandum in support of Motion for Clarification Of Clerk Notice Of Docket Entry, Together With The Defendant's Motion To Reconsider, To Vacate Judgment And For A DE NOVO Hearing	48.3	
10/20/2016	Defendant Michael J. Tocci, Tocci Corporation's Response in Connection With Micheal Tocci Motion To Vacate	49	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/20/2016	John L. Tocci, Tocci Building Corp.'s Memorandum in opposition to Defendant Michael J. Tocci, Tocci Corporation's Response in Connection With Micheal Tocci Motion To Vacate the Court's August 16 2016 Judgment	49.1	
10/21/2016	The following form was generated: Notice to Appear Sent On: 10/21/2016 13:39:01		
11/30/2016	Event Result: The following event: Motion Hearing to Compel scheduled for 11/30/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: By Court prior to date		
11/30/2016	The following form was generated: Notice to Appear Sent On: 11/30/2016 09:49:25		
11/30/2016	Event Result: The following event: Motion Hearing to Compel scheduled for 12/14/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: By Court prior to date		
12/01/2016	Defendant William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for Leave to Amend Complaint	50	Image
12/01/2016	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum in support of Motion for leave to amend complaint	50.1	
12/01/2016	Affidavit of Katherine Kayatta Regarding no opposition	50.2	
12/07/2016	Endorsement on Motion for Leave to Amend Complaint (#50.0): ALLOWED No opposition. (Dated: 12/5/16) notice sent 12/7/16		
12/12/2016	Plaintiff-Intervenor, Defendant in a Counterclaim Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation, Michael J. Tocci, John L. Tocci, Tocci Building Corp.'s Joint Motion for continuance of pre-trial conference and trial date and extension of scheduling order deadlines. (duplicate of #53)	51	Image
12/14/2016	Event Result: The following event: Final Trial Conference scheduled for 01/03/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
12/14/2016	Event Result: The following event: Jury Trial scheduled for 01/09/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
12/14/2016	The following form was generated: Notice to Appear Sent On: 12/14/2016 15:50:53		
12/15/2016	ORDER: ORDER The Court orders as follows pursuant to Superior Court Rule 9D. In light of the unavailability of Judge Curran, any motion that may be filed seeking reconsideration or clarification of any order or ruling, or otherwise relating to any order or decision issued by him in this matter, shall be referred to the judge sitting in the session or to any other judge sitting in Woburn as may be ordered by the Regional Administrative Justice. Dated 15, 2016	52	Image
12/15/2016	Plaintiff, Defendant Tocci Building Corp., John L. Tocci, Michael J. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Joint Motion for Continuance of Pre-Trial Conference and Trial Date and Extension of Scheduling Order Deadlines (Fax copy) Filed in Court	53	Image
12/15/2016	Endorsement on Motion to continue / reschedule an event Pre-Trial Conference and Trial Date and Extension of Scheduling Order Deadlines (#53.0): ALLOWED (Dated: 12/15/16) notice sent 12/15/16		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/10/2017	The following form was generated: Notice to Appear Sent On: 01/10/2017 08:46:55		
01/17/2017	Matter taken under advisement The following event: Motion Hearing scheduled for 01/17/2017 02:00 PM has been resulted as follows: Result: Held - Under advisement		
01/17/2017	The following form was generated: Notice to Appear Sent On: 01/17/2017 15:44:59		
01/17/2017	Event Result:: Motion Hearing scheduled on: 01/17/2017 02:00 PM Has been: Held as Scheduled Hon. Peter B Krupp, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
01/20/2017	Amended: amended complaint filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation	54	Image
02/03/2017	Plaintiff, Defendant Tocci Building Corp., John L. Tocci, Michael J. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Joint Motion for Order To Compel Production Of Client Files Of Tocci Corporation	55	Image
02/24/2017	General correspondence regarding Letter from Attorney Kayatta dated February 23, 2017 stating status of discovery requests and the pending motion to compel with a Proposed Order for review. Correspondence also includes listing of disputed Requests for Production of Documents and Interrogatories	56	Image
02/27/2017	Matter taken under advisement The following event: Rule 56 Hearing scheduled for 02/27/2017 03:00 PM has been resulted as follows: Result: Held - Under advisement		
02/28/2017	The following form was generated: Notice to Appear Sent On: 02/28/2017 09:51:12		
03/06/2017	Endorsement on motion to compel Production of Documents (#46.0): and For Appointment of Discovery Referee Other action taken After hearing, ALLOWED to the extent of the parties' agreement as memorialized in the Order on Motion to Compel of same date. As for the requests for production and interrogatories identified in Katherine Kayatta's letter to the Court dated February 23, 2017 and the other relief sought in this motion, the motion is DENIED without prejudice to renewal on motion after review of the records and documents subject to the Order on Motion to Compel and other discovery, and on submission of detailed information about the specific information sought and why. Nothing in this ruling precludes any party from serving narrower requests more carefully tailored to obtain documents relevant to the dispute and not overly burdensome. (Dated: 3/6/17) notice sent 3/6/17		Image
03/06/2017	Endorsement on Motion for Order to Compel Production of Client Files of Tocci Corporation (#55.0): ALLOWED (Dated: 3/6/17) notice sent 3/6/17		Image
03/06/2017	Endorsement on Motion of Defendant Michael J. Tocci to Join in Support of Intervenor William R. Tocci and Tocci Corporation's Motion to Compel Production of Documents by Plaintiffs and For the Appointment of a Discovery Referee (#47.0): ALLOWED See endorsement on Docket #46. (Dated: 3/6/17) notice sent 3/6/17		Image
03/06/2017	ORDER: ORDER ON MOTION TO COMPEL (which see 3 pages and scanned in) SO ORDERED Dated: This 6th day of March, 2017 Peter B. Krupp Associate Justice Superior Court Entered and copies sent 3/6/17	57	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/06/2017	ORDER: (which see 3 pages and scanned in) SO ORDERED: Dated: This 6th day of March, 2017 Peter B. Krupp Associate Justice Superior Court Entered and copies sent 3/6/17	58	Image
05/26/2017	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion for Extension of Time To File Certain Pleadings	59	
05/30/2017	Plaintiff-Intervenor Tocci Corporation's Response to Defendants' Emergency Motion For Extension of Time to File Certain Pleadings	60	Image
05/31/2017	Plaintiff Tocci Building Corp., John L. Tocci's Response to Opposition to Emergency Motion For Extension of Time to File Certain Pleadings	61	Image
06/01/2017	The following form was generated: Notice to Appear for motion for extension of time to file certain pleadings Sent On: 06/01/2017 11:44:59		
06/21/2017	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion to extend time for file certain pleadings (second)	61.1	
06/22/2017	Interpleader William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for Leave to Amend Complaint	62	Image
06/22/2017	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum in support of their motion	62.1	Image
06/22/2017	Affidavit of compliance with Superior Court Rule 9A Applies To: McCarthy, Esq., Gavin (Attorney) on behalf of Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor)	62.2	Image
06/22/2017	Interpleader(s) William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for a Preliminary Injunction	63	Image
06/22/2017	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum in support of their motions for attachment & preliminary injunction	63.1	Image
06/22/2017	Affidavit of Arthur H. Marshall	63.2	
06/22/2017	Affidavit of Gavin G. McCarthy	63.3	
06/22/2017	Interpleader(s) William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for a Real Estate Attachment (re: #63 package) for affidavits	64	Image
06/22/2017	Interpleader William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for sanctions for Failure to Comply with Discovery order (Affidavit regarding No Opposition to Motions, see copy included in motion to amend complaint)	65	Image
06/22/2017	Interpleader William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Assented to Motion for Impoundment	66	Image
06/22/2017	The following form was generated: Notice to Appear Sent On: 06/22/2017 14:40:18		
06/23/2017	General correspondence regarding defendants' second emergency motion (Tocci Corp's response to defendants' second emergency motion for extension of time to file certain pleadings)	67	Image
06/26/2017	Opposition to Interpleader William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion for sanctions for Failure to Comply with Discovery order filed by Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	68	Image
06/26/2017	Affidavit of John L. Tocci	69	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/26/2017	Affidavit of Ruth M. Tocci	70	
06/26/2017	Affidavit of Cynthia Tocci	71	
06/26/2017	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion to Allow Separately Filed Papers In Opposition To The Motion For Preliminary Injunction, Attachment, And Sanctions Filed With The Court By Tocci Corporation and William Tocci	72	Image
06/26/2017	Opposition to Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion to Allow Separately Filed Papers In Opposition To The Motion For Preliminary Injunction, Attachment, And Sanctions Filed With The Court By Tocci Corporation and William Tocci filed by Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	73	Image
06/28/2017	Event Result: The following event: Motion Hearing scheduled for 06/28/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
06/28/2017	The following form was generated: Notice to Appear Sent On: 06/28/2017 16:12:20		
06/29/2017	Endorsement on Motion for Impoundment (#66.0): ALLOWED Allowed after hearing and by agreement of the parties. (Dated: 6/28/17) notice sent 6/29/17		Image
06/29/2017	Endorsement on Motion to (#62.0): Amend Complaint ALLOWED Allowed after agreement by the parties. (Dated: 6/28/17) notice sent 6/29/17		Image
06/29/2017	Amended: Second amended complaint filed by Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation	74	Image
06/29/2017	Endorsement on Motion to Allow Separately Filed Papers In Opposition to the Motions For Preliminary Injunction, Attachment, and Sanctions Filed With the Court By Tocci Corporation and William Tocci (#72.0): ALLOWED Allowed after hearing. (Dated: 6/28/17) notice sent 6/29/17		Image
06/29/2017	Endorsement on Motion for Extension of Time To File Certain Pleadings (#59.0): ALLOWED Allowed after hearing. (Dated: 6/28/17) notice sent 6/29/17		Image
06/29/2017	Endorsement on Motion for Second Extension of Time to File Certain Pleadings (#61.1): ALLOWED Allowed after hearing. (Dated: 6/28/17) notice sent 6/29/17		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/07/2017	<p>ORDER: ORDER PURSUANT TO UNIFORM ON IMPOUNDMENT PROCEDURE, RULE 8: This matter is before the Court on the parties joint Motion for Impoundment, pursuant to Rule 8 of the Uniform Rules on Impoundment Procedure. The underlying case is of the following nature:</p> <p>The motion requests the court to issue an order to impound the following information:</p> <p>The following information: Information derived from Tax returns, financial statements and other documents marked confidential. All affidavits and declarations offered in support of, or in opposition to motions for Preliminary Injunction and any attachments.</p> <p>Motion ALLOWED. This motion was/was not opposed and a hearing was/was not conducted. Having considered the arguments of the parties, legal authority, and relevant factors including, but not limited to, the nature of the parties and the controversy, constitutional rights, the type of information and the privacy interests involved, the extent of community interest, and the reason for the requested impoundment, and otherwise being fully advised, the Court ALLOWS the motion for the following reasons:</p> <p>1. The Court finds that good cause for impoundment of the above documents has been demonstrated by the parties to protect the following interests:</p> <p>The privacy interests of the parties and confidential financial information.</p> <p>2. The Court further finds that no less restrictive measure is available to protect this/these interest(s), and that the degree, duration and manner of impoundment ordered herein are no broader than necessary to protect the interest(s).</p> <p>It is furthered ORDERED that the materials impounded pursuant to this Order may be:</p> <p>copied by,</p> <p>inspected by,</p> <p>the parties and their attorneys of record, except</p> <p>This ORDER shall expire on _____</p> <p>So ORDERED, this 7th day of July 2017</p> <p>By the Court,</p> <p>C.W. Barrett, Judge</p> <p>Entered and copies sent 7/7/17</p>	75	Image
07/07/2017	<p>ORDER: ORDER: Pursuant to Trial Court Rule VIII and Uniform Rules on Impoundment Procedure and based on the information made known to the Court to date by the Parties and counsel, it is hereby ORDERED that the following documents shall be filed and docketed by the clerk in REDACTED form only as submitted to the clerk by Tocci Corporation along with its Motion for Real Estate Attachment and Motion for Preliminary Injunction, with the unredacted versions to be impounded and submitted directly to the trial court judge for consideration as part of the pending motions:</p> <p>a. Memorandum of Law in Support of Motion for Real Estate Attachment and Preliminary Injunction (redacted version to be publically available); and</p> <p>b. Exhibits attached to Affidavit of Gavin McCarthy (redacted version to be publically available); and</p> <p>c. Exhibit C to Affidavit of Arthur Marshall (redacted version to be publically available).</p> <p>This order of impoundment shall last indefinitely, for the duration of the litigation, and beyond.</p> <p>SO ORDERED:</p> <p>Dated: This 7 day of July, 2017.</p> <p>C.W. Barrett Associate Justice Superior Court</p> <p>Entered and copies sent 7/7/17</p>	76	Image
07/14/2017	<p>Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Reply Memorandum</p> <p>Brief on motion for sanctions for failure to comply with discovery order (re: #65)</p>	77	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/14/2017	Affidavit filed by Defendant William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation in support of Reply Brief on motion for sanctions	77.1	
07/14/2017	Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Reply Memorandum on motions for attachment & preliminary injunction (re: #63 & 64)	78	Image
07/18/2017	Event Result: The following event: Hearing: Sanctions scheduled for 07/18/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
07/19/2017	The following form was generated: Notice to Appear Sent On: 07/19/2017 10:34:51		
07/19/2017	The following form was generated: Notice to Appear Sent On: 07/19/2017 10:37:09		
07/19/2017	The following form was generated: Notice to Appear Sent On: 07/19/2017 10:38:45		
07/21/2017	Endorsement on Motion for Sanctions For Failure to Comply With Discovery Order (#65.0): ALLOWED After hearing, the court allows the intervenor-plaintiffs motion only in so far as the following, John Tocci and Tocci Building Corp shall produce the requested materials and answers (see court transcript for details) by August 15, 2017. If they are not produced/provided by said date, costs for this motion as well as any follow up motion will be assessed. (Dated: 7/19/17) notice sent 7/21/17		Image
07/21/2017	Service Returned for Defendant-Intervenor Tocci, Lila E.: Service accepted by counsel;	79	Image
08/14/2017	Event Result: The following event: Conference to Review Status scheduled for 08/15/2017 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
09/21/2017	Tocci Corporation's and William Tocci's Pre-Hearing Suibmission Applies To: William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Tocci Corporation (Plaintiff-Intervenor)	80	
09/22/2017	Matter taken under advisement The following event: Hearing on Preliminary Injunction scheduled for 09/22/2017 09:00 AM has been resulted as follows: Result: Held - Under advisement		
09/27/2017	Endorsement on Motion for a Preliminary Injunction (#63.0): Other action taken After hearing, the motion is ALLOWED IN PART. Tocci Building Corporation shall continue to operate in the normal course of business BUT SHALL not waste or diminish the value of its assets. In addition, neither John Tocci Sr. or Lila Tocci will take any action to waste or diminish the value of Tocci Building Corporations assets. Dated 9/25/17. Copies mailed 9/27/17.		Image
09/27/2017	Endorsement on Motion for a Real Estate Attachment (#64.0): DENIED After hearing, the motion is DENIED. There are adequate alternative forms of security available to "Tocci Corporation". See also the Courts decision on "Tocci Corporations" motion allowing in part, it's request for a preliminary injunction. Dated 9/25/17. Copies mailed 9/27/17.		Image
10/05/2017	Received from Plaintiffs Tocci Building Corp. and Tocci, John L.: Answer to Second amended complaint;	82	Image
10/23/2017	Plaintiff(s) Tocci Building Corp. motion filed for Letters Rogatory	83	
10/23/2017	Tocci Building Corp., John L. Tocci's MOTION for appointment of Other -. Commissioner.	84	
10/23/2017	Affidavit of compliance with Superior Court Rule 9A Applies To: Edwards, Esq., John M (Attorney) on behalf of Tocci Building Corp. (Plaintiff)	85	
10/25/2017	Plaintiff, Defendant Tocci Building Corp., William Tocci Individually and Derivatively on behalf of Tocci Corporation, Lila E. Tocci's Joint Motion for cancellation or continuance of Rule 16 conference and implementation of scheduling order	86	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/25/2017	Endorsement on Motion for Cancellation or Continuance of Rule 16 Conference and Implementation of Scheduling Order (#86.0): ALLOWED Joint motion is allowed. (Dated: 10/25/17) notice sent 10/25/17 Judge: Freniere, Hon Diane		Image
10/25/2017	Event Result: Judge: Freniere, Hon Diane The following event: Rule 16 Conference scheduled for 10/26/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Joint request of parties		
10/27/2017	Endorsement on Motion for issuance of a letter rogatory (#83.0): ALLOWED , without opposition. The Letter Rogatory shall issue. Dated 10/24/17. Notice mailed 10/27/17. Judge: Freniere, Hon Diane		Image
10/27/2017	Endorsement on Motion for appointment of commissioner (#84.0): ALLOWED , without opposition. The Commission shall issue. Dated 10/24/17. Notice mailed 10/27/17. Judge: Freniere, Hon Diane		Image
10/27/2017	ORDER: ORDER AND COMMISSION: (Copy) It is hereby ordered that the foregoing Motion for Appointment for Commissioner is granted and that Able Process Servers, Inc., 6586 Hypoluxo Road, Suite 260, Lake Worth, Florida 33467 is appointed commissioner, pursuant to the attached Commission, to serve a subpoena upon Valerie Tocci, 7410 Hearth Stone Avenue, Boynton Beach, Florida 33472. The subpoena shall require Ms. Tocci to appear for a deposition and to produce certain documents by October 16, 2017 or on any day or dates which have been agreed upon by the parties. Dated 10/24/17. Original mailed to John M. Edwards, Esq. on 10/27/17. Judge: Freniere, Hon Diane	87	Image
10/27/2017	Letters Rogatory (Copy) To: The appropriate authority in the State of Florida. Re: Valerie Tocci, 7410 Hearth Stone Avenue, Boynton Beach, Florida 33472. Dated 10/24/17. Original mailed to John M. Edwards, Esq. on 10/27/17. (See scanned image) Judge: Freniere, Hon Diane	88	Image
12/01/2017	The following form was generated: Notice to Appear Sent On: 12/01/2017 11:08:40		
12/08/2017	Endorsement on Motion for clarification (#48.0): ALLOWED After hearing see Memorandum and Order of same date. Dated 12/6/17 Judge: Krupp, Hon. Peter B		
12/08/2017	Endorsement on Motion for clarification and motion to reconsider (#48.1): Other action taken After hearing defendants motion to reconsider is ALLOWED in part and DENIED IN PART. see memorandum and Order of same date. Dated December 6, 2017 Judge: Krupp, Hon. Peter B		
12/08/2017	Endorsement on Motion for partial summary judgment of plaintiff's John J. Tocci and Tocci Building Corp (#33.0): ALLOWED after review, this motion is allowed. See accompanying memorandum and order. dated 12/6/17 Judge: Krupp, Hon. Peter B		
12/08/2017	MEMORANDUM & ORDER: ON MOTIONS FOR CLARIFICATION OF DOCKET ENTRY, AND RECONSIDERATION OF EARLIER DECISION ON, MOTION FOR PARTIAL SUMMARY JUDGMENT: The motion of Plaintiff's John J. Tocci and Tocci Building Corp., for Clarification of Clerk's Notice of Docket Entry (Docket #48) is ALLOWED. The Docket Entry dated August 16, 2016 which currently states: Endorsement on Motion for Partial Summary Judgment of Plaintiffs, John L. Tocci and Tocci Building Corp. (#33) DENIED After review, this motion is DENIED. See accompanying Memorandum of Decision. shall be changed to state: Endorsment on Motion for Partial Summary Judgment of Plaintiffs. John J. Tocci and Tocci Building Corp (#33) Allowed After review, this motion is ALLOWED. See accompanying Memorandum of Decision. Defendant's Motion to Reconsider, to vacate Judgment and for De Novo Hearing (Docket #48) is DENIED insofar as it relates to Michaels counterclaim based on non payment of a promissory note or a purported loan, but allowed insofar as the remainder of the decision on the motion for partial summary judgment(Docket #41) is vacated. Dated December 6, 2017 Judge: Krupp, Hon. Peter B	89	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/28/2017	List of exhibits IMPOUNDED EXHIBIT "1" TABS 100-143	90	
01/10/2018	The following form was generated: Notice to Appear Sent On: 01/10/2018 14:46:12		
01/11/2018	Plaintiff-Intervenor, Defendant in a Counterclaim, Plaintiff in a Counterclaim, Defendant Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation, Michael J. Tocci, John L. Tocci, Tocci Building Corp., Lila E. Tocci's Joint Motion for Cancellation of Rule 16 Conference	91	Image
01/12/2018	Endorsement on Motion for Cancellation of Rule 16 Conference (#91.0): ALLOWED Set Final Pretrial Conf. in April 2018. (Dated: 1/11/18) notice sent 1/12/18 Judge: Leibensperger, Hon. Edward P		Image
01/12/2018	Event Result: Judge: Leibensperger, Hon. Edward P The following event: Rule 16 Conference scheduled for 01/16/2018 02:00 PM has been resulted as follows: Result: Canceled Reason: Joint request of parties		
01/12/2018	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 01/12/2018 09:06:49		
01/29/2018	Michael J. Tocci's Motion for leave to file his first Amended Counterclaim	92	
01/29/2018	Opposition to Plaintiff's Motion for leave to file his first Amended Counterclaim filed by Applies To: Tocci, Michael J. (Defendant)	92.1	Image
01/29/2018	Plaintiff Michael J. Tocci's Response to Plaintiff's opposition to his Motion for leave to file his first Amended Counterclaim	92.2	Image
02/02/2018	Endorsement on Motion of (#92.0): Defendant Michael J. Tocci to File His First Amended Counterclaim DENIED DENIED, because the proposed Amended Counterclaim is not a "short and plain statement of the claim" as required by Mass.R.Civ. P. 8. This denial is without prejudice to the movant moving again with a proposed amended counterclaim that succinctly identifies a claim against each proposed defendant. (Dated: 1/31/18) notice sent 2/2/18 Judge: Leibensperger, Hon. Edward P		Image
03/15/2018	Plaintiffs, Defendants Tocci Building Corp., William Tocci Individually and Derivatively on behalf of Tocci Corporation, Michael J. Tocci, John Tocci, Tocci Building Corp., Lila E. Tocci's Joint Motion to continue / reschedule an event 04/23/2018 02:00 PM Final Pre-Trial Conference	93	Image
03/19/2018	Endorsement on Motion for Continuance of Final Pre-Trial Conference (#93.0): ALLOWED Reschedule to May 10, 2018. (Dated: 3/16/18) notice sent 3/19/18 Judge: Leibensperger, Hon. Edward P		Image
03/19/2018	Event Result: Judge: Leibensperger, Hon. Edward P The following event: Final Pre-Trial Conference scheduled for 04/23/2018 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
03/19/2018	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 03/19/2018 11:17:42		
03/28/2018	Plaintiffs Tocci Building Corp., John L. Tocci's EMERGENCY Motion for Extension of Time to Complete Discovery	94	Image
03/30/2018	Opposition to to Plaintiff's Emergency Motion For Extension of Time to Complete Discovery and His Motion For Entry of Default Judgment Against the Plaintiffs filed by Michael J. Tocci	95	Image
03/30/2018	Michael J. Tocci's Memorandum in support of His Opposition to Plaintiff's Emergency Motion For Extension of Time to Complete Discovery and In Support of His Motion For Entry of Default Judgment Against the Plaintiffs	95.1	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/04/2018	Opposition to Emergency Motion For Extension of Time to Complete Discovery filed by Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation	96	Image
04/04/2018	Endorsement on Motion for Extension of Time to Complete Discovery (#94.0): ALLOWED Upon review, including the Oppositions (therefore, this is not an emergency motion), this motion is ALLOWED. (Dated: 4/4/18) notice sent 4/4/18 Judge: Leibensperger, Hon. Edward P		Image
04/04/2018	Endorsement on Submission of Opposition to Plaintiffs' Emergency Motion For Extension of Time to Complete Discovery and His Motion For Entry of Default Judgment Against the Plaintiffs (#95.0): DENIED Request for default is DENIED. (Dated: 4/4/18) notice sent 4/4/18 Judge: Leibensperger, Hon. Edward P		Image
04/27/2018	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion for Extension of Time to Complete Discovery and to Continue Final Pre-Trial Conference	97	Image
04/30/2018	Defendant Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation's Response to Emergency Motion For Extension of Time to Complete Discovery and to Continue Pre-Trial Conference	98	Image
04/30/2018	Plaintiffs, Defendant in a Counterclaim John L. Tocci, Tocci Building Corp.'s Motion for judgment on the pleadings MRCP 12(c) (Partial)	99	Image
04/30/2018	Tocci Building Corp., John L. Tocci's Memorandum in support of Their Motion for Partial Judgment on the Pleadings	99.1	Image
04/30/2018	Opposition to Motion for Partial Judgment on the Pleadings filed by Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation	99.2	Image
04/30/2018	Brief filed: Reply Applies To: Tocci, John L. (Plaintiff); Tocci Building Corp. (Defendant-Intervenor)	99.3	
05/01/2018	Endorsement on Motion for extension of time to complete discovery and to continue final pre trial conference (#97.0): ALLOWED not as and "emergency" but after review of defendants response. Discovery extended to May 25, 2018. The final pre trial conference is moved from May 10, 2018 to June 5, 2018 Judge: Leibensperger, Hon. Edward P		Image
05/01/2018	Event Result: Judge: Leibensperger, Hon. Edward P The following event: Final Pre-Trial Conference scheduled for 05/10/2018 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Request of Plaintiff		
05/01/2018	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 05/01/2018 09:56:52		
05/02/2018	The following form was generated: Notice to Appear Sent On: 05/02/2018 09:12:46		
05/22/2018	Plaintiff in a Counterclaim Michael J. Tocci's Motion for leave to file first amended counterclaim	100	Image
05/22/2018	Opposition to counterclaim plaintiff's motion to amend counterclaim filed by John L. Tocci, Tocci Building Corp.	100.1	Image
05/30/2018	The following form was generated: Notice to Appear Sent On: 05/30/2018 09:51:41		
05/31/2018	Joint Pre-Trial Memorandum filed:	101	Image
06/05/2018	Event Result:: Final Pre-Trial Conference scheduled on: 06/05/2018 02:00 PM Has been: Held as Scheduled Hon. Edward P Leibensperger, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/05/2018	Matter taken under advisement: Hearing for Judgment on Pleading scheduled on: 06/05/2018 02:00 PM Has been: Held - Under advisement Hon. Edward P Leibensperger, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
06/06/2018	The following form was generated: Notice to Appear for Trial Sent On: 06/06/2018 09:48:21		
06/06/2018	The following form was generated: Notice to Appear FTC Sent On: 06/06/2018 09:49:49		
06/06/2018	Endorsement on Motion to (#100.0): File His First Amended Counterclaim DENIED After hearing, DENIED. Because this motion is brought after the close of discovery in a case four years old, and because it seeks to add new parties, and because it is not a plain and short statement of a new claim (as opposed to a requested remedy), this attempted amendment must be denied. (Dated: 6/6/18) notice sent 6/6/18 Judge: Leibensperger, Hon. Edward P		Image
06/06/2018	ORDER: ON MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS (DOCKET NO. 99) Tocci Building Corp. and John Tocci move to dismiss claims made against them arising under G.L.c.93A. The motion is ALLOWED in part and DENIED in part. The claim by Michael J. Tocci in Count VI of his Counterclaim against John Tocci alleging c.93A violations is DISMISSED. The claim arises solely from Michael Tocci's position as a minority shareholder in Tocci Corporation. It presents a dispute between himself and his brother arising from the same venture. "It is well established that disputes between parties in the same venture do not fall within the scope of G.L.c. 93A, Section 11, Szalla v. Locke, 421 Mass.448, 451 (1995). In Count VI of the Second Amended Complaint of Tocci Corporation, a c.93A claim is asserted by Tocci Corporation against Tocci Building Corporation for, among other things, conversion of property belonging to Tocci Corporation. This dispute appears, at this stage, to be between two, separate corporate entities. Accordingly, taking the allegations of Tocci Corporation to be true for purposes of this motion, a claim under c. 93A is stated. Thus, the motion is denied with respect to the claim of Tocci Corporation. By the Court, Edward P. Leibensperger Justice of the Superior Court Date: June 6, 2018 Entered and copies sent 6/6/18 Judge: Leibensperger, Hon. Edward P	102	Image
07/23/2018	Defendants John L. Tocci, Tocci Building Corp., Lila E. Tocci's Motion for summary judgment, MRCP 56 against William R. Tocci	103	Image
07/23/2018	John L. Tocci, Tocci Building Corp., Lila E. Tocci's Memorandum of Law in support of Motion for Summary Judgment, MRCP 56 against William R. Tocci	103.1	Image
07/23/2018	Defendants William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Cross Motion for summary judgment, MRCP 56 (Partial)	104	Image
07/23/2018	Opposition to Defendants' Motion for Summary Judgment and Memorandum in support of Plaintiffs' Cross-Motion for Partial Summary Judgment filed by Applies To: William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor)	104.1	Image
07/23/2018	John L. Tocci, Tocci Building Corp., Lila E. Tocci's Memorandum in support of their Motion for Summary Judgment and the Memorandum of Tocci Building Corp in opposition to the Cross- Motion for Partial Summary Judgment of William R. Tocci and Tocci Corporation	104.2	Image
07/23/2018	Brief filed: Reply in support of William R. Tocci and Tocci Corporation's Cross- Motion for Partial Summary Judgment Applies To: William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Tocci Corporation (Plaintiff-Intervenor)	104.3	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/23/2018	John L. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation, Lila E. Tocci's Joint Appendix of Exhibits		
07/24/2018	Statement of Undisputed Facts Joint Statement of Uncontested Material Facts, Statement of Uncontested Material Facts in support of Motion for Summary Judgment Applies To: Tocci, John L. (Plaintiff); William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Tocci Corporation (Plaintiff-Intervenor); Tocci, Lila E. (Defendant-Intervenor); Tocci Building Corp. (Defendant-Intervenor)		Image
07/25/2018	The following form was generated: Notice to Appear Sent On: 07/25/2018 10:46:42		
10/26/2018	Event Result:: Rule 56 Hearing scheduled on: 11/13/2018 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Bruce R Henry, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
10/26/2018	The following form was generated: Notice to Appear Sent On: 10/26/2018 09:14:25		
10/26/2018	The following form was generated: Notice to Appear Sent On: 10/26/2018 09:14:58		
11/21/2018	Attorney appearance On this date Bradley L Croft, Esq. added as Private Counsel for Plaintiff Tocci Building Corp.		
11/21/2018	Attorney appearance On this date Dianna Marie Williams, Esq. added as Private Counsel for Plaintiff Tocci Building Corp.		
11/21/2018	Attorney appearance On this date Bradley L Croft, Esq. added as Private Counsel for Plaintiff John L. Tocci		
11/21/2018	Attorney appearance On this date Dianna Marie Williams, Esq. added as Private Counsel for Plaintiff John L. Tocci		
11/28/2018	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion to continue trial	105	Image
12/04/2018	Opposition to Plaintiff's Emergency Motion to Continue Trial filed by Michael J. Tocci	105.1	Image
12/04/2018	Opposition to Plaintiffs' Motion to Continue Trial filed by Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation	105.2	Image
12/05/2018	Endorsement on Motion to Continue Trial (#105.0): ALLOWED Allowed to the extent that the trial will not go forward on 1/15/19. Counsel should come to the summary judgment hearing on Dec. 17th fully prepared to set a new trial date. This case will have precedence over the other cases due to the length of time it has been pending. No motions in limine or pre-trial motions are due until after summary judgment has been decided. (Dated: 12/4/18) notice sent 12/5/18 Judge: Yarashus, Hon. Valerie A		Image
12/05/2018	Event Result:: Jury Trial scheduled on: 01/15/2019 09:00 AM Has been: Rescheduled For the following reason: Request of Plaintiff Hon. Valerie A Yarashus, Presiding Appeared: Staff:		
12/05/2018	Event Result:: Final Trial Conference scheduled on: 01/08/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Appeared: Staff:		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/17/2018	The following form was generated: Notice to Appear for Trial Sent On: 12/17/2018 15:58:52		
12/17/2018	Event Result:: Rule 56 Hearing scheduled on: 12/17/2018 02:00 PM Has been: Held as Scheduled Hon. Valerie A Yarashus, Presiding Appeared: Staff: Amanda Ward, Assistant Clerk Magistrate		
12/24/2018	Event Result:: Jury Trial scheduled on: 08/19/2019 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Appeared: Staff:		
12/24/2018	The following form was generated: Notice to Appear Sent On: 12/24/2018 14:41:17		
12/24/2018	Event Result:: Filing of Motions scheduled on: 01/03/2019 06:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Appeared: Staff:		
01/08/2019	Endorsement on Motion for summary judgment, MRCP 56 (#103.0): Of Plaintiffs/Defendants in Counterclaim John L. Tocci, Tocci Building Corporation, and Lila E. Tocci Against William R. Tocci DENIED Based on the specific articulation of claims and defenses, all motions and cross-motions for summary judgment are DENIED as there are material facts in dispute regarding when William Tocci knew or should have known that he was harmed by other parties' alleged misappropriation of funds. A trier of fact may or may not find that some of the claims are barred by the statute of limitations. However, cases involving breach of fiduciary duty have a particularly high standard for determining when a claim will be barred by the statute of limitations. See Demoulas v. Demoulas Super Markets, Inc., 424 Mass. 501, 518 (1977). Here, a review of the Joint Statement of Uncontested Material Facts reveals that a large number of material facts remain hotly disputed and it is appropriate for these to be determined by a trier of fact rather than as a matter of law. Dated: 1/4/19 Valerie A. Yarashus Justice of the Superior Court notice sent 1/8/19 Judge: Yarashus, Hon. Valerie A		Image
01/08/2019	Endorsement on Motion of William Tocci and Tocci Corporation For Partial Summary Judgment (Cross-Motion) (#104.0): DENIED Denied, see endorsement on Plaintiff/Defendants in Counterclaim Motion for summary judgment, paper #103. (Dated: 1/4/19) notice sent 1/8/19 Judge: Yarashus, Hon. Valerie A		Image
01/08/2019	Plaintiff Tocci Building Corp., John L. Tocci's EMERGENCY Motion for protective order, filed in court	106	
01/08/2019	Endorsement on Motion for protective order (emergency) (#106.0): Other action taken Defendant Michael Tocci shall have until 1-22-19 to file a response to this motion. He shall not file any pleading which discusses the substance of any settlement offer, negotiations or discussions until after the court has ruled on this motion. The court will hear this motion on 1/30/2019 at 2:00 pm		
01/08/2019	The following form was generated: Notice to Appear Sent On: 01/08/2019 15:45:40		
01/24/2019	Response to plaintiffs' emergency motion for protective order. filed by Michael J. Tocci	107	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/29/2019	Event Result:: Hearing for Protective Order scheduled on: 01/30/2019 02:00 PM Has been: Not Held For the following reason: Request of Plaintiff Hon. Helene Kazanjian, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
01/30/2019	General correspondence regarding email from Attorney Dianna Williams requesting that the hearing on motion for protective order be taken off the calendar	108	Image
01/30/2019	The following form was generated: Notice to Appear Sent On: 01/30/2019 15:39:28		
01/30/2019	The following form was generated: Notice to Appear Sent On: 01/30/2019 15:40:49		
03/15/2019	General correspondence regarding Email from Attorney Dianna Williams requesting that the Plaintiff's Emergency Motion for Protective Order, currently scheduled for March 18, 2019 be taken off the list	109	Image
03/15/2019	Event Result:: Hearing for Protective Order scheduled on: 03/18/2019 02:00 PM Has been: Not Held For the following reason: Request of Defendant Hon. Helene Kazanjian, Presiding Appeared: Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
03/29/2019	Defendant Michael J. Tocci's Motion to Enforce Settlement Agreement and Dismiss Intervenor William R. Tocci from the Matter	110	Image
03/29/2019	Michael J. Tocci's Memorandum in support of Motion to Enforce Settlement Agreement and Dismiss Intervenor William R. Tocci from the Matter	110.1	Image
03/29/2019	Opposition to Motion Enforce Settlement Agreement between William R. Tocci, John L. Tocci, Lila E. Tocci and Tocci Building Corporation filed by John L. Tocci, Lila E. Tocci, Tocci Building Corp.	110.2	Image
03/29/2019	Defendant Michael J. Tocci's Response to Opposition of John L. Tocci, Lila E. Tocci, and Tocci Building Corporation to his Motion to Enforce Settlement Agreement and Dismiss Intervenor William R. Tocci from the Matter	110.3	Image
03/29/2019	Reply/Sur-reply of Plaintiffs/Counterclaim Defendants in Opposition to Michael J. Tocci's Motion to Enforce Settlement Agreement	110.4	Image
04/01/2019	The following form was generated: Notice to Appear Sent On: 04/01/2019 10:04:51		
05/10/2019	Attorney appearance On this date Dianna Marie Williams, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Tocci Building Corp.		Image
05/10/2019	Attorney appearance On this date Dianna Marie Williams, Esq. dismissed/withdrawn as Private Counsel for Plaintiff John L. Tocci		Image
05/16/2019	Matter taken under advisement: Motion Hearing scheduled on: 05/16/2019 02:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
05/17/2019	Endorsement on Motion to enforce settlement agreement and dismiss interveror William R. Tocci from the Matter (#110.0): DENIED After hearing and careful consideration of submissions by parties, motion is denied for reason set forth on record at hearing. Dated this day May 16, 2019 at Woburn, Ma Judge: Barry-Smith, Hon. Christopher K		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/08/2019	Event Result:: Final Trial Conference scheduled on: 08/08/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
07/25/2019	Plaintiffs William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine to Exclude assertion in opening that William sold his shares in Tocci Corporation and introduction of evidence regarding purported transfer of equipment	111	Image
07/25/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum of Law in support of Motion in Limine to Exclude assertion in opening that William sold his shares in Tocci Corporation and introduction of evidence regarding purported transfer of equipment	111.1	Image
07/31/2019	Event Result:: Filing of Motions scheduled on: 08/01/2019 05:00 PM Has been: Held as Scheduled Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine to exclude testimony of defendants' proffered expert witness Priya Kapila	112	Image
08/01/2019	Plaintiffs Tocci Building Corp., John L. Tocci's PROPOSED Request for special verdict form.	122.6	Image
08/01/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum of law in support of #112 motion.	112.1	Image
08/01/2019	Opposition to #112 motion. filed by Tocci Building Corp., Lila E. Tocci, John L. Tocci	112.2	Image
08/01/2019	General correspondence regarding Declaration of John Tocci in support of opposition to defendants' motion in limine to exclude testimony of expert witness Priya Kapila.	112.3	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Reply in support of #112 motion.	112.4	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci's Motion in limine to exclude parol evidence concerning the Deed of Transfer and to prohibit reference to any alleged related financial audit	113	Image
08/01/2019	Tocci Building Corp., John L. Tocci's Memorandum in support of motion in limine (P#113)	113.1	Image
08/01/2019	Opposition to plaintiffs' motion in limine (P#113) filed by Michael J. Tocci	113.2	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci's Reply to defendant's opposition to plaintiffs' motion in limine (P#113)	113.3	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci's Motion in limine to exclude reference to William Tocci as a director of Tocci Corp	114	Image
08/01/2019	Tocci Building Corp., John L. Tocci, Lila E. Tocci's Memorandum in support of motion in limine (P#114)	114.1	Image
08/01/2019	Opposition to motion in limine (P#114) filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation	114.2	Image
08/01/2019	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion in limine to exclude testimony of defendant/counterclaim plaintiffs' expert Steven Kirkland	115	Image
08/01/2019	Tocci Building Corp., John L. Tocci, Lila E. Tocci's Memorandum in support of motion in limine (P#115)	115.1	Image
08/01/2019	Opposition to motion in limine (P#115) filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation	115.2	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion in limine to exclude reference to settlement negotiations	116	Image
08/01/2019	Tocci Building Corp., John L. Tocci's Memorandum in support of motion in limine (P#116)	116.1	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation's Response to motion in limine (P#116)	116.2	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine To Exclude Evidence or Reference in Opening Statement That Michael and William Were "Notional" Owners of Tocci Corporation	117	Image
08/01/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum in support of Plaintiff's Motion in Limine to Exclude Evidence or Reference in Opening Statement That Michael and William Were "Notional" Owners of Tocci Corporation	117.1	Image
08/01/2019	Opposition to Defendants' Motion in Limine to Exclude Evidence or References in Opening Statement That Michael and William Were "Notional" Owners of Tocci Corporation filed by John L. Tocci, Lila E. Tocci, Tocci Building Corp.	117.2	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Reply in Support of Motion in Limine to Exclude Evidence or Reference in Opening Statement that Michael and William Were "Notional" Owners of Tocci Corporation	117.3	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion in limine to bifurcate trial	118	Image
08/01/2019	Tocci Building Corp., John L. Tocci, Lila E. Tocci's Memorandum in support of motion in limine (P#118)	118.1	Image
08/01/2019	Opposition to motion in limine (P#118) filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation	118.2	Image
08/01/2019	Plaintiff Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion to clarify status of parties (*pre-trial motion)	119	Image
08/01/2019	Opposition to pre-trial motion (P#119) filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation	119.1	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine to exclude testimony of defendants' proffered expert witness Michael Gordon.	120	Image
08/01/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum of law in support of #120 motion.	120.1	Image
08/01/2019	Opposition to #120 motion. filed by Tocci Building Corp., Lila E. Tocci, John L. Tocci	120.2	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Reply in support of #120 motion.	120.3	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine to exclude evidence that John Tocci Told Michael, William, and others that he had no obligations to William or Michael.	121	Image
08/01/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum of law in support of #121 motion.	121.1	Image
08/01/2019	Opposition to #121 motion. filed by Tocci Building Corp., Lila E. Tocci, John L. Tocci	121.2	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Reply in support of #121 motion.	121.3	Image
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Motion in limine to exclude evidence or references in opening statement to gifts of money to Michael and to his other business ventures.	122	Image
08/01/2019	William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Memorandum of law in support of #122 motion.	122.1	Image
08/01/2019	Opposition to #122 motion. filed by Tocci Building Corp., Lila E. Tocci, John L. Tocci	122.2	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/01/2019	Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation's Reply in support of #122 motion.	122.3	Image
08/01/2019	Plaintiffs Tocci Building Corp., John L. Tocci's PROPOSED Request for voir dire questions. Applies To: McCarthy, Esq., Gavin (Attorney) on behalf of Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Kayatta, Esq., Katherine (Attorney) on behalf of Tocci Corporation, William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor)	122.4	Image
08/01/2019	Request for Jury Instructions Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	122.5	
08/01/2019	Plaintiffs Tocci Building Corp., John L. Tocci's PROPOSED Request to special verdict form	122.6	Image
08/05/2019	General correspondence regarding Request from Attorney Noonan for jury pool information for Trial scheduled for August 16, 2019	123	Image
08/06/2019	Plaintiff John L. Tocci's Declaration in support of opposition to defendants' motion in limine to exclude testimony of expert witness Priya Kapila	124	Image
08/14/2019	Event Result:: Final Trial Conference scheduled on: 08/14/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
08/14/2019	Juror Voir Dire questions filed by: Plaintiffs, Other Interested Party John L. Tocci, Tocci Building Corp., Lila E. Tocci (Proposed)	124.1	Image
08/14/2019	Witness list Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff)	125	Image
08/14/2019	List of exhibits Joint Exhibit List	126	Image
08/14/2019	Gavin McCarthy, Esq.'s Assented to MOTION to admit counsel pro hac vice: Kyle M. Noonan	127	Image
08/14/2019	Affidavit of Kyle M. Noonan in support of the Assented to motion for admission Pro Hac Vice. Board of Bar overseers attached	127.1	Image
08/14/2019	Affidavit of compliance with Superior Court Rule 9A No oppsition Applies To: McCarthy, Esq., Gavin (Attorney) on behalf of William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor)	127.2	Image
08/14/2019	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., John L. Tocci, Lila E. Tocci's Submission of Proposed Witness List, Exhibit List, and Deposition Designations with Plaintiff's Tocci Corp. and William Tocci's Objections and Counter-Designations	126.2	Image
08/15/2019	Event Result:: Jury Trial scheduled on: 08/16/2019 09:00 AM 08/15/2019 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
08/15/2019	Plaintiff, Defendant Tocci Building Corp., William Tocci Individually and Derivatively on behalf of Tocci Corporation, Michael J. Tocci, Tocci Building Corp., John Tocci, Lila E. Tocci's Joint Motion to sever John Tocci and TBC's claim for declaratory judgment against defendant Michael Tocci regarding validity of "Deed of Transfer"	128	Image
08/16/2019	Event Result:: Final Trial Conference scheduled on: 08/16/2019 11:00 AM Has been: Held as Scheduled Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/16/2019	Endorsement on Motion for Admission Pro Hac Vice of Kyle M. Noonan (#127.0): ALLOWED (Dated: 8-16-19) notice sent 8/16/19 Judge: Kazanjian, Hon. Helene		Image
08/16/2019	Attorney appearance On this date Kyle M Noonan added as Pro Hac Vice (SJC 3:15) for Plaintiff-Intervenor Tocci Corporation		
08/16/2019	Attorney appearance On this date Kyle M Noonan added as Pro Hac Vice (SJC 3:15) for Plaintiff-Intervenor William Tocci Individually and Derivatively on behalf of Tocci Corporation		
08/20/2019	Plaintiffs, Defendant in a Counterclaim John L. Tocci, Tocci Building Corp., Lila E. Tocci's Submission of Proposed Witness List, Exhibit List, and Deposition Designations For Severed Trial	129	Image
08/20/2019	List of exhibits Joint Exhibit List for Severed Trial Applies To: Croft, Esq., Bradley L (Attorney) on behalf of Tocci Building Corp., Tocci, John L. (Plaintiff)	130	Image
08/20/2019	Attorney appearance On this date John M Edwards, Esq. added as Private Counsel for Defendant-Intervenor Lila E. Tocci		
08/22/2019	Event Result:: Jury Waived Trial scheduled on: 08/22/2019 09:00 AM Has been: Held as Scheduled Comments: Day 1 Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
08/23/2019	Event Result:: Jury Waived Trial scheduled on: 08/23/2019 09:00 AM Has been: Held as Scheduled Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
08/26/2019	Event Result:: Jury Waived Trial scheduled on: 08/26/2019 09:00 AM Has been: Held as Scheduled Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
08/26/2019	Endorsement on Motion in limine to exclude (#113.0): Parole Evidence Concerning the Deed of Transfer and to Prohibit Reference to any alleged Related Financial Audit Reserved After review and hearing, the Court shall reserve on this motion. The Court will rule at the time objections are made to evidence that plaintiffs intend is "parole evidence". Because one of M. Tocci's affirmative defenses is that he was fraudulently induced to sign the deed of transfer the Court needs to hear the context of the purported evidence before ruling.		Image
08/30/2019	Matter taken under advisement: Jury Waived Trial scheduled on: 08/30/2019 09:00 AM Has been: Held - Under advisement Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
08/30/2019	Plaintiff, Other Interested Party Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion for Involuntary Dismissal	131	Image
08/30/2019	Endorsement on Motion for Involuntary Dismissal (#131.0): DENIED After hearin, and after review of the evidence presented to the court, this motion is DENIED for the reasons set forth on the record FTR (approx) 11:20 am. DENIED.		Image
08/30/2019	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., John L. Tocci, Lila E. Tocci's Submission of Proposed Findings of Facts and Rulings of Law	131.1	Image
09/09/2019	Event Result:: Jury Waived Trial scheduled on: 09/10/2019 10:00 AM Has been: Canceled For the following reason: Joint request of parties Hon. Rosemary Connolly, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/10/2019	The following form was generated: Notice to Appear for Trial Sent On: 09/10/2019 14:16:30		
09/10/2019	The following form was generated: Notice to Appear Sent On: 09/10/2019 14:18:01		
01/06/2020	ORDER: DECISION AND ORDER AFTER JURY WAIVED TRIAL DECLARATION For the foregoing reasons, the court declares that the 1993 Deed of Transfer is voidable by Michael Tocci and is therefore unenforceable by John Tocci. The court declares that Michael Tocci remained one third (1/3rd) shareholder of Tocci Corp after signing the 1993 Deed because that instrument did not validly transfer Michael Tocci's shares in Tocci Corp to John Tocci. John Tocci's claim for relief in the form of declaration that the 1993 Deed of Transfer validly transferred Michael Tocci's shareholder interest to John Tocci is hereby DENIED. Dated: January 3, 2020 (see scanned copy of Decision and Order for full text) Judge: Connolly, Hon. Rosemary	132	Image
01/16/2020	Attorney appearance electronically filed. On this date Roger L Smerage, Esq. added for Plaintiff John L. Tocci		Image
01/30/2020	Event Result:: Final Trial Conference scheduled on: 02/24/2020 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
02/05/2020	Plaintiff Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion to amend the Decision and Order after Jury Waived Trial, or alternatively, to Direct Entry of Final Judgment; Motion for Reconsideration pursuant to Superior Court Rule 9D	133	Image
02/05/2020	Tocci Building Corp., John L. Tocci, Lila E. Tocci's Memorandum in support of Motion to Amend Decision and Order after Jury Waived Trial, or alternatively, to Direct Entry of Final Judgment; Motion for Reconsideration pursuant to Superior Court Rule 9D	133.1	Image
02/05/2020	Opposition to Motion to Amend Decision and Order after Jury Waived Trial, or alternatively, to Direct Entry of Final Judgment; Motion for Reconsideration pursuant to Superior Court Rule 9D filed by Michael J. Tocci	133.2	Image
02/05/2020	Michael J. Tocci's Memorandum in opposition to Motion to Amend Decision and Order after Jury Waived Trial, or alternatively, to Direct Entry of Final Judgment; Motion for Reconsideration pursuant to Superior Court Rule 9D	133.3	Image
02/05/2020	Reply/Sur-reply in Support of Plaintiff's Motion to Amend Decision and Order after Jury Waived Trial, or alternatively, to Direct Entry of Final Judgment; Motion for Reconsideration pursuant to Superior Court Rule 9D	133.4	Image
02/05/2020	Affidavit of Compliance with Rule 9A, with notice of Filing and list of documents	133.5	Image
02/05/2020	Plaintiff Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion to Stay Proceedings and Continue Trial Date Pending Review of Decision and Order after Jury Waived Trial	134	Image
02/05/2020	Tocci Building Corp., John L. Tocci, Lila E. Tocci's Memorandum in support of Motion to Stay Proceedings and Continue Trial Date Pending Review of Decision and Order after Jury Waived Trial	134.1	Image
02/05/2020	Opposition to Motion to Stay Proceedings and Continue Trial Date Pending Review of Decision and Order after Jury Waived Trial filed by Michael J. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation	134.2	Image
02/05/2020	Reply/Sur-reply in Support of Motion to Stay Proceedings and Continue Trial Date Pending Review of Decision and Order after Jury Waived Trial	134.3	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/05/2020	Affidavit of Compliance with Rule 9A, with notice of filing and list of documents	134.4	Image
02/06/2020	Transcript received Dates: August 22-23,26 and 30, 2019	135	Image
02/10/2020	General correspondence regarding Request for Jury Pool Information scheduled for Trial on March 2, 2020 by Attorney McCarthy	135.1	Image
02/11/2020	Endorsement on Motion for Plaintiff to Amend Decision and Order After Jury Waived Trial Or, Alternatively, to Direct Entry of Final Judgment, Motion For Reconsideration Pursuant to Superior Court Rule 9D (#133.0): DENIED Motions denied. See Decision and Order of this date. (Dated: 2/10/2020) notice sent 2/11/2020 Judge: Connolly, Hon. Rosemary		Image
02/11/2020	ORDER: DECISION AND ORDER ON PLAINTIFFS' MOTION TO AMEND DECISION OR IN THE ALTERNATIVE TO DIRECT ENTRY OF FINAL JUDGMENT AND MOTION FOR RECONSIDERATION: (which see 4 pages): ORDER: The court now therefore: 1. DENIES the plaintiffs' Motion to Amend the Judgment except the court has amended its scrivener's errors and issues a revised Decision and Order after Jury Waived Trial but DENIES to the substantively amend or alter the judgment; 2. DENIES plaintiffs' motion for reconsideration and 3. DENIES the plaintiffs' request for entry of separate and final judgment under Mass. R. Civ. P. 54. Rosemary Connolly Justice of the Superior Court DATE: February 10, 2020 Entered and copies sent 2/11/2020 Judge: Connolly, Hon. Rosemary	136	Image
02/11/2020	ORDER: REVISED DECISION AND ORDER AFTER JURY WAIVED TRIAL: (which see 28 pages) DECLARATION: For the foregoing reasons, the court declares that the 1993 Deed of Transfer is voidable by Michael Tocci and is therefore unenforceable by John Tocci. The court declares that Michael Tocci remained a one third (1/3rd) shareholder of Tocci Corp after signing the 1993 Deed because that instrument did not validly transfer Michael Tocci's shares in Tocci Corp to John Tocci. John Tocci's claim for relief in the form of declaration that the 1993 Deed of Transfer validly transferred Michael Tocci's shareholder interest to John Tocci is hereby DENIED. Rosemary Connolly Justice of the Superior Court DATE: REVISED: February 10, 2020 (Original: January 3, 2020) Entered and copies sent 2/11/2020 Judge: Connolly, Hon. Rosemary	137	Image
02/11/2020	Endorsement on Motion of Plaintiff to Stay Proceedings and Continue Trial Date Pending Review of Decision and Order After Jury Waived Trial (#134.0): DENIED (Dated: 2-7-20) notice sent 2/11/2020		Image
02/14/2020	General correspondence regarding Request from plaintiff's counsel asking for a copy of the jury pool information for the trial scheduled for March 2, 2020	138	Image
02/14/2020	Proposed verdict slip filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation, Tocci Corporation		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/14/2020	Proposed special jury questions Proposed jury instructions of Plaintiffs Tocci Corporation and William Tocci Applies To: William Tocci Individually and Derivatively on behalf of Tocci Corporation (Plaintiff-Intervenor); Tocci Corporation (Plaintiff-Intervenor)	139	Image
02/18/2020	Plaintiffs William Tocci Individually and Derivatively on behalf of Tocci Corporation's Motion of No. 7 Regarding Factual Findings From Bench Trial	139.1	Image
02/18/2020	Michael J. Tocci's Memorandum in support of Pretrial Motion No. 7 Regarding Factual Findings From Bench Trial	139.2	Image
02/18/2020	Opposition to to Pretrial Motion No. 7 Regarding Factual Findings From Bench Trial filed by	139.3	Image
02/18/2020	Reply/Sur-reply of Plaintiff Tocci Corporation and William Tocci in Support of Pretrial Motion No. 7 Regarding Factual Findings From Bench Trial	139.4	Image
02/18/2020	General correspondence regarding NOTICE OF FILING	139.5	Image
02/18/2020	Rule 9A list of documents filed. LIST OF COMBINED DOCUMENTS	139.6	Image
02/18/2020	Plaintiff William Tocci Individually and Derivatively on behalf of Tocci Corporation's Motion in Limine No.8 to Exclude Evidence or Argument that Valentino Tocci was a Director of Tocci Corporation After 1979	139.7	Image
02/18/2020	William Tocci Individually and Derivatively on behalf of Tocci Corporation's Memorandum in support of Plaintiffs' Motion in Limine No.8 to Exclude Evidence or Argument that Valentino Tocci was a Director of Tocci Corporation After 1979	139.8	Image
02/18/2020	Opposition to to Motion in Limine No.8 to Exclude Evidence or Argument that Valentino Tocci was a Director of Tocci Corporation After 1979 filed by	139.9	Image
02/18/2020	Reply/Sur-reply of Plaintiff's Tocci Corporation and William Tocci In Support of Motion in Limine No. 8 to Exclude Evidence or Argument that Valentino Tocci was a Director of Tocci Corporation After 1979	139.11	Image
02/20/2020	Plaintiff Tocci Building Corp.'s Motion to Determine Legal Standard Applicable to Statute of Limitations for Breach of Fiduciary Duty	140	Image
02/20/2020	Tocci Building Corp.'s Memorandum in support of Plaintiffs' Motion to determine Legal Standard Applicable to Statute of Limitations for Breach of Fiduciary Duty	140.1	Image
02/20/2020	Opposition to of filed by Michael J. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation to Motion to determine Legal Standard Applicable to Statute of Limitations	140.2	Image
02/20/2020	Reply/Sur-reply in Support of Plaintiff's Motion to determine Legal Standard Applicable to Statute of Limitations for Breach of Fiduciary Duty	140.3	Image
02/20/2020	Affidavit of Compliance Pursuant to Superior Court Rule 9A	140.4	Image
02/20/2020	Plaintiff Tocci Building Corp.'s Notice of Filing Pursuant to Superior Court Rule 9A	140.5	Image
02/20/2020	Rule 9A list of documents filed. Pursuant to Superior Court Rule 9A	140.6	Image
02/21/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., Lila E. Tocci, John L. Tocci's PROPOSED Request for jury instructions.	141	Image
02/21/2020	Defendants Tocci Building Corp., Lila E. Tocci, John Tocci's Motion to PRECLUDE USE OF JURY-WAIVED TRIAL DECISION AS CHARACTER EVIDENCE	143	Image
02/21/2020	Plaintiff, Defendant in a Counterclaim John L. Tocci, Tocci Building Corp., Lila E. Tocci's PROPOSED Request for special verdict form.	142	Image
02/21/2020	Lila E. Tocci, John Tocci, Tocci Building Corp.'s Memorandum in opposition to Motion to PRECLUDE USE OF JURY-WAIVED TRIAL DECISION AS CHARACTER EVIDENCE	143.1	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/21/2020	Opposition to Defendants Tocci Building Corp., Lila E. Tocci, John Tocci's Pre-trial Motion to PRECLUDE USE OF JURY-WAIVED TRIAL DECISION AS CHARACTER EVIDENCE filed by	143.2	Image
02/21/2020	Affidavit of compliance with Superior Court Rule 9A Applies To: Smerage, Esq., Roger L (Attorney) on behalf of Tocci, John L. (Plaintiff)	143.3	Image
02/25/2020	Plaintiff John L. Tocci's EMERGENCY Motion to Amend Complaint to Conform to Evidence	144	Image
02/26/2020	Opposition to Emergency Motion to Amend filed by William Tocci Individually and Derivatively on behalf of Tocci Corporation, Michael J. Tocci	145	Image
02/28/2020	Request for jurors		
02/28/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., John L. Tocci, Lila E. Tocci's Submission of Proposed Witness List, Exhibit List and Deposition Designations with Plaintiff's Tocci Corp. and William Tocci's Objections and Counter-Designations	146.3	
02/28/2020	Event Result:: Final Trial Conference scheduled on: 02/28/2020 02:00 PM Has been: Held as Scheduled Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
02/28/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., Lila E. Tocci, John L. Tocci's Motion to Use Court Reporter During Trial	146	
02/28/2020	Plaintiff, Defendant Tocci Building Corp., John L. Tocci, Michael J. Tocci, William Tocci Individually and Derivatively on behalf of Tocci Corporation, Lila E. Tocci, Tocci Corporation's Joint Submission of Proposed Findings to be Read and Provided to the Jury	146.1	Image
02/28/2020	Exhibits/Appendix Joint Exhibit List	146.2	Image
03/02/2020	Impanelment of jurors on this date		
03/02/2020	Event Result:: Jury Trial scheduled on: 03/02/2020 09:00 AM Has been: Held as Scheduled Hon. Helene Kazanjian, Presiding Comments: Day 1 - Impanelment Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/02/2020	Defendants Tocci Building Corp., John L. Tocci, Lila E. Tocci's PROPOSED Statement of Statement Regarding Factual Findings from Bench Trial	146.3	Image
03/03/2020	Event Result:: Jury Trial scheduled on: 03/03/2020 09:00 AM Has been: Held as Scheduled Comments: Day 2 - Openings and Testimony Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/04/2020	Event Result:: Jury Trial scheduled on: 03/04/2020 09:00 AM Has been: Held as Scheduled Comments: Day 3 - Testimony Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/04/2020	Endorsement on Motion to amend the Complaint to Conform to Evidence (#144.0): No Action Taken Based on representations made in court, this motion is moot. (Dated: 2-28-29) notice sent 3/4/2020 Judge: Kazanjian, Hon. Helene		Image
03/04/2020	Endorsement on Motion to Use Court Reporter During Trial (#146.0): ALLOWED Allowed without opposition. (Dated: 2-28-20) notice sent 3/4/2020 Judge: Kazanjian, Hon. Helene		Image
03/05/2020	Event Result:: Jury Trial scheduled on: 03/05/2020 09:00 AM Has been: Held as Scheduled Comments: Day 4 - Testimony Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Megan, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/05/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., Lila E. Tocci, John Tocci's Motion for Directed Verdict on Conversion Claims	147	Image
03/05/2020	Endorsement on Motion for Directed Verdict on Conversion Claims (#147.0): DENIED for the reasons stated on the record Judge: Kazanjian, Hon. Helene		Image
03/06/2020	Event Result:: Jury Trial scheduled on: 03/06/2020 09:00 AM Has been: Held as Scheduled Comments: Day 5 - Testimony Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Megan Castro, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/10/2020	Event Result:: Jury Trial scheduled on: 03/10/2020 09:00 AM Has been: Held as Scheduled Comments: Day 6 - Testimony; P rests Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/10/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., John L. Tocci, Lila E. Tocci's Motion for Directed Verdict	148	
03/10/2020	Plaintiff, Defendant in a Counterclaim Tocci Building Corp., Lila E. Tocci, John Tocci's Submission of Supplemental Brief on Submission of Equitable Remedy to Jury	149	Image
03/11/2020	Endorsement on Motion for Directed Verdict (#148.0): DENIED Judge: Kazanjian, Hon. Helene		Image
03/11/2020	Event Result:: Jury Trial scheduled on: 03/11/2020 09:00 AM Has been: Held as Scheduled Comments: Day 7 - Testimony Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/11/2020	Request for Jury instructions filed by Defendant John L. Tocci, Tocci Building Corp., Lila E. Tocci	150	Image
03/11/2020	Plaintiff Tocci Corporation's Objection to Final Jury Instructions	151	Image
03/12/2020	Event Result:: Jury Trial scheduled on: 03/12/2020 09:00 AM Has been: Held as Scheduled Comments: Day 8: Testimony; D rests; P re-rests; Closings; Instructions; Deliberations Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/13/2020	Event Result:: Jury Trial scheduled on: 03/13/2020 09:00 AM Has been: Held as Scheduled Comments: Day 9: Deliberations; Verdict Plaintiff: Gavin McCarthy Katherine Kayatta Kyle Noonan Michael Tocci, Pro Se Defendant: Bradley Croft Roger Smerage John Edwards Janet McHugh, Court reporter (official record) Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/13/2020	The following form was generated: Notice to Appear Sent On: 03/13/2020 13:01:06		
03/13/2020	Verdict of jury for party BREACH OF FIDUCIARY DUTY 1. Did Tocci Corporation bring its breach of fiduciary duty claim within the statute of limitations? YES <u> X </u> NO <u> </u> If you answered "yes" to Question 1, go to Question 2. If you answered "no" to Question 1, go to Question 3. 2. Did John Tocci breach his fiduciary duty to Tocci Corporation by transferring money or property from Tocci Corporation to himself or Tocci Building Corporation? YES <u> X </u> NO <u> </u> CONVERSION 3. Did Tocci Corporation bring its conversion claim within the statute of limitations? YES <u> X </u> NO <u> </u> If you answered "yes" to Question 3, go to Question 4. If you answered "no" to Question 3, AND you also answered "no" to Question 1, sign the verdict form as you have reached a verdict. If you answered "no" to Question 3, BUT you answered "yes" to Question 1, go to Questions 5 and 6. 4. Did John Tocci convert money or property belonging to Tocci Corporation? YES <u> X </u> NO <u> </u> If you answered "yes" to EITHER Question 2 or 4, go to Questions 5 and 6. If you answered "no" to Question 4, AND you also answered "no" to Question 2, sign the verdict form as you have reached a verdict. DAMAGES 5. State, in words and numbers, the total amount of harm to Tocci Corporation. <u> One Million Dollars </u> Amount in Words \$ <u> 1,000,000. </u> Amount in Numbers 6. State in words and numbers the total amount of unjust enrichment to John Tocci in the form of: A. Value of Tocci Building Corporation <u> Zero </u> Amount in Words \$ <u> 0 </u> Amount in Numbers B. Distributions to John Tocci <u> Zero </u> Amount in Words \$ <u> 0 </u> Amount in Numbers C. Value of Guastavino <u> Zero </u> Amount in Words \$ <u> 0 </u> Amount in Numbers Certification The undersigned Foreperson of the jury hereby certifies that at least 12 of the 14 members of the jury agree to the above answers. DATED: 3/13/2020	152	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/13/2020	List of exhibits	153	Image
03/20/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 03/25/2020 10:00 AM Has been: Rescheduled-Covid-19 emergency For the following reason: By Court due to Covid-19 Hon. Helene Kazanjian, Presiding Staff: Amanda Ward, Assistant Clerk Magistrate		
03/20/2020	The following form was generated: Notice to Appear Sent On: 03/20/2020 13:35:25		
05/15/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 06/03/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency For the following reason: By Court due to Covid-19 Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
07/20/2020	Defendant Michael J. Tocci's Motion for Leave to Serve a Second Request For Admissions Pursuant to Civil Procedure Rule 36	154	Image
07/20/2020	Michael J. Tocci's Memorandum in support of His Motion For Leave to Serve a Second Request For Admissions Pursuant to Civil Procedure Rule 36	154.1	Image
07/20/2020	Opposition to Michael Tocci's Motion Leave to Serve a Second Request For Admissions Pursuant to Civil Procedure Rule 36 (Ref. P#154) filed by Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff); Tocci, Lila E. (Defendant-Intervenor)	154.2	Image
07/20/2020	Brief filed: Reply to Plaintiffs & Counterclaim Defendants Opposition to His Motion For Leave to Serve a Second Request For Admissions Pursuant to Civil Procedure Rule 36 Applies To: Tocci, Michael J. (Defendant)	154.3	Image
07/20/2020	Defendant Michael J. Tocci's Motion for Leave to Amend His Counterclaim Per MRCP Rule 15(a) or, in the Alternative, 15(b)	155	Image
07/20/2020	Michael J. Tocci's Memorandum in support of of His Motion to Amend His Counterclaim Per MRCP Rule 15(a) or, in the Alternative, 15(b)	155.1	Image
07/20/2020	Opposition to Michael Tocci's Motion For Leave to Amend His Counterclaim (Ref. P#155) filed by Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff); Tocci, Lila E. (Defendant-Intervenor)	155.2	Image
07/20/2020	Brief filed: Reply to Plaintiffs & Counterclaim Defendants Opposition to His Motion For Leave to Amend His Counterclaim Per MRCP Rule 15(a) or, in the Alternative, 15(b) Applies To: Tocci, Michael J. (Defendant)	155.3	Image
07/29/2020	Plaintiff, Defendant Tocci Building Corp., Michael J. Tocci's Joint Request for Leave to Exceed Page Limit	156	Image
07/29/2020	Plaintiff Tocci Building Corp.'s Response to Tocci's Post-Trial Brief	157.1	Image
07/29/2020	Response to POST-TRIAL BRIEF filed by Tocci Corporation	157	Image
07/29/2020	Reply/Sur-reply Tocci Corporation's Reply	157.2	Image
07/31/2020	Exhibits/Appendix	158	Image
08/04/2020	Endorsement on Request for Leave to Exceed Page Limit (#156.0): ALLOWED (Dated: 8-4-2020) notice sent 8/4/2020 Judge: Kazanjian, Hon. Helene		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/11/2020	<p>The following form was generated:</p> <p>Notice to Appear Sent On: 08/11/2020 08:26:51 Notice Sent To: John M Edwards, Esq. Winer & Bennett LLP 111 Concord St PO Box 488, Nashua, NH 03061-0488 Notice Sent To: Bradley L Croft, Esq. Ruberto, Israel & Weiner PC 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Roger L Smerage, Esq. Ruberto, Israel & Weiner, P.C. 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Gavin McCarthy, Esq. Pierce Atwood Merrills Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Katherine Kayatta, Esq. Pierce Atwood LLP 254 Commercial St, Portland, ME 04101 Notice Sent To: Kyle M Noonan Pierce Atwood LLP Merrill's Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Michael J. Tocci 2332 Antioch Road, Scottsville, VA 24590</p>		
08/26/2020	<p>The following form was generated:</p> <p>Notice to Appear Sent On: 08/26/2020 13:47:31 Notice Sent To: John M Edwards, Esq. Winer & Bennett LLP 111 Concord St PO Box 488, Nashua, NH 03061-0488 Notice Sent To: Bradley L Croft, Esq. Ruberto, Israel & Weiner PC 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: John M Edwards, Esq. Winer & Bennett LLP 111 Concord St PO Box 488, Nashua, NH 03061-0488 Notice Sent To: Bradley L Croft, Esq. Ruberto, Israel & Weiner PC 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Roger L Smerage, Esq. Ruberto, Israel & Weiner, P.C. 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Gavin McCarthy, Esq. Pierce Atwood Merrills Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Katherine Kayatta, Esq. Pierce Atwood LLP 254 Commercial St, Portland, ME 04101 Notice Sent To: Kyle M Noonan Pierce Atwood LLP Merrill's Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Katherine Kayatta, Esq. Pierce Atwood LLP 254 Commercial St, Portland, ME 04101 Notice Sent To: Gavin McCarthy, Esq. Pierce Atwood Merrills Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Kyle M Noonan Pierce Atwood LLP Merrill's Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: John M Edwards, Esq. Winer & Bennett LLP 111 Concord St PO Box 488, Nashua, NH 03061-0488 Notice Sent To: Michael J. Tocci 2332 Antioch Road, Scottsville, VA 24590 Notice Sent To: John Tocci No addresses available Notice Sent To: Tocci Building Corp. No addresses available</p>		
09/23/2020	<p>Event Result:: Conference to Review Status scheduled on: 09/23/2020 03:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate</p>		
09/23/2020	<p>The following form was generated:</p> <p>Notice to Appear Sent On: 09/23/2020 12:42:10 Notice Sent To: John M Edwards, Esq. Winer & Bennett LLP 111 Concord St PO Box 488, Nashua, NH 03061-0488 Notice Sent To: Bradley L Croft, Esq. Ruberto, Israel & Weiner PC 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Roger L Smerage, Esq. Ruberto, Israel & Weiner, P.C. 255 State St 7th Floor, Boston, MA 02109 Notice Sent To: Gavin McCarthy, Esq. Pierce Atwood Merrills Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Katherine Kayatta, Esq. Pierce Atwood LLP 254 Commercial St, Portland, ME 04101 Notice Sent To: Kyle M Noonan Pierce Atwood LLP Merrill's Wharf 254 Commercial Street, Portland, ME 04101 Notice Sent To: Michael J. Tocci 2332 Antioch Road, Scottsville, VA 24590</p>		
10/28/2020	<p>Matter taken under advisement: Motion Hearing scheduled on: 10/28/2020 10:00 AM Has been: Held - Under advisement Hon. Helene Kazanjian, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate</p>		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/30/2020	Reply/Sur-reply brief regarding Michael Tocci's claims for De Facto merger and abandonment Applies To: Tocci Building Corp. (Plaintiff); Tocci, John L. (Plaintiff); Tocci, Lila E. (Defendant-Intervenor)	159	Image
12/07/2020	Michael J. Tocci's Memorandum in support of motion for leave to amend his counterclaim to include declaratory judgment of John I Tocci's Abandonment of his interest in Tocci Corporation or for a formal dissolution of any interest of John Tocci J. Corporation	158.1	Image
12/07/2020	Michael J. Tocci's Memorandum in support of count VII (declaratory judgment) of Michael Tocci's counterclaim and count VII of his amended counterclaim (declaratory judgment - de facto merger)	158.2	Image
01/11/2021	Endorsement on Motion for leave to serve a second request for admissions pursuant to Civil procedure Rule 36 (#154.0): DENIED after hearing, dated at Woburn, Ma this 28, day of October, 2020 Judge: Kazanjian, Hon. Helene		Image
01/11/2021	General correspondence regarding Letter from Michael J. Tocci	160	Image
02/03/2021	Endorsement on Motion of (#155.0): Defendant Michael J. Tocci to Amend His Counterclaim Per MRCP Rule 15(a) Or, in the Alternative, 15(b) DENIED Motion to amend counterclaim is Denied. See Omnibus Memorandum of this date. (Dated: 1/29/21) notice sent 2/3/21 Judge: Kazanjian, Hon. Helene		Image
02/03/2021	Endorsement on Submission of Tocci Corporation's Post-Trial Brief (#157.0): DENIED With exception of the parties' stipulation concerning John/Lila Trusts, all other requested relief is Denied. See Omnibus Memorandum of this date. (Dated: 1/29/21) notice sent 2/3/21 Judge: Kazanjian, Hon. Helene		Image
02/03/2021	MEMORANDUM & ORDER: OMNIBUS MEMORANDUM OF DECISION AND ORDER ON PARTIES' POST-TRIAL MOTIONS (which see 12 pages scanned) ORDER: For the foregoing reasons, Michael's Motion to Amend Counterclaim (Docket No. 155) and his Motion for Judgment on his remaining claims (Docket No. 158) are both DENIED. On Tocci Corporation's Post-Trial Brief (Docket No. 157), with the exception of the parties' stipulation concerning the John/Lila Trusts, all other requested relief is DENIED. The stipulation shall be memorialized in the final judgment. The court will decide the security issue after judgment has entered. Prejudgment interest shall run from April 24, 2014. Helene Kazanjian Justice of the Superior Court DATE: January 29, 2021 Entered and copies sent 2/3/21 Judge: Kazanjian, Hon. Helene	161	Image
02/03/2021	ORDER: The court HEREBY orders the parties to submit proposed judgments consistent with the court's Omnibus Memorandum of Decision and Order on Parties' Post-Trial Motions, within 30 days of the order. The proposed judgment shall address all claims asserted in Tocci Building Corp.'s complaint, Michael Tocci's counterclaims and Tocci Corporation's intervenor complaint. Helene Kazanjian Justice of Superior Court DATE: February 2, 2021 Entered and copies sent 2/3/21 Judge: Kazanjian, Hon. Helene	162	Image

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- Case Type:
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- Case Status:
- Suspended-Covid-19
- File Date
- 04/04/2014
- DCM Track:
- F - Fast Track
- Initiating Action:
- Other Equity Action
- Status Date:
- 04/04/2014
- Case Judge:
-
- Next Event:
-

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03/23/2021	Endorsement on Motion of Legal Elements Defendant Michael J. Tocci For Reconsideration of Omnibus Order of February 2, 2021 (#164.0): DENIED There has been no material change of circumstances. Nor has Michael Tocci presented newly discovered evidence, a change in the law or a plain error of fact or law. See Audubon Hill South Condominium Ass'n v. Community Ass'n Underwriters of America, Inc. 82 Mass. App. Ct. 461, 470 (2012) citing Peterson v. Hopson, 306 Mass. 597, 600 (1940). (Dated: 3/18/21) notice sent 3/23/21		Image
03/23/2021	Endorsement on Submission of Proposed Judgement (Joint) (#163.0): Other action taken The court agrees with Tocci Building Corp. John Tocci and Lila Tocci that the parties contemplated the court invalidating the board resolution if it found against Michael Tocci on the abandonment issue. Accordingly the court finds the proposed declaration appropriate and supported by the record. Judgment will enter accordingly. (Dated: 3-18-21) notice sent 3/23/21 Judge: Kazanjian, Hon. Helene		Image
03/24/2021	Judgment. It is ORDERED and ADJUDGED:: Which see four (4) pages. Dated at Woburn, Ma this 24th day of March, 2021. Judge: Kazanjian, Hon. Helene	167	Image
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04/14/2021	Attorney appearance On this date Bradley L Croft, Esq. added as Private Counsel for Defendant-Intervenor John Tocci.		
04/14/2021	Attorney appearance On this date Bradley L Croft, Esq. added as Private Counsel for Defendant-Intervenor Tocci Building Corp..		
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05/21/2021	Endorsement on motion for additur (#174.0): Or New Trial on Remedy DENIED The jury verdict was supported by the evidence. The jury was properly instructed on damages and was well within its discretion to award the amount awarded. (Dated: 5-20-21) notice sent 5/21/21 Judge: Kazanjian, Hon. Helene		Image
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06/16/2021	Court received NOTICE OF FAILURE TO ENTER APPEAL TIMELY PURSUANT TO MASS RAP 10(a)(l): related to appeal On May 14, 2021, the Middlesex Superior Court transmitted a notice of assembly to the Appeals Court in the above-referenced case, pursuant to Mass. R.A.P. 9(e). The Appeals Court received the notice on May 14, 2021. Pursuant to Rule 10(a)(l) of the Massachusetts Rules of Appellate Procedure, each appellant has 14 days from receipt of the notice of assembly to docket the appeal in the Appeals Court by paying the required entry fee or moving for waiver of the fee on grounds of indigency. As of today's date, June 15, 2021, no appellant has entered the appeal pursuant to Mass. R.A.P. 10(a)(l). This notice is sent for informational purposes only and does not constitute a dismissal of the appeal.	181	Image
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COMMONWEALTH OF MASSACHUSETTS
 MIDDLESEX, SS. SUPERIOR COURT DEPARTMENT
 OF THE TRIAL COURT

* * * * *
 *
 TOCCI BUILDING CORP., ET AL. *
 *
 v. * Docket No. 1481CV03261
 *
 MICHAEL TOCCI *
 *
 *
 * * * * *

BENCH TRIAL DAY 1
 BEFORE THE HONORABLE ROSEMARY CONNOLLY

APPEARANCES:

For the Plaintiff Tocci Building Corp.:
 By Bradley Croft, Attorney at Law
 By Shamus Hyland, Attorney at Law
 Ruberto, Israel & Weiner PC
 255 State Street, 7th Floor
 Boston, MA 02109

For the Plaintiff John Tocci:
 By John Edwards, Attorney at Law
 Winer & Bennett LLP
 111 Concord Street, PO Box 488
 Nashua, NH 03061

For the Defendant Michael Tocci:
 By Michael Tocci, Pro Se
 2332 Antioch Road
 Scottsville, VA 24590

Woburn, Massachusetts
 Courtroom 710
 August 22, 2019

Quaverly H. Rothenberg, Q & A Transcripts
 Approved Court Transcriber

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1 MR. TOCCI: I'll be honest with you: I'll go with whatever
2 Plaintiffs want. If they want to go with the details
3 rulings -- findings of fact and rulings of law, you know, I -- I'm
4 willing to submit that. If we want to go with the Rule 20, that's
5 fine with me, as well.

6 THE COURT: Counsel, please explain the -- if you would, --

7 MR. CROFT: Sure.

8 THE COURT: -- why.

9 MR. CROFT: So, a few different reasons. The first is
10 because there are several fact issues that will be decided in
11 connection with this particular part of the case that overlap with
12 some of the remaining facts, we felt that Your Honor having heard
13 the evidence would be in a position to make findings of fact that
14 would then streamline the jury process. Our entire intent here
15 was to try to narrow what ultimately would be left for the jury --

16 THE COURT: So why --

17 MR. CROFT: -- to decide.

18 THE COURT: -- wouldn't be able to accomplish that same thing
19 through a verdict slip?

20 MR. CROFT: Depending on how fulsome of a verdict slip -- So,
21 what we have done is we have started the process of the findings
22 of fact and rulings of law proposed. And --

23 THE COURT: But if you were going to -- Well, I want them by
24 tomorrow, then, --

25 MR. CROFT: You will have them.

1 trial; if I'm mistaken --

2 THE COURT: Well, if there are certain facts that are found
3 here, you don't going to reargue them at the jury trial. For
4 example, --

5 MR. TOCCI: Okay.

6 THE COURT: I'm just making --

7 MR. TOCCI: Sure, okay.

8 THE COURT: I'm just giving -- hypothetically, if in order to
9 decide this case I find that the light was red, you don't get to
10 relitigate in the jury trial --

11 MR. TOCCI: I see.

12 THE COURT: -- that the light was red at the time of the
13 accident.

14 MR. TOCCI: Very good.

15 THE COURT: So if there's certain specific findings, then
16 everyone's going to be bound by them for purposes of the second
17 piece of this.

18 MR. TOCCI: Okay.

19 MR. MCCARTHY: Your Honor, if I could be heard on that.

20 THE COURT: I don't --

21 MR. MCCARTHY: My name is Gavin McCarthy. I represent Bill
22 Tocci and Tocci Corporation.

23 THE COURT: But you don't -- Do we have -- Why are you here?

24 MR. MCCARTHY: Because -- For exactly this reason. If those
25 findings are to be binding on us as a nonparty to this piece of

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March 03, 2020



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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO.

1481CV03261

TOCCI CORPORATION,

Plaintiffs,

V.

JOHN TOCCI, et al.,

Defendants.

JURY TRIAL - DAY 2

BEFORE: THE HONORABLE HÉLÈNE KAZANJIAN

Tuesday, March 3, 2020 8:48 a.m.

Middlesex Superior Court

200 Tradecenter Drive, Woburn, MA 01801

-----Reporter: Janet M. McHugh, RMR, CRR-----
EPPLEY COURT REPORTING LLC
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Hopedale, Massachusetts 01747
Phone (508) 478-9795 Fax (508) 478-0595
www.eppleycourtreporting.com

1 APPEARANCES:

2

3 PIERCE ATWOOD LLP

4 (By Gavin G. McCarthy, Esquire,

5 Katherine Kayatta, Esquire,

6 and Kyle Noonan, Esquire)

7 Merrill's Wharf

8 254 Commercial Street

9 Portland, ME 04101

10 207.791.1100

11 gmcarthy@pierceatwood.com

12 kkayatta@pierceatwood.com

13 knoonan@pierceatwood.com

14 Counsel for the Plaintiffs

15

16 RUBERTO, ISRAEL & WEINER PC

17 (By Bradley L. Croft, Esquire, and

18 Roger Smerage, Esquire)

19 255 State Street, 7th Floor

20 Boston, Massachusetts 02109

21 617.570.3506

22 blc@riw.com

23 rls@riw.com

24 Counsel for the Defendants

1 APPEARANCES: (Continued)

2 - and -

3 WINER & BENNETT, LLP

4 (By John M. Edwards, Esquire)

5 111 Concord Street

6 P.O. Box 488

7 Nashua, New Hampshire 03061-0488

8 603.882.2694

9 jedwards@winerbennett.com

10 Counsel for the Defendants

13 MICHAEL TOCCI, Pro Se

14 2332 Antioch Road

15 Scottsville, Virginia 24590

16 617.388.4199

17 tocci@reagan.com

19 ALSO PRESENT:

20 Page Holmes, Pierce Atwood

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MICHAEL TOCCI			
By Mr. McCarthy	269		

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1 THE COURT: This --

2 MR. CROFT: -- so you can hold me as
3 saying that I've already agreed that this was a
4 found fact, and I could do the same.

5 THE COURT: All right. So that's --
6 why don't we proceed like that. I know that's
7 not exactly how you want to proceed. I know you
8 would want me -- you've all submitted what you
9 want me to do. Your record is made of that. I
10 think I need to rule and we need to just do
11 something.

12 So I'm going to read the facts that are
13 to be accepted as true from my version. Are they
14 accurate? Did I make any mistakes in that? I
15 mean, I just want to make sure.

16 MR. MCCARTHY: I think in No. 2,
17 technically it's John Tocci & Sons.

18 THE COURT: Okay. We can talk about
19 whether this document will go to the jury later.
20 We'll mark it -- once I get it revised, we'll
21 mark it for identification.

22 MR. CROFT: Can I ask your Honor what
23 is your intention with respect to the
24 presentation of this? Right out of the gates,

1 I look forward to you hearing the
2 evidence over the coming days. We very much
3 appreciate the effort you're going to put into
4 this. And we're hopeful that when you hear all
5 the evidence, you, ladies and gentlemen of the
6 jury, will come to the correct conclusions as to
7 what that evidence is. Thank you.

8 THE COURT: Thank you. Now we're going
9 to hand out the notebooks. All right. Everybody
10 has a notebook and a pen. Before we call -- I
11 have plaintiffs call their first witness, I am
12 going to instruct you on a series of facts that
13 I'm going to instruct you you are to accept as
14 true. Okay? So these are facts you are to
15 accept as true.

16 One, Valentino Tocci was the father of
17 John, Michael and William Tocci.

18 Valentino built a successful
19 construction company in Massachusetts called John
20 Tocci & Sons.

21 Three, Valentino sought to set up John,
22 Michael and William in their own building and
23 construction company through the creation of a
24 company he called Will-Mick Construction Company,

1 Inc.

2 Four, Will-Mick Construction Company
3 was formed on August 12, 1975.

4 Five, the company later changed names
5 to William Michael Corporation and later Tocci
6 Corporation.

7 Six, each of the three sons, John,
8 Michael, and William, received a one-third
9 ownership interest in Tocci Corporation.

10 Seven, Valentino named himself
11 president and treasurer -- named himself
12 president and treasurer of Tocci Corporation and
13 named four directors of the company: Himself,
14 Michael, William, and John.

15 Eight, over time, Valentino turned over
16 the day-to-day operations of Tocci Corporation to
17 John and relied on him to run the business.

18 Nine, at some point prior to
19 March 1987, John created another construction
20 business which he named Tocci Building
21 Corporation. Neither Michael nor William had any
22 interest either as a shareholder or officer in
23 Tocci Building Corporation.

24 Ten, in 1993, John asked Michael to

1 sign a document indicating that all of Michael's
2 33-and-a-half interest in Tocci Corporation
3 belonged to John -- thirty-three and a half
4 percent interest belonged to John.

5 In December, 1993, Michael signed that
6 document, which is referred to as "the deed of
7 transfer."

8 Michael never believed that the deed of
9 transfer was a valid transfer of his ownership in
10 Tocci Corporation. He believed only that he was
11 helping John out of some sort of legal bind.

12 Michael believed the document was only
13 for third parties who made inquiries about the
14 ownership of Tocci Corporation. In fact, John
15 intended to use the deed of transfer as proof to
16 show that Michael had transferred his ownership
17 in Tocci Corporation.

18 Twelve, the deed of transfer is
19 voidable by Michael and is, therefore,
20 unenforceable by John because John fraudulently
21 induced Michael into signing it. The deed of
22 transfer did not operate to transfer Michael's
23 shareholder interest in Tocci Corporation to
24 John.

1 Michael Tocci remained a one-third
2 shareholder of Tocci Corporation after signing
3 the deed of transfer because that instrument did
4 not validly transfer Michael Tocci's shares in
5 Tocci Corporation to John Tocci.

6 Is that -- anything I need to hear
7 about from counsel?

8 MR. CROFT: Yes, your Honor. Briefly
9 at sidebar.

10 THE COURT: Sure.
11 (On-the-record discussion at sidebar.)

12 MR. CROFT: Your Honor, two quick
13 things. Number one, in opening, there was a
14 statement made about the 1992 transactions
15 between the brothers. To the extent that that
16 constitutes or will constitute part of the claim
17 of breach of fiduciary duty, that's contrary to
18 the Massachusetts law. So we would request that
19 the appropriate -- at the appropriate time, some
20 curative instruction that a negotiation which
21 does not deal with the operation of the company
22 is outside the bounds of fiduciary duty claims.

23 THE COURT: All right.

24 MR. CROFT: The second piece is that we

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT

No. 1481CV03261

TOCCI CORPORATION,

Plaintiff

vs.

JOHN TOCCI, et al.

Defendants

Heard before THE HONORABLE HÉLÈNE KAZANJIAN

JURY TRIAL - DAY 4
MIDDLESEX SUPERIOR COURT
200 Tradecenter Drive
Courtroom 520
Woburn, Massachusetts
March 5, 2020

----- Megan M. Castro, RPR, Court Reporter -----

EPPLEY COURT REPORTING, A LEXITAS COMPANY
(508) 478-9795 (508) 478-0595 (fax)
www.eppleycourtreporting.com

1 APPEARANCES:

2 Representing the Tocci Building Corp. and John
Tocci:

3 RUBERTO, ISRAEL & WEINER

Bradley L. Croft, Esquire

4 Roger L. Smerage, Esquire

225 State Street

5 7th Floor

Boston, Massachusetts 02109

6 617-742-4200

blc@riw.com

7 rls@riw.com

8 WINER AND BENNETT, LLP

9 John M. Edwards, Esquire

111 Concord Street

10 P.O. Box 488

Nashua, New Hampshire 03061-0488

11 603-882-5157

jedwards@winerbennett.com

12
13 Representing the Michael Tocci and Tocci
Corporation:

14 PIERCE ATWOOD, LLP

Gavin McCarthy, Esquire

15 Katherine S. Kayatta, Esquire

Kyle Noonan, Esquire

16 254 Commercial Street

Portland, Maine 04101

17 207-791-1105

gmccarthy@pierceatwood.com

18 kkayatta@pierceatwood.com

19 knoonan@pierceatwood.com

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1 THE COURT: There may be
2 inconsistencies and these may not be. But
3 Judge Connolly ruled how she did, and it is
4 the law of the case. And I am not going to
5 overturn Judge Connolly. So I am not going to
6 piecemeal do it as we go.

7 MR. MCCARTHY: So you want me to just
8 ask the questions?

9 THE COURT: Cross examine him.

10 MR. MCCARTHY: He will say no. And
11 then --

12 THE COURT: If you want to cross
13 examine him the way you did before, before
14 Judge Connolly, and show whatever you have
15 that shows that he is inaccurate, I think you
16 are going to need to do that.

17 MR. MCCARTHY: I guess what I am asking
18 is, it affects how I do this, whether, at the
19 end, on facts that were clearly found, whether
20 there is going to be an instruction that they
21 were found or whether the slate is clean.

22 THE COURT: So I am not going to
23 promise you that I am going to do it. I am going
24 to take it fact by fact and make a judgment.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1481CV03261 H

TOCCI BUILDING CORP. AND JOHN L. TOCCI,

Plaintiffs/Counterclaim Defendants,

vs.

MICHAEL J. TOCCI,

Defendant/Counterclaim Plaintiff.

DECISION AND ORDER AFTER JURY WAIVED TRIAL

The plaintiff and counterclaim defendants (John) seek a declaration that the “Deed of Transfer” (Exhibit 119) executed by Michael J. Tocci on December 2, 1993 is valid; and by this instrument Michael J. Tocci (Michael) assigned his 33 1/3% ownership interest in Tocci Corporation, formally known as Will-Mick Corporation and William Michael Corporation, to John Tocci.¹ The defendant, and counterclaim plaintiff, Michael Tocci, denies the validity of the Deed of Transfer on three alternate grounds. First, that the instrument fails for lack of consideration; that John fraudulently induced him into signing the document or that John is estoppel from relying upon it. Michael claims the Deed of Transfer is thus voidable and should be declared so by the court, which, in turn, would clear the way for Michael to bring claims in a subsequent trial against John for, among other things, his alleged breach of fiduciary duty owed to Michael as a shareholder of Tocci Corporation. After four days of a jury waived trial, the

¹ Because the family name “Tocci” finds its way into the names of the parties, and the corporate entities, in their various incarnations, to distinguish among the parties and entities the court will use first names or initials to distinguish among the various Tocci parties and business entities.

review of 25 joint exhibits and after hearing from four witnesses the court now renders its verdict as follows.

These findings and conclusions of law are based upon the evidence the court found credible and after weighing and applying the appropriate standard of review to the evidence the court found credible, either by a preponderance of the evidence for most claims or, with respect to Michael's affirmative defense of fraud in the inducement, the credible evidence applying the clear and convincing standard of review. Now, then the court concludes that the 1993 Deed of Transfer drafted and signed by Michael is voidable and did not operate to transfer Michael's shareholder interest in Tocci Corporation.

A. A Brief History of the Formation of Tocci Corporation

The patriarch of the Tocci clan, Valentino Tocci, father to both John and younger brother Michael, had enjoyed success operating his own construction company, John Tocci and Sons. John had worked there and explained that this entity was a union shop. Valentino sought to set up his sons, John, Michael and another son, William, in their own building and construction company through the creation of a Massachusetts Corporation, he named Will-Mick Construction Company, Inc., formed on August 12, 1975. (Ex. 112) Will-Mick, and its successor corporation was formed as an S corporation.² John testified that purpose of Will-Mick was to be an open shop and they could bid on non-union jobs whereas John Tocci and Sons was limited to only union jobs.

Obvious from the chosen name, Will-Mick was a combination of sons Michael and William's names, as there could be no doubt in a subsequent name change on file with the Secretary of State. The company named changed to William Michael Corporation and later to

² In an S Corporation, such as Tocci Corporation, all taxable income passes through to the stockholders and paid on their individual returns, at not the corporate entity. See Ex. 111 JT0307 n.(2).

Tocci Corporation. (Ex. 142)³ These three corporate names are used interchangeably throughout this decision because they each refer to the same entity. 1000 shares of common stock were authorized to be issued. Each of the three sons received 33 1/3% ownership interest in Will – Mick.

Valentino named himself president and treasurer of Will-Mick and named Michael as clerk, and then listed four directors: Valentino, Michael, John and William.⁴ Valentino made John a director, but not an officer, of Will-Mick. No one can ever recall ever holding any corporate meetings, let alone an annual meeting.

John worked closely with his father, initially, in both John Tocci and Sons and Will-Mick. Over time, Valentino turned over the day-to-day operations to John and relied on him to run both businesses. Michael and William cycled through various jobs and projects at Will-Mick, but always under John's supervision. John gave them work and determined their salary and John told them when their work was done and they needed to move on. It was clear that John ran Will-Mick Corp.

1. Transfers of shares

At or about the time Will-Mick was incorporated, in 1975, Valentino showed John, Michael and William their shareholder certificates and then collected them back. They have never been seen nor have they been found since. Neither John nor Michael presented evidence

³ The exhibits outlining the corporate history are spotty, reflecting poor, if not non-existent record keeping and even in those records that were admitted, there are inconsistencies. For example, at its inception in 1975, Will-Mick authorized 1000 shares.(Ex. 112) The 1979 and 1980 Annual Reports indicate that the corporation had authorized and issued 1000 shares. (Ex. 121) The 1984 Annual Report filed with the Secretary of State show that William Michael Corporation/ Tocci Corporation had 100 shares of stock authorized and issued. (Ex. 122) The 1986 Annual report claims that there are 1000 shares authorized but only 100 shares issued. (Ex. 123) The Annual Reports for 1987 and 1989 report 1000 authorized shares and 100 shares issued. (Ex. 124 & 125). There is no record of a board meeting, or a minute from any meeting, or vote to change the number of shares issued, nor any records indicating that various directors and officers were voted in or out of office.

⁴ According to the testimony, William was the youngest of the three and was in high school at the time Will-Mick was created.

that would suggest that their father's act, forming Will-Mick, and vesting each of his three sons with a 1/3 rd interest apiece, was anything but a gift from Valentino to each of his sons. No consideration was demanded nor exchanged for their shares. Other than the 1993 Deed of Transfer, discussed *infra* there is no written record of any transfer or assignment of any shares in Tocci Corp.

The Articles of Incorporation provided that a stockholder wishing to sell or transfer their shares:

shall notify the directors of his desire to sell or transfer by notice in writing, which notice shall contain the price at which he is willing to sell or transfer and the name of one arbitrator. The directors shall within 30 days thereafter either accept the offer, or by notice to him in writing name a second arbitrator ... It shall be the duty the arbitrators to ascertain the value of the stock ... After the acceptance of the offer, the directors shall have 30 days within which to purchase the same at such valuation, but if at the expiration of 30 days the Corporation shall not have exercised the right so to purchase, the owner of the stock shall be at liberty to dispose of the same in any manner he sees fit. No share of stock shall be sold or transferred on the books of the Corporation until these provisions have been complied (*sic*) with, but the Board of Directors may in any particular instance waived the requirements.

Ex. 112 ¶ 5 JT0023.

2. Annual Report Filings for Will-Mick a/k/a Tocci Corp.

In its Annual Report for the fiscal year 1979, Willmick Construction Company reported that John Tocci, not Valentino, was its president and Treasurer and Michael remained as the clerk. (Ex. 121 T Box I – 000450). Apparently, at some point from 1975 – 1979 Valentino was removed from the operation both as an officer and director and John replaced him as a corporate officer. The Directors of Will Mick in 1979 were the original three: John, Michael and William. There are no corporate records to indicate what happened to Valentino's directorship nor how or

when he was removed as an officer. In fact, there are no records reflecting any meetings or votes for Will-Mick, or William Michael Corporation or Tocci Corp.⁵

The Annual Report of Condition filed with the Secretary of State at the end of the 1980 fiscal year report is identical to the 1979 report. There are no further corporate records until the Annual Report for the fiscal year dated October 31, 1984. (Ex. 122). This report, unsigned, indicates that John remained as president and treasurer, and Michael as clerk. William, John and Michael were each directors.

There was no report for 1985 entered into evidence. The Annual Report for fiscal year 1986 for Tocci Corp indicated that only John and Michael were officers and directors for Tocci Corp. (Ex. 123) No mention of William was made in that report. Again, there are no corporate records to track the changes in officers and directors despite the requirements for recorded votes in the Articles of Incorporation.

The Annual Report filed at the end of the 1987 fiscal year indicated that John was the president and treasurer and Michael was the clerk. They were the only two named directors of Tocci Corp. (Ex. 124) No Annual Reports for Tocci Corp. were provided to the court for the fiscal year 1988. However, the 1989 Annual Report for Tocci Corp. eliminated Michael leaving only one of the three Tocci brothers, John, as a director or officer. John was the president, Treasurer and its sole director. Kevin Morse appears as the clerk. Remarkably, there is no corporate documentation to explain why Valentino, then William and then Michael were removed as officers and directors. Michael was not aware of these changes and did not review the annual reports.

⁵ The only official act taken by Michael Tocci, as clerk for Will-Mick, aka Tocci Corporation, to sign the amendment for the name change from Will-Mick to William Michael/Tocci Corporation. (Ex. 131).

Effective December 31, 1994 John Tocci dissolved Tocci Corporation. (Ex. 141). Once again, Michael was not aware that this action had been taken until several years later.

C. Park West Litigation

For the period from 1989 – 1995 Tocci Corporation was bogged down in litigation involving a title insurer and the Federal Deposit Insurance Corporation (FDIC) arising from its work what was referred to as the Park West project. John devoted much time, toil and effort to that litigation over several years. On November 17, 1991, it culminated in a favorable settlement between Tocci Corporation and a title insurance company. The title insurer agreed to pay Tocci \$2.55 million. (\$1.55 million to Tocci's counsel by 12/2/91 and a second payment in 1992, \$1 million paid to Tocci Corporation). John Tocci signed the agreement. (Ex. 116) Immediately above his signature this provision appears:

By executing this Agreement, Tocci Corporation certifies that the Agreement was approved by its Board of Directors and by its shareholders. Upon request, Tocci shall provide to First America or FDIC (i) a separate release and or (ii) a copy of the minutes of the board meeting which reflect the vote approving this agreement.

Ex. 116 HK005911. No records were produced to prove that the certification required in paragraph 7, (quoted above,) ever happened. There was no board of directors' meeting nor board vote.

Based on the evidence presented to this court, it finds that John Tocci was not the sole shareholder and director of Tocci Corp. as of the time of the Park West Settlement. Michael (and possibly William, though his ownership interest is not at issue in this trial) remained an shareholder. Notwithstanding, John did not tell Michael about this settlement contemporaneous with its execution. Michael did not vote to approve or authorize it. In 1993, John told Michael that there was no real money recovered after payment of all expenses. Michael did not learn of

the amount of the settlement until some years later. John did not produce any evidence that, in accord with the Tocci Corp's Articles of Incorporation, that any vote or proportional distribution of these proceeds were made to Michael or William, who were each one third shareholders of Tocci Corp.

Despite John's contrary protestations, John knew that he was not the sole shareholder and director of Tocci Corp. in 1991. Consequently, he knew, or should have known, that his representations that he was the sole shareholder and director might expose him to legal risk. That explains why, in 1992 when Mrs. Tocci was trying to broker a settlement among her three sons, John wrote to his mother about his proposal: ... "the dates should stay as 12/30/88 because the company has been reporting its taxes as me being the sole owner since 1989." (Ex. 117 DT 00151) John's own words are admissions and explain, in part, John's motivation. This is why, when he attempted to buy out his brothers' interests in Tocci Corp. he was keen to have the agreement backdated to 1988, predating his tax reporting but also predating the Park West litigation and settlement. Recall in the fiscal year 1988 Annual Report all the three brothers were named as directors. However, starting 1989, Tocci Corp.'s Annual Report listed only listed John as the sole director. John had unceremoniously removed Michael as both the clerk and director. And John's own admission that he filed Tocci Corp. taxes as its sole owner further supports the conclusion that John knew at all times, prior to 1993, that Michael and William remained shareholders in Tocci Corp. (Ex. 117).⁶

⁶ Because Tocci Corp. was an S corporation, as previously explained, all profits from Tocci Corp should have been reported on a K1 form and then distributed to each shareholder who would in turn be responsible to pay taxes on the profits (or carry the losses) on their personal returns.

D. Tocci Building Corp.

John created another branch of the family construction business at some point prior to March of 1987. Adding another layer of complexity to the family naming convention, John Tocci incorporated his new, separate corporate entity naming it: Tocci Building Corp. Though the court was not provided with its articles of incorporation, based on the testimony it heard, the court concluded that neither Michael nor William had or has any interest, as either a shareholder or officer in Tocci Building Corp.

E. Family Feuds

John and his brothers Michael and Daniel all agree on at least one thing: John's sweat equity and brains built Tocci Corp. into a successful business. He undoubtedly took the laboring oar from the beginning. Michael and William would cycle in and out of the employ of Will-Mick, William Michael Corp. and later Tocci Corp. Michael only worked for Tocci Corp. (and its predecessor cos.) when John okayed it and Michael would leave, if or when, John told him it was time to go.⁷ Michael did not exercise any dominion or control as an officer, director or 1/3 rd owner of the company. He deferred, in all things to John, his older brother.

Valentino, in hindsight, established a corporate structure that was doomed from the outset. It was guaranteed to cause resentments, particularly between John and Michael. John, Michael and William were each one-third owners but not one third contributors. At the end of the year when profit distributions (or losses) were made each brother, regardless of their efforts, was supposed to receive a one-third share. In order to grow the company, and have larger

⁷ There was some testimony about loans made to Michael over the years. John did not establish whether these were personal loans, advances against Michael's notes held by the company or true loans from Tocci Corp or Tocci Building Corp to Michael. There was no paper trail or ledger accounting for the dates and terms of these loans. John claims that Michael did not pay them back though at least one of the loans appears to have been paid by Valentino to John on Michael's behalf.

bonding capacity, it was important for the company to have “retained earnings”. This meant that the distribution check, after being credited for taxes on a K1 schedule to John, Michael and William respectively, they each signed it back over to the company as a loan or a note that should have been tracked as a liability on Tocci Corp.’s balance sheet. There was supposed to be a ledger that kept track of the amounts of the notes owed to each of the brothers, which would, one day, be paid back by Tocci Corp.⁸

From the inception of Will-Mick, John resented paying 66 2/3rd of the company profits to Michael and William who he claimed were doing little or nothing to grow the business. Rather, it was John working long hours and taking risks to build the company. John complained to his father about the inequity of his situation. There were spirited family discussions but, to John’s consternation, no change. John ran Tocci as the *de facto* owner. Michael, and William, acquiesced to John’s role in the company governance. However, the court can find no proof that prior to the 1993 Deed of Transfer, discussed *infra*, that either Michael (or William) relinquished, transferred or sold their shares in Tocci Corp.

1. Music Room Meeting

In 1984, John’s ongoing resentment in Will-Mick’s distribution formula came to a head in what was called the Music Room meeting. John told his father, and Michael, that if things did not change he was leaving the business and he would go out on his own. John wanted Michael and William removed as shareholders. He did not think it was equitable to share the profits on an equal 1/3 basis. It was then, perhaps to diffuse the tension of the moment that Michael announced he was going to go to law school, with the plan to come back with a useful skill set for the benefit of the company. Michael graduated from Regent Law School in 1987. Michael

⁸ The court has no facts before it and therefore makes no findings as to the amount of, or validity of any claim on the notes or of any early distributions or other loans made from the company to Michael or William.

believed he would come back to work at the company. However, John's take away from that meeting was that his path was cleared to be the sole owner of Tocci, though he admits, nothing to that effect was ever memorialized.

By the time John filed his 1990 tax return, (Exhibit 13), on his schedule K1, John stated that he owned 100% of the shares of Tocci Corp. (Ex. 13 T Box I 002021)("[s] hareholders percentage of ownership for tax year ... 100%") There is no record of how John came to allegedly acquire 100% of the outstanding and issued shares in Tocci Corp. by 1990. Both John and Michael admit that no corporate vote was ever taken in Tocci Corp's twenty-year history.

2. John And Michael's Mother Serves As An Intermediary

Even after Music Room Meeting, resentments between the brothers would simmer. In 1992 Mrs. Tocci, mother to all three sons, attempted to negotiate a resolution in the nature of a buy out for William and Michael, with each receiving the value of the loans/notes they still had on the books of Tocci Corp. John and Michael both testified that their mother was persistent. John drafted a proposal and sent it to along to his mother with a handwritten cover note:

Here are the agreements and the notes to Mike and Bill.

The check to Mike should be cashed after he signs and returns a copy of the agreement to me.⁹ . . .

The agreements had to be redrafted for the increased amounts and the no-interest provisions. The dates should stay as 12/30/88 because the company has been reporting its taxes as me being the sole owner since 1989. They could face significant tax exposure and penalties if this is not memorialized in this manner.

(Ex. 117).

This note, as well as his drafted two proposals (Ex. 132 & 133 respectively) all demonstrate that John believed, as of 1992, he had not extinguished William and Michael

⁹ Crossed out but clearly legible is John stating: "otherwise I will be exposed to...." (Ex. 117).

interests as shareholders in Tocci Corp. John's further admission on this point is in his draft proposals from 1992, which both state: " WHEREAS *WRT, MJT and JT are stockholders of the Company.*" (Ex. 132 JT0091)(emphasis added)¹⁰ John's proposals provide for William and Michael to be repaid for their notes, (the loans). More importantly, the proposals require John to buy Michael and Williams shares in Tocci Corp. for an agreed upon price. The agreement is dated the "30th day of December 1988" even though it was drafted by John in 1992. John signed the draft marked as Exhibit 132.

However, the proposal never came to fruition, because it was never executed by Michael and William. Michael balked at John's low valuation for his shares and the notes and sought to examine the company's financial statements and tax returns. Michael proposed a three way sit-down to discuss a resolution after looking at the requested corporate records.¹¹ Ultimately, the brothers pursued litigation, not negotiation, pitting brother against brother and risking family fortunes and reputations.

3. The 1993 Deed Of Transfer

In 1993 Michael and his family had come into some financial hard times. Michael's conflict with the New Hampshire State Bar resulted in Michael being disbarred from the practice of law in New Hampshire.¹² He was again looking for work in the family company. He had worked there on and off but nothing steady. He had come to John asking for work and John

¹⁰ At trial John attempted to deny that it was true that William and Michael were shareholders in Tocci Corp in 1992 but the court does not credit his denial.

¹¹ Ex. 140. In a letter dated June 9, 1992 Michael questions John's proposed valuations. He wrote it on letterhead that states Michael J. Tocci Counselor at Law. The letterhead is regrettable because of that date Mr. Michael Tocci was not licensed to practice of law in New Hampshire.

¹² Michael's problem with the New Hampshire Bar originated when he refused on personal, ethical grounds, to pay bar dues and join the New Hampshire Bar and it escalated when he continued to practice law even after the suspension of his law license. On July 2, 1992 he was suspended and in April of 1993 the New Hampshire Supreme Court reaffirmed his suspension.

obliged.¹³ John, in turn, asked his brother for a favor. John told Michael that he needed a document from him stating that all of his, Michael's, shares were transferred to John. John told Michael he needed this to satisfy some "bean counters"; and that it did not mean anything. He just needed it for some auditors otherwise, he could be in some legal jeopardy.¹⁴ Based on John's representations, Michael understood that there were no net proceeds from the Park West settlement for Tocci Corp. Nevertheless, John told Michael he needed documentation to approve the settlement after the fact.¹⁵ Michael testified that he offered to draft one document stating that he, Michael ratified the settlement. He gave it to John. Awhile later, on December 2, 1993, (at their father's birthday party) John told Michael that "the thing you gave me" was not enough, "they" want an assignment and you need to backdate it to 1988. Michael said he would not backdate it but, instead, he would reference a prior oral agreement that did not exist. Michael went and drafted the Deed right then and there. He believed he was helping his brother out of "a jam."

The 1993 Deed of Transfer, which Michael drafted and signed, states the following:

Know all men by these presents, that I, Michael J. Tocci do hereby convey and transfer to John L. Tocci, his heirs and assigns, for the sum of one dollar and other valuable consideration, the Thirty Three and One Third Percent (33 1/3) ownership interest that is registered in my name in Tocci Corporation, a Massachusetts corporation, formerly also known as Will-Mick Corporation and William Michael Corporation. This formal declaration of transfer is intended to satisfy any requirement that the transfer of said interest be evidenced by a writing and to memorialize any prior oral representations of said transfer.

¹³ It should be noted that John and Michael, and their families, had been quite close. Michael was always loyal to John and John provided aid and comfort to Michael, and his family, when they suffered personal misfortune.

¹⁴ John adamantly denies this version of events. However, on this point, the court credits Michael's testimony and finds it is corroborated by the documents and Dan's testimony. The court finds that John made the statement to induce Michael to execute the Deed. The court does not credit John's version of his exchange with Michael and Dan leading up to the execution of the 1993 Deed of Transfer. It should be noted that the court has not made any finding, nor is it necessary for it to explicitly find, whether, in fact, John was in legal jeopardy, it is enough that John made the statements to Michael to induce him to execute the deed.

¹⁵ John's statement that there were no "net proceeds" to Tocci Corp as a result of the Park West settlement has not been proven in this trial and it is not necessary to make that finding in this trial.

Ex. 119A.¹⁶

Michael executed the Deed on December 2, 1993. Dan, another, younger, Tocci brother, was called in by Michael to witness Michael's signature. Dan read the Deed and was concerned by what it purported to be. Michael assured Dan that the Deed was not as it appeared and that he, Michael, knew what he was doing. He was not transferring his shares; really, he was just giving John something for his file. Dan was hesitant to become involved especially after he understood John to say that he, John, had made representations that he was the sole owner and if he did not get this document he could "do time" or words to that effect. Dan testified that he did not want to become involved in what he thought was a possible fraudulent representation being made by John through the use of the Deed, and so Dan stated: I am only witnessing Michael's signature.

Michael never believed that the Deed was a valid transfer of his shares and ownership in Tocci. He believed only that he was helping John out of some sort of legal bind. He took John at his word and believed that John needed to paper over what the records indeed show, that John had made representations in official documents that he was the sole owner of Tocci Corp. when that was not so. Michael explained that he gave the Deed of Transfer to John out of filial love. There was no other consideration exchanged.¹⁷

John placed the original Deed in his credenza and pulled it out in 2012 when internal family discussions about the status of Tocci Corp once again came to a head. Michael was stunned at that time to learn that John was using that Deed against Michael to defeat Michael's

¹⁶ Ex. 119AS is the original signed Deed of Transfer. On the back John wrote "Please make a "Michael Tocci" file for my credenza."

¹⁷ The Deed references \$1.00 and there was testimony about continued employment and perhaps, forbearance, on loans. The court discusses *infra* at pg. 20 that this Deed is not unenforceable because it lacks of consideration, but because it fails on other grounds.

claims to any interest in Tocci Corp., which as Michael learned, had been dissolved in 1995. Michael testified credibly that he had never intended the Deed to transfer his interests in the family business but was rather done at John's specific request and in reliance on John's representations in 1993, which caused Michael to believe he was protecting his older brother from some sort of legal exposure.

CONCLUSIONS OF LAW

A. John's Motion in Limine to Exclude Parole Evidence relating to the 1993 Deed

John Tocci moved, at the beginning of the trial, to exclude from the court's consideration extrinsic evidence to the 1993 Deed of Transfer (Deed) contending instead that the court must give effect to the plain meaning of the unambiguous terms within the four corners of the Deed of Transfer. The court reserved on the motion because Michael Tocci raised the affirmative defense of fraud in the inducement in drafting and executing the Deed. Michael claimed he was induced by John's representation of needing the Deed to ward off potential personal legal jeopardy and so Michael drafted and signed the Deed never intending it to be an actual transfer of his shares and interests in Tocci Corp.

The court **DENIES** John's Motion in Limine and further finds that the extrinsic evidence is necessary to assess Michael's affirmative defense, which requires him to prove by clear and convincing evidence that there was fraud in the inducement. *McEvoy Travel Bureau, Inc. v. Norton Company*, 408 Mass. 704, 711 n. 5 (1990); ("[i]t is well established that the parole evidence rule does not apply when the complaining party alleges fraud in the inducement.") *citing Broomfield v. Kosow*, 349 Mass. 749, 759 (1965)(fraud at the inception of the contract may be proven with evidence extrinsic to the written contract). Here, parole evidence is not being used to vary or alter the plain language of the Deed but rather to explain why Michael

unilaterally drafted and signed the Deed in exchange for de minimus consideration to transfer his 1/3 interest in Tocci Corp. Especially, where only a year earlier, in June of 1992, Michael rejected John's proposal to pay him \$40,000 for his interest in Tocci Corp. The fraud undermines the formation of a contract because there is no assent to be bound. *See* Restatement (Second) on Contracts §163 (“[i]f a misrepresentation as to the character or essential terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows nor has reasonable opportunity to know of the character or essential terms of the proposed contract, his conduct is not effective as a manifestation of assent.”)

B. Massachusetts Law is Indulgent when Considering a Closely-Held Family Business' Noncompliance with Corporate Formalities, However it Cannot Abide Deliberate Disregard for all Corporate Formalities.

Both parties readily admit they did not follow the corporate formalities associated with the Tocci corporate entity. As best as the court can discern, the Articles of Incorporation for Will-Mick and its successor companies, William Michael and Tocci Corp. were ignored, and in retrospect, much to the disadvantage of all involved. The corporate entity was not respected as a separate legal entity. Despite Will-Mick's Articles of Incorporation, the legal entity became little more than the springboard for John to ultimately launch his own successful construction corporation, Tocci Building Corp. albeit, after sidelining and freezing out his two brothers, Michael and William in Tocci Corp. John ostensibly manipulated Will-Mick so that it appeared that he was its sole shareholder and director. Just look at the evolution in the Annual Reports. Over time John is reported as Tocci Corp's sole shareholder, director, and holding all offices except clerk. John cannot explain how his brothers, Michael and William, were essentially “disappeared” from the corporate filings and tax forms.

There was the 1984 Music Room meeting and numerous other family blow-ups when John felt fettered by Michael despite his generosity towards him. John provided Michael, and later his son, with periodic work and loaned him money. Except, John never recognized Michael as an owner, entitled to Tocci Corp.'s profits or work. John believed, incorrectly, that Michael was not entitled to shareholder status. However, even John recognized the risk in his strategy, at least by 1992. The strongest evidence of Michael and William's ownership of Tocci, pre 1993, is John's own admission. John's two draft settlement proposals, Ex. 132 and 133, each acknowledge that as of 1992, Michael and William were both 1/3rd owners of Tocci Corp.

John further acknowledges Michael and Williams's interest (and possible tax exposure) when he was communicating through his mother to settle accounts with both Michael and William and have the agreement backdated to 1988 to avoid "tax consequences" to his brothers. As owners of the S corporation since its inception, John, Michael and William should have each been receiving annual K1s from Tocci Corporation. They did not. Michael recalled receiving only 1 K1 from 1975 – 1995. Tocci Corp was dissolved in 1995 again without the knowledge of its three shareholders.

In reviewing Tocci Corp's 1989, 1990, and 1991 federal tax forms provided to the court (Ex. 12, 13, & 14 respectively) the court makes the following observations that lend further support for the court's crediting of Michael's testimony regarding fraud in the inducement of his execution of the Deed. In 1989 – 1990, while the Park West litigation was in full swing, Tocci Corp was dormant. John explained that Tocci Building Corp., John Tocci's own company, became the ongoing business entity bidding on projects while Tocci Corp. was involved in the Park West litigation. The court found that while that was an accurate statement, it failed to paint the whole picture. Equipment and other assets owned by Tocci Corp were leased or otherwise

provided for use by Tocci Building Corporation. Tocci Corp.'s tax filings show it was operating at a loss. It depreciated some equipment and showed a little revenue from renting its equipment out to Tocci Building Corp.

Then, in 1991, as per the terms of the settlement in the Park West litigation, \$1.55 million in gross sales appeared on line 1a of Tocci Corp.'s 1120S federal tax form. This amount corresponds to the \$1.55 that the title insurer was to pay to Tocci Corp.'s attorneys by December 2, 1991. (See Ex. 116 ¶1(i)). No 1992 or 1993 tax returns from Tocci Corp. were offered into evidence. Instead, there is a 1993 unaudited review of Tocci Corp.'s balance sheets as of the end of 1991 and 1992. (Ex. 111). That revealed that Tocci Corp. owed Tocci Building Corp \$445,728 in 1991 and \$609,608 in 1992, despite the fact that, by all accounts, Tocci Corp. was, and had been inactive during the years of the Park West litigation.¹⁸ The 1991 Park West settlement was its largest source of income for Tocci Corp in 1991 and 1992. Notwithstanding Tocci Corp.'s operations for those years, Michael did not receive a K1 in 1991 or 1992 for any profits or losses from Tocci Corp.

The 1993 unaudited report of Tocci Corp's 1991 and 1992 balance sheets assumes that John is the only shareholder for Tocci Corp.¹⁹ The report paints a picture that could lead one to conclude that Tocci Corp.'s assets were being used in transactions to benefit Tocci Building Corp. For example, buried in note 4 it states that Tocci Building Corp. charged Tocci Corp \$175,000 and \$336,000, in 1991 and 1992 respectively, for John's services rendered to Tocci Corp. "solely for his personal involvement with presiding over the case the past six years." The

¹⁸ This statement of purpose for Tocci Corp. in the unaudited review of the 1991 & 1992 Balance sheets is much more circumspect than the broad ranging corporate purpose explained in Tocci Corp's original articles of incorporation. *Compare* Ex. 112 pg. JT 0024 with Ex. 111 pg. JR 0307.

¹⁹ Note 2 refers to the company's "stockholder" in the singular, not plural. Ex. 111 JT 0307 note(2). In Note 4, entitled: "Related – Party Transactions the report's author stated: Tocci Corporation is affiliated with Tocci Building Corporation through common ownership." However, the only common owner between those two entities was John L. Tocci.

“case” is the Park West litigation and settlement. Presumably, as the President, Treasurer, director and 1/3 shareholder of Tocci Corp., John had a preexisting duty and obligation to Tocci Corp. and its other two shareholders, to manage the litigation without then charging Tocci Corp. for his time to benefit John’s other entity, Tocci Building Corp.

The court’s review of the 1993 unaudited report of Tocci Corp. balance sheets for 1991 and 1992 cannot discern whether the notes, or loans, made by Michael and William to Tocci Corp. in the 1980s were carried on its balance statements, and, if so, how those loans were treated.

John’s may have achieved success in his *de facto* corporate takeover of Tocci Corp., but he also sought to achieve *de jure* control over Tocci Corp. He sought to imbue his prior acts with legitimacy. Michael, trained as a lawyer, and though loyal to John, was persistent in seeking to insert himself in Tocci Corp. governance and operations. This was the source of ongoing friction with John. John’s unilateral decision to make himself the sole owner of Tocci for purposes of official reporting, when his status as such was never ratified or recognized in any official act by the Tocci shareholders and directors, posed significant risk to John.²⁰ He faced potential risk from at least three sources: from his brothers, his fellow shareholders if they learned about what he, John had managed Tocci Corp. and how its assets were distributed; he also faced risks from third parties who relied on his misrepresentation of sole ownership and he may have faced other potential legal jeopardy from his misrepresentations on official documents. The Deed of Transfer would help accomplish what John believed he needed; documentation that he controlled

²⁰ The issue of William’s continuing interest in Tocci Corp. was not placed in issue before this court.

Michael's 33 1/3 interest in Tocci Corp.²¹ With that in hand, John believed he could manage Michael and get him to stop asking him difficult questions about Tocci Corp.

However, the Deed fails to validly transfer Michael's shares to John because the Deed does not conform with the strict requirements of Article 5 of Tocci Corp.'s Article of Incorporation as to how shares are to be sold or transferred. There is no writing to the directors, there is no vote of the directors to either accept Michael's tender at the agreed upon price or a vote by the directors to waive the strict requirements of Article 5

John argues that Massachusetts law does not require small, closely held, family corporations to comply with corporate formalities for their acts to be effective. He cites several cases.²² Those cases are distinguishable and do not provide a safe harbor for this transaction. This is not the matter of failing to cross a T or dot an I in the corporate filings or books. Rather, a review of Will-Mick's twenty-year corporate existence shows a complete disregard of the Articles of Incorporation and a lack of respect for the corporate form as a separate, legal entity with an existence apart from John L. Tocci.

John's long stated goal was to remove Michael (and William) as shareholders and operate Tocci Corp. as its sole shareholder because, as he explained, he was doing the lion share of the

²¹ The Deed of Transfer only purports to transfer ownership interest and does not appear to address the outstanding notes or loans that were also a point of some dispute between the brothers.

²² See Plaintiffs/Defendants-In Counterclaim John L. Tocci Building Corporation and Lilia Tocci's Proposed Findings of Fact and Rulings of Law ¶42 and fn. 1. See *Samia v. Central Oil. Co.*, 339 Mass. 101, 109 (1959)(the court sought to do what equity required even if not "in strict compliance with corporate formalities") Here the court finds that to do equity it cannot ignore the avoidance of corporate formality which was done to disadvantage two shareholders to the benefit of one. *Trager v. Schwartz*, 345 Mass. 653, 658-659 (1963)(in a dispute between father and son on account of a trust amendment granting son shares in the family corporation the court noted that a small family owned company operated itself "without overemphasis on corporate formalities and reasonably is not to be held to the strict standards of larger commercial organizations.) Here, there was simply no respect for any of the articles of incorporation or corporate formality. In *Trager* there was at least a vote of the directors, even if not technically in compliance with its corporate requirements. *Diamond v. Pappathanasi*, 78 Mass. App. Ct. (2010)(court noted that family businesses operated under "looser arrangements" and that plaintiff had herself "profited handsomely" from such an arrangement and had obtained all the accounting she was entitled.) However here, the books and records were only pried open due to litigation and the "loose" operation of Tocci Corp. was not to the benefit of Michael (or William) but rather for John.

work and creating its value.²³ Without so much as board vote or a meeting of the Directors, in 1989, John filed the Annual Reports and signed other official documents as the sole shareholder of Tocci Corp. By 1990, John claimed, on his K1, that he held 100% of Tocci Corp. shares.

John cannot now ask the court to relieve him from complying with corporate formalities; asking the court to recognize that the Deed served to transfer all of Michael's shares; because John is in fact asking this court to sanction his *ultra vires* actions, done at the expense of, and to the disadvantage of, his two fellow shareholders. The court observes, "he who seeks equity must do equity." *New England Merchants Bank of Boston v. Kann*, 363 Mass. 425, 428 (1973).

John has the burden to prove, by a preponderance of the evidence, that the 1993 Deed was a valid transfer of Michael's interest in Tocci Corp. The court finds that he has failed because the transfer of Michael's shares was not done in conformance with Article 5 of the Articles of Incorporation or, alternatively, John's claim fails because Michael has proven fraud in the inducement to sign the Deed. Each reason is discussed below.

A. The 1993 Deed Does Not Conform To Article 5

Will-Mick's articles of incorporation made a specific provision for the transfer of shares requiring a shareholder:

shall notify the directors of his desire to sell or transfer by notice in writing, which notice shall contain the price at which he is willing to sell or transfer and the name of one arbitrator....The directors shall within 30 days thereafter either accept the offer, or by notice to him in writing name a second arbitrator ... but if at the expiration of 30 days the Corporation shall not have exercised the right so to purchase, the owner of the stock shall be at liberty to dispose of the same in any manner he sees fit. No share of stock shall be sold or transferred on the books of the Corporation until these provisions have been complied (*sic*) with, but the Board of Directors may in any particular instance waive the requirements. (emphasis added)

²³ As noted *supra* the corporate structure created by Valentino was perhaps doomed to failure because it granted each of the three sons equal ownership interests but had no commensurate demand for equal effort to launch or run the company.

Michael did not submit a written request to sell his shares. Further, even if the Deed of Transfer was loosely considered to serve as such a written request, then there was no record that William, the third director, ever received a copy nor is there any record that the Directors of Tocci Corp. either accepted Michael's offer or waived the requirements of Article 5.

Moreover, and for the reasons discussed *infra*, if the Deed truly was a valid transfer, it remains inexplicable that in 1992 Michael refused to sell his interest in Tocci Corp for \$40,000 but here, a year later, was willing to sell and assign for \$1.00. However, the court does not find that the Deed would fail for want of consideration, because filial love and affection is sufficient consideration. *Ward v Ward*, 70 Mass. App. Ct. 366, 438 (2007)("[s]ufficient consideration may also, in the absence of fraud, consist of nothing more than 'love and affection'; although it is not a 'valuable' consideration, it is nevertheless good consideration between the parties.")²⁴ Rather, the court finds that the purported transfer did not comply with Article 5 of Tocci Corp.'s Articles of Incorporation. Therefore, Michael did not transfer his interest in Tocci Corp. by virtue of the 1993 Deed of Transfer.

C. The 1993 Deed of Transfer Voidable

Alternatively, even if the requirements of Article 5 had been met or had been waived, because the court finds that Michael has met his burden to prove fraud in the inducement, the 1993 Deed is voidable. Michael has raised this as an affirmative defense. He bears the burden to prove, by clear and convincing evidence, that his execution and delivery of the Deed to John was

²⁴ John makes alternative argument that Michael's continued employment, or the loans made to him over the years, also constituted adequate consideration. The court does not find that the Deed lacks consideration as explained above. However, as to the other grounds raised, the court finds that John failed to prove that the past loans to Michael nor the intermittent employment of Michael constituted good and valuable consideration for the Deed of Transfer. There was no proof as to the dates of the loans, the amounts, payments made and from whom or what the loans were made so John did not carry his burden on that point. Likewise the continued employment as consideration fails as well for lack of proof at trial that John conditioned Michael's continued employment on signing the Deed.

procured by fraud. Clear and convincing evidence requires proof “so clear as to leave no substantial doubt.” *Barboza v. McLeod*, 447 Mass. 468, 473, 474 (2006) It is “more demanding than the preponderance of the evidence” standard but is less demanding than beyond a reasonable doubt. *MacDonald v. Caruso*, 467 Mass. 382, 390 (2014).

1. Michael Was Fraudulently Induced To Sign The Deed

Contracts induced by fraudulent misrepresentations are voidable. *Shaw Supermarkets, Inc. v. Delgiacco*, 410 Mass. 840, 842 (1991).²⁵ Michael’s allegations, and evidence at trial, meet the heightened pleading and proof requirements to establish fraud. See Mass. R. Civ. P. 9(b) and *Equipment & Systems for Industry, Inc. v. NorthMeadows Constr. Co., Inc.*, 59 Mass. App.Ct. 931, 932 (2003) (rescript) (at minimum one pleading fraud must identify the person making the statement, the statement that was made, when it took place and the materiality of the statement).

1. John Made Material Misrepresentation that He Intended Would Induce Michael to Assign His Shares in Tocci Corp. to John

Fraud must be proven, and can never be presumed. The elements of fraudulent inducement are: (1) the statement was knowingly false; (2) the maker of the statement made the statement with the intent to deceive; (3) the statement was material; (4) the moving party reasonably relied on that statement; (5) the moving party was injured as a result of his reliance on that statement. *United States v. Presidents and Fellows of Harvard College*, 323 F. Supp. 2d 151, 199 (D. Mass. 2004)(apply Massachusetts law, “standards for common law fraud and fraudulent inducement are the same: (1) the statement was knowingly false, (2) defendants made

²⁵ See also Restatement (Second) on Contracts § 164: When a Misrepresentation Makes a Contract Voidable
(1) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.

the statement with the intent to deceive, (3) the statement was material, (4) plaintiff reasonably relied on the statement, and (5) plaintiff was injured as a result of its reliance”).

The court credits Michael’s testimony that in 1993, John asked him to draft and sign a document that John could use if he had to produce proof that he was the sole shareholder of Tocci Corp. To that end, John wanted a document purporting to assign Michael’s shares to him.²⁶ He told Michael, and this point was corroborated by Dan’s testimony, that he, John, had been reporting as the sole shareholder of Tocci Corp. on official documents, and without the Deed of Transfer, he could be in legal trouble.

Michael and Dan’s testimony on this point is further corroborated by John’s own admission, made in his 1992 note to his mother. John told his mother he needed to back date the settlement with Mike and Bill to 1988 because otherwise there was legal exposure. This is evident in Ex.117. Still visible, though scratched out, written in John’s own hand was: “[o]therwise I will be exposed.” (Ex. 117 DT00151) John later rephrased the reason for backdating the agreement was that the “company has been reporting its taxes as me being the sole owner since 1989. They could face significant tax exposure and penalties....” (Ex. 117) John’s statement attempts to deflect responsibility from himself, but it is clearly an admission that he has created the potential for “significant tax exposure and penalties” for Michael and William and possibly himself. The court concludes that John knew that he had legal exposure resulting from his unilateral decision to make himself the sole owner and simply “disappear” Michael and William’s 66 2/3-ownership interest in Tocci Corp. That statement was true.

The material misstatement John made to induce Michael, a trained lawyer, to draft, execute and deliver the 1993 Deed was to play on Michael’s filial loyalty to John. John told him

²⁶ As previously referenced, the issue of William’s ownership interest is not before the court.

that Deed was only for the “bean counter” and was not intended for any other purpose. That was a false statement. That statement was a misrepresentation. In fact, John did intend to use the Deed as personal protection but he intended to use it against Michael. He wrote on the back of the original Deed: “[p]lease make a “Michael Tocci” file for my credenza”. (Ex. 119A) Just before the execution of the Deed, John prevailed upon Michael, even after Michael offered to draft a ratification for the Park West settlement, John rejected that offer, stating that “they”, really, he, wanted more – he wanted Michael to assign his shares and relinquish his ownership. John’s assurance to Michael that the Deed was for no purpose other than to defend himself from the “bean counters” was a material misstatement and caused Michael to draft, sign and deliver the Deed to John. See *National Car Rental System, Inc. v. Mills Transfer Company*, 7 Mass. App. Ct. 850, 852 (1979)(rescript)(materiality is established when the misrepresentation was the principal reason that caused the [party] “to take the particular action that the wrongdoer intended he should take as a result of such representations and that otherwise he would not have taken such action.” citing *National Shawmut Bank v. Johnson*, 317 Mass. 485, 490 (1945)).

John’s attempt to bluster his way to sole ownership after the 1984 Music Room meeting failed, because Michael would again make his claims on Tocci Corp. The 1992 negotiations, mediated through their mother, failed when Michael spurned John’s proposal and instead asked to look at the corporate books and records. John knew he had potential legal exposure, including potential exposure to his fellow shareholders for what they may contend was self-dealing or a breach of the duties he owed to them as shareholders. Consequently, John saw an opportunity in 1993 when Michael had returned to work at Tocci Corp. John sought to accomplish two things: he wanted to protect himself from Michael’s claims and demands on Tocci Corp and he wanted to protect himself from any third parties challenging his representation as the sole

owner.²⁷ To accomplish the former goal, John played on Michael's attachment to family and his deep loyalty to John, in particular, pointing out that he, John, needed this document to protect him potential legal exposure. Michael had offered to ratify the Park West settlement, (after the fact) but John came back to him, at their father's birthday party, and told Michael that the ratification was not enough "they" needed an assignment,²⁸ and it needed to be backdated to 1988. Michael, declined to backdate it, but he sat down and immediately drafted the Deed, signed it, and gave it to John on the spot.

Michael told Dan, who witnessed his signature on the Deed, that the Deed was not what it seemed to be. Dan talked with Michael about the Deed in the presence of John. Michael's intention, as he told Dan, was clear: he was only acting to protect John. Michael never intended to assign his shares. Michael was not walking away from his lifelong ownership interest in the family business for \$1.00. Especially, when he had rejected \$40,000 from John for his shares just a year earlier.

Michael trusted his brother, and took John at his word that the document was only for third parties who made inquiries. Michael's reliance was reasonable in light of the long history between the brothers helping each other over the years. He trusted that the Deed was not to be used by John to eliminate his ownership in Tocci Corp. That is why Michael did not take any action to disavow the Deed from 1993 until the time of this lawsuit in or about 2014. Michael never thought, as between the brothers, the document had any effect. For the same reason he never pressed the issue of consideration for his shares. Michael did not intend for the Deed to

²⁷ The court acknowledges that to fully protect himself from third parties, John would also need an assignment or transfer of William's shares. However, William's interest was not before the court in this trial. From the evidence that was presented, John found Michael's persistence, intermittently over the years, trying to interject himself into to a role at Tocci Corp. a constant irritant and unwelcome interference. .

²⁸ Who "they" were was not explained, though Michael operated on the assumption it was "the bean counters" or auditors.

change his relationship with Tocci Corp.²⁹ He had no cause to challenge the Deed from 1993 until John brought this action seeking a declaration that the Deed did extinguish Michael's ownership in Tocci Corp. John had kept this original in his credenza for just this occasion. Michael's inaction during the intervening years was neither acquiescence nor ratification of the Deed.³⁰ Michael had no cause to question his brother until his brother used the Deed in this lawsuit. Michael relied on John's material misrepresentation to his detriment.

This suit is proof that Michael was injured by his reliance on John's misrepresentation. The brothers have spent five years in litigation. In addition to the resources, time and expense this has cost Michael, the fall out from dispute also appears to have caused a deep rift between the brothers, and drawing in other family members declaring sides in this fight. Michael was damaged by giving away his share of the family business.

The court finds that Michael produced clear and convincing evidence that John induced Michael to draft, execute and deliver the Deed assigning his shares in Tocci Corp. for \$1.00 to John because Michael believed John only intended it to be used to protect John against third parties. Michael's success on his affirmative defense precludes the court from entering the declaration urged by John Tocci in this trial.

It is not lost on the court that both John and Michael were content to use the Deed to misrepresent Michael's ownership to the world at large. That it was only when John sought to use the Deed against him, did Michael claim fraud. The court's conclusion here should not be seen to sanction Michael and John's attempt to misrepresent John and Michael's interests to any

²⁹ Michael's passing reference at his regret at giving John "a written statement sufficient for the purpose" is too vague a statement, especially in the context of the three page April 13, 2012 letter, to be considered a "ratification" of the 1993 Deed by Michael. Instead it supports the finding that the Deed was given out of a brotherly love and was not an arm's-length transaction. (Ex. 137)

³⁰ The court is not expressing an opinion as to whether there is a statute of limitations or laches defense on any other claims that parties still have, even after this decision, and because there are other claims and issues that will form the basis for their upcoming jury trial to resolve the remainder of their claims and issues.

third parties or any defraud third parties with the Deed. Their efforts are yet another example in a long history of failing to respect the corporate entity. They took this action to avoid what the Articles of Incorporation would require; having meetings of the directors and taking votes.

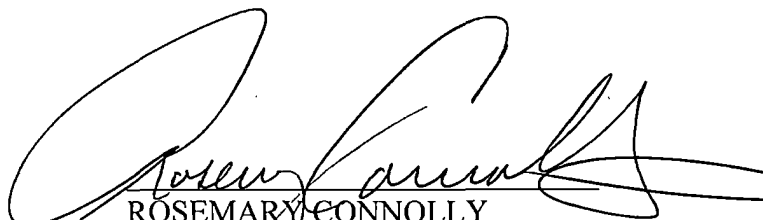
However, as between John and Michael, the court has to address the *in pari delicto* doctrine in reaching its conclusion. The doctrine of *in pari delicto* is an equitable one, and it bars a plaintiff who has participated in wrongdoing from recovering damages resulting from that wrongdoing.

Merrimack Coll. v. KPMG LLP, 480 Mass. 614, 621-622 (2018). Courts generally will leave parties to such a contract in the same position in which it found them. *Arcidi v. NAGE, Inc.*, 447 Mass. 616, 620 (2006). The court found that Michael established John's wrongdoing. Even if Michael's Deed would have the purpose of misleading third parties, there was no evidence that it was used by John in that manner. The only evidence offered as to how the Deed was used, was offered by Michael, that John only used the Deed to undercut Michael's claim to ownership in Tocci Corp. John should not benefit from his wrongdoing *viz a viz* Michael. Between John and Michael, John has acted deceptively, and so Michael may void his execution of the Deed.

DECLARATION

For the foregoing reasons, the court declares that the 1993 Deed of Transfer is voidable by Michael Tocci and is therefore unenforceable by John Tocci. The court declares that Michael Tocci remained a one third (1/3rd) shareholder of Tocci Corp after signing the 1993 Deed because that instrument did not validly transfer Michael Tocci's shares in Tocci Corp to John Tocci.

John Tocci's claim for relief in the form of declaration that the 1993 Deed of Transfer validly transferred Michael Tocci's shareholder interest to John Tocci is hereby **DENIED**.



ROSEMARY CONNOLLY
Justice of the Superior Court

DATE: January 3, 2020

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1481CV03261TOCCI BUILDING CORP. & another¹vs.

MICHAEL J. TOCCI

TOCCI CORPORATION & another,² intervener plaintiffs

vs.

JOHN TOCCI & others³**OMNIBUS MEMORANDUM OF DECISION AND ORDER ON
PARTIES' POST-TRIAL MOTIONS**

This litigation primarily concerns the rights of three brothers, John L. Tocci ("John"), Michael J. Tocci ("Michael"), and William R. Tocci ("William"), in relation to two business entities: Tocci Corporation ("Tocci Corporation") and Tocci Building Corporation ("TBC"). After a jury trial in early March 2020 that resolved William, Michael, and Tocci Corporation's breach of fiduciary duty, conversion, and unjust enrichment claims against John Tocci and TBC, the court now resolves the parties' several post-trial motions.

BACKGROUND

In brief, the jury reasonably could have found the following facts, with further facts reserved for later discussion.⁴ Tocci Corporation is the successor corporation of a construction

¹ John L. Tocci.

² William Tocci, individually and derivatively on behalf of Tocci Corporation.

³ Lila Tocci and Tocci Building Corp.

⁴ A more detailed background of the Tocci corporate history is set forth in Judge Connelly's Decision and Order after Jury-Waived Trial, entered on January 6, 2020 (Docket No. 132).

business the brothers' father incorporated in the mid-nineteen-seventies. All three brothers were equal shareholders, but John essentially ran Tocci Corporation over the years. Although no corporate votes were ever taken, or shares transferred, beginning in 1989, the Tocci Corporation annual report indicated that John was its president, treasurer, and sole director. Prior to that point, Michael had been listed as director, then as clerk. John's 1990 tax return also stated he owned one hundred percent of the shares of Tocci Corporation

Between the years 1989 and 1995, Tocci Corporation was involved in litigation with a title insurer ("Park West litigation"). During the same years it essentially became inactive as a going concern. In 1992, Tocci Corporation received a one million dollar settlement payment as part of the resolution of the Park West litigation. To execute the settlement, John signed an agreement certifying that the Tocci Corporation board of directors and shareholders voted to approve the settlement agreement, even though no such vote had occurred. Michael and William knew nothing about either the agreement or the million dollar payment.

In 1993, John asked Michael to sign a deed, backdated to 1988, transferring his shares in Tocci Corporation to John ("1993 Deed"). Believing that he was not actually transferring his shares, and that he was just doing a favor to John to help him out of a legal jam, Michael signed the deed. At around the same time, John unsuccessfully attempted to buy out William and Michael's shares in Tocci Corporation (and notes Tocci Corporation owed them). Effective December 31, 1994, John dissolved Tocci Corporation without telling Michael or William.

In the meantime, at some point prior to 1987, John incorporated TBC as a completely separate company from Tocci Corporation. Neither Michael nor William was a shareholder or officer of TBC, and were unaware of its incorporation at the time. In 1991 and 1992, Tocci Corporation, through John, transferred the proceeds of the Park West litigation settlement

proceeds to TBC. At the time of Tocci Corporation's dissolution, John transferred its remaining cash and assets to TBC. John testified that a portion of these transfers were to repay him for the time he spent working on the Park West litigation and settlement agreement. Over the years, TBC grew into a large and successful business. In or around 2013, Michael discovered for the first time that Tocci Corporation had been dissolved. A series of unsuccessful negotiations ensued, followed by the present litigation.

RELEVANT PROCEDURAL HISTORY

On April 4, 2014, John and TBC filed a complaint against Michael seeking declaratory and injunctive relief to prevent Michael from reviving Tocci Corporation. A few weeks later, Michael filed an answer and counterclaim, alleging conversion (Count I), common law fraud (Count II), breach of fiduciary duty (Count III), and c. 93A (Count VI). Michael also sought a constructive trust (Count IV), a parol trust (Count V), an accounting (Count VI), and declaratory relief (Count VII). On March 23, 2016, Tocci Corporation and William, individually and derivatively on behalf of Tocci Corporation, filed their intervenor complaint. The second amended intervenor complaint, filed on June 29, 2017, included claims for conversion (John Tocci/TBC) (Count I), conversion (Lila Tocci) (Count II), breach of fiduciary duty (Count III), fraud (Count IV), negligent misrepresentation (Count V), c. 93A, § 11 (Count VI), unjust enrichment (Count VII), negligence (Count VIII), tortious interference with business relations (Count IX), accounting (Count X), declaratory judgment (Count XI), fraudulent transfer (Count XII), and reach and apply (Count XIII) ("Intervener Claims" and "Intervener Complaint").

In August 2019, a jury-waived trial proceeded solely on the threshold question of whether Michael validly executed the 1993 Deed, and thereby relinquished his interest in Tocci Corporation. On January 6, 2020, the court, Connolly J., issued a decision and order declaring

the 1993 Deed voidable by Michael, and unenforceable by John. The court further declared that Michael “remained one third (1/3rd) shareholder of Tocci Corp after signing the 1993 Deed because that instrument did not validly transfer Michael Tocci’s shares in Tocci Corp to John Tocci.”

On March 2, 2020, a nine-day jury trial commenced. The jury was asked to render verdicts on Counts I, III and VII of the Intervener Complaint.⁵ Per the agreement of all parties, the following verdict slip questions were submitted, and then returned by the jurors:

BREACH OF FIDUCIARY DUTY

1. Did Tocci Corporation bring its breach of fiduciary duty claim within the statute of limitations?

YES ☒X_____ NO _____

2. Did John Tocci breach his fiduciary duty to Tocci Corporation by transferring money or property from Tocci Corporation to himself or Tocci Building Corporation?

YES ☒X_____ NO _____

CONVERSION

3. Did Tocci Corporation bring its conversion claim within the statute of limitations?

YES ☒X_____ NO _____

4. Did John Tocci convert money or property belonging to Tocci Corporation?

YES ☒X_____ NO _____

DAMAGES

5. State, in words and numbers, the total amount of harm to Tocci Corporation.

One Million Dollars _____
Amount in Words

\$ 1,000,000. _____
Amount in Numbers

⁵ Counts I (conversion) and III (breach of fiduciary duty) of Michael’s counterclaim is duplicative, and thus, were resolved by the jury’s verdict.

6. State in words and numbers the total amount of unjust enrichment to John Tocci in the form of:

A. Value of Tocci Building Corporation

Zero
Amount in Words

0
Amount in Numbers

B. Distributions to John Tocci

Zero
Amount in Words

0
Amount in Numbers

C. Value of Guastavino

Zero
Amount in Words

0
Amount in Numbers

The parties agree that the jury's verdict indirectly resolved Counts IV, V, VIII, and IX of the Intervener Complaint because no relief is available under those counts that is not available for breach of fiduciary duty or conversion.⁶ The parties' stipulation during trial regarding the enforceability of any judgment against certain assets held in trust disposes of Counts II and XII. The remaining claims equitable claims were reserved for post-trial consideration by the court.

⁶ This is equally true with respect to Count II (fraud) of Michael's counterclaim.

DISCUSSION

The court will address the several pending post-trial motions pending, in turn.

A. Michaels' Motion to Amend Counterclaim (Docket No. 155)

In this motion, Michael moves to amend his counterclaim to conform to the evidence. In particular, he seeks to add two equitable claims to his counterclaim for declaratory relief: abandonment by John of his interest in Tocci Corporation and de facto merger of the two corporations. The proposed amended counterclaim also adds a claim for unjust enrichment. In support of his motion, Michael argues that, since his last motions to amend, which were filed prior to the trials and both denied, the facts and evidence have significantly changed, including the revival of Tocci Corporation. The court denies the motion in light of Michael's delay in asserting these claims, and their futility.

While leave to amend should be "freely given when justice so requires," Mass. R. Civ. P. 15(a), such leave may be denied in the court's discretion where there is undue delay, undue prejudice to the opposing party, or futility in the amendment. *Mathis v. Massachusetts Elec. Co.*, 409 Mass. 256, 264 (1991); *Murphy v. I.S.K. Con. of New England, Inc.*, 409 Mass. 842, 864 (1991).

In its endorsement denying Michael's most recent motion to amend, entered on June 6, 2018, the court, Liebensberger, J., stated: "Because this motion is brought after the close of discovery in a case four years old, and because it seeks to add new parties and because it is not a plain and short statement of a new claim (as opposed to a requested remedy), this attempted amendment must be denied." This reasoning applies equally, if not more, at this point in the case where the trial phase is complete, Michael agreed on the record to the claims presented at the jury trial and those that had been reserved, and the case is now six years old. *See Mathis*, 409

Mass. at 264 (unexcused delay of over four years in seeking to amend valid basis to deny motion). Moreover, amendment is not warranted where, as discussed *infra*, the counterclaims that Michael seeks to add, to the extent they are not encompassed in his original answer and counterclaim, either lack merit (abandonment and de facto merger) or already were adjudicated (unjust enrichment). *See id.* Accordingly, Michael's motion to amend his counterclaim is **DENIED.**

B. Motion for Judgment on Michael's Remaining Claims (Docket No. 158)

In conjunction with his motion to amend, Michael also moves for judgment on his counterclaim for declaratory judgment, in which he now seeks declarations that John abandoned his shares of Tocci Corporation when he dissolved it, and that Michael has an interest in TBC under the doctrine of de facto merger. Michael's original, unamended counterclaim seeks declaratory judgment on the issue of Michael's interest in TBC, but does not specify de facto merger. The counterclaim is silent on the issue of abandonment. Nevertheless, assuming without deciding that these claims are properly before the court, both legal principles are inapposite to the facts here.

Beginning with abandonment, Michael equates John's actions in covertly dissolving Tocci Corporation to the abandonment of personal property or chattel. This principle, however, has no application to the shares of a close corporation, which are governed by statute and the corporation's own by-laws. Here, neither the relevant corporate statutes nor Tocci Corporation's by-laws provide that a shareholder who dissolves the corporation somehow abandons their shares upon any revival of the corporation. For that reason, no abandonment has occurred in this case.

The doctrine of de facto merger is likewise inapplicable where, under Massachusetts law, it concerns whether liabilities from a selling predecessor corporation are transferred to a

successor corporation that purchases its assets. *See Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 557 (2008) (“The ‘de facto merger’ theory of successor liability ‘has usually been applied to situations in which the ownership, assets and management of one corporation are combined with those of another, preexisting entity’” [citation omitted]); *Cargill, Inc. v. Beaver Coal & Oil Co.*, 424 Mass. 356, 359 (1997) (same). It is undisputed that successor liability to a third party creditor is not an issue here.

Accordingly, Michael’s motion for judgment in his favor based on these theories must be **DENIED**.

C. Tocci Corporation’s Post-Trial Brief (Docket No. 157):

Tocci Corporation’s post-trial brief seeks rulings on numerous issues, including whether all unjust enrichment claims were submitted to the jury, and whether other, additional equitable relief is available. Tocci Corporation also seeks resolution of its outstanding claim for c. 93A violations. Finally, Tocci Corporation requests that the final judgment memorialize the parties’ stipulation regarding certain of John’s trusts, and that prejudgment interest commence from the filing of the original complaint. The court addresses each issue, in turn.

1. Unjust Enrichment

The parties vigorously dispute whether the court included the unjust enrichment claims on the special verdict slip in a merely advisory capacity, or whether the claims were sent to the jury for final resolution. Proceeding on the assumption that the verdict on this issue was merely advisory, and, alternatively that it has remaining independent unjust enrichment claims, Tocci Corporation also advances several arguments in support of its claim that it is entitled to a finding of unjust enrichment against John and TBC.

The record fairly resolves the issue. During a conference on day seven of the trial, counsel and the court discussed whether fiduciary duty, and the related monetary remedy of unjust enrichment, would go to the jury in an advisory capacity. Part of the discussion related to tax offsets from any unjust enrichment award, and how the court would resolve that issue following the verdict. The next day, at the commencement of the eighth day of trial, the court informed the parties that:

[T]he court has discretion to send the [breach of fiduciary duty] claim to the jury and to have the jury decide it. That's well — that's clearly decided law in Massachusetts. And it's common practice. I have the discretion to send a 93A claim to the jury even though there's no jury right. Under the circumstances, where all the facts are intermingled with the conversion claim, I will exercise my discretion. I will send the claim to the jury with *both theories of damages*. And then we'll sort it out once we get the jury verdict.

(Emphasis added). The jury then decided that no unjust enrichment award was warranted by the facts of the case. As no tax consequences ensued, nothing was left for the court to resolve. Considering the evidence the court heard at trial, and under all of these circumstances, the court will respect the jury's verdict. As for any outstanding, unresolved, independent unjust enrichment claims, given the record, the court fails to understand the origin of any such claims. In short, the jury's unjust enrichment verdict is the last word on this issue.

2. Additional Equitable Relief

Tocci Corporation argues that the court should award it additional equitable relief based on the jury's finding that John breached his fiduciary duty. In particular, it seeks an equitable "surcharge remedy to require John to reimburse Tocci Corporation for its attorneys' fees and costs"; an order that John transfer his interest in TBC and Guastavino to Tocci Corporation; and an order for adequate security during the pendency of an appeal.

Starting with surcharge, it is a type of remedy that may, in a judge's discretion, be ordered paid by a trustee who breaches their fiduciary duty to the trust. *See, e.g., In re Will of Crabtree*, 449 Mass. 128, 150-151 (2007). Tocci Corporation cites no Massachusetts cases applying this principle outside the context of trusts and trustees, or to the payment of attorney's fees. For this reason alone, the court declines to order such a remedy here. The court likewise declines to order any transfer of John's interests where this claim relies on a finding of unjust enrichment, which the jury clearly rejected.

On the security issue, while a general power to order the posting of appeals bonds is not authorized under our rules, "[p]arties may request from a trial court judge an attachment of real property or the grant of security interest in personal property to protect a judgment pending appeal." *Borne v. Haverhill Golf & Country Club, Inc.*, 58 Mass. App. Ct. 306, 326 (2003). The court agrees with Tocci Corporation that it may well be appropriate to order a security interest against John's personal property once judgment enters. However, this motion is premature. The court will entertain a motion for security following the entry of judgment.

3. Violation of c. 93A

Tocci Corporation argues that John's conduct in relation to the two businesses constituted a violation of c. 93A. As a threshold matter, to fall within the purview of c. 93A, the parties must have been engaged in trade or commerce, with the challenged transactions occurring in a "business context." *Milliken & Co.*, 451 Mass. at 563. If the transactions are not at arms-length, but rather arise in the context of shareholder relationships, there is no business context and c. 93A does not apply. *See Puritan Med. Ctr., Inc. v. Cashman*, 413 Mass. 167, 179-180 (1992) (where gravamen of plaintiff's complaint was self-dealing, "the commercial transaction was anything but arm's-length"), and cases cited. Here too, the gravamen of Tocci Corporation's

complaint against John is self-dealing. Accordingly, c. 93A does not apply to the facts of this case.^{7 8}

4. Stipulation Regarding the John/Lila Trusts

Tocci Corporation requests that the court memorialize in the final judgment the parties' stipulation that any judgment against John could be executed against any assets held in either of the revocable trusts set up by John and Lila Tocci as if they were held in John's name individually, with the exception of their personal residence in Lexington. As the parties have stipulated, the court will allow this request. To the extent there is a dispute on this issue, the court agrees with defendants that no judgment shall enter against Lila Tocci since there has been no finding of liability against her. However, the judgment against John may be executed against any assets that were held either individually in John's name or in the 2012 John L. Tocci, Sr. Revocable Trust or the 2012 Lila E. Tocci Revocable Trust as if they were held in John's name, except for John and Lila Tocci's personal residence.⁹

5. Prejudgment Interest

The parties dispute whether the prejudgment interest on the damages award should run from the filing of the original complaint or the Intervener Complaint. Under G. L. c. 231, § 6B, interest added to damages in tort actions shall run "from the date of commencement of the action." The same is true of contract claims, in the absence of a prior demand or established date of breach. *See* G. L. c. 231, § 6C. Where counterclaims are concerned, which is essentially the

⁷ For this reason, the court need not address the c. 93A statute of limitations.

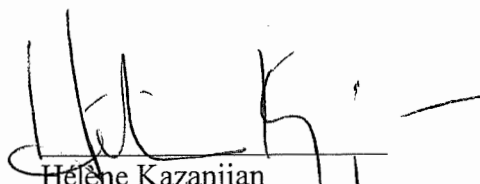
⁸ Michael's c. 93A claim fails for the same reasons.

⁹ This interpretation of the stipulation is supported by the statement made by Tocci Corporation's counsel in open court: "The gist of the agreement . . . is that the defendant would stipulate that any judgment against John could be executed against any assets held either individually in his name or in the 2012 John Tocci trust or 2012 Lila Tocci trust, as if they were held in John's name, except that the personal residence of John and Lila at 4 Solomon Lane would not be available and could not be executed upon." Trial Transcript, at 787-788.


equivalent of the Intervener Complaint here, courts have consistently set the start of prejudgment interest at the filing of the counterclaim, not the earlier, original complaint. See *Pettingell v. Morrison, Mahoney & Miller*, 426 Mass. 253, 259 (1997); *Deerskin Trading Post, Inc. v. Spencer Press, Inc.*, 398 Mass. 118, 125 (1986); *Boyle v. Mirrer*, 92 Mass. App. Ct. 1102, 2017 WL 3372019, at *4 n.9 (2017) (Rule 1:28 Decision); *Gorgens v. McGovern*, 2008 WL 2754527, at *5 (Mass. App. Ct. 2008); *Advanced Diagnostic Imaging, Inc. v. Shahidi*, 67 Mass. App. Ct. 1109, 2006 WL 2853875, at *4 (2006). The court agrees with this logical approach, i.e., reading “the date of commencement of the action” as the date when the prevailing party actually brought their claim. In this case, however, the claims for damages that are at issue were originally brought by Michael in his counterclaim, which was filed on April 24, 2014. Thus, prejudgment interest in this case shall run from that date.

ORDER

For the foregoing reasons, Michael’s Motion to Amend Counterclaim (Docket No. 155) and his Motion for Judgment on his remaining claims (Docket No. 158) are both **DENIED**. On Tocci Corporation’s Post-Trial Brief (Docket No. 157), with the exception of the parties’ stipulation concerning the John/Lila Trusts, all other requested relief is **DENIED**. The stipulation shall be memorialized in the final judgment. The court will decide the security issue after judgment has entered. Prejudgment interest shall run from April 24, 2014.


Helene Kazanjian
Justice of the Superior Court

DATE: January 29, 2021

CLERK'S NOTICE		DOCKET NUMBER 1481CV03261	Trial Court of Massachusetts The Superior Court 
CASE NAME: Tocci Building Corp. et al vs. Tocci, Michael J.		Michael A. Sullivan, Clerk of Court Middlesex County	
TO: Gavin McCarthy, Esq. Pierce Atwood Merrills Wharf 254 Commercial Street Portland, ME 04101		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
<p>You are hereby notified that on 05/21/2021 the following entry was made on the above referenced docket:</p> <p>Endorsement on motion for additur (#174.0): Or New Trial on Remedy DENIED</p> <p>The jury verdict was supported by the evidence. The jury was properly instructed on damages and was well within its discretion to award the amount awarded. (Dated: 5-20-21) notice sent 5/21/21</p> <p>Judge: Kazanjian, Hon. Helene</p>			
DATE ISSUED 05/21/2021	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Helene Kazanjian		SESSION PHONE# (781)939-2745