

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

R. Wayne Klein,

Plaintiff and Judgment Creditor,

CIVIL ACTION NO.

16EV004433A

v.

King, King, & Jones, PC and David H.  
Jones, Individually,

Defendants.

**ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
and DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

After oral argument, considering the record and all applicable law, this Court finds as follows:

1) Plaintiff's Motion for Summary Judgment

- a. Fraudulent Conveyance – Plaintiff contends that the transactions at issue in this suit bear 7 indicia of fraudulent conveyance under OCGA 18-2-74(b).<sup>1</sup>

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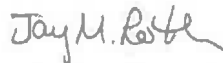
<sup>1</sup> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
  - (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - (B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
- (b) In determining actual intent under paragraph (1) of subsection (a) of this Code section, consideration may be given, among other factors, to whether:
  - (1) The transfer or obligation was to an insider;
  - (2) The debtor retained possession or control of the property transferred after the transfer;
  - (3) The transfer or obligation was disclosed or concealed;
  - (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
  - (5) The transfer was of substantially all the debtor's assets;
  - (6) The debtor absconded;
  - (7) The debtor removed or concealed assets;
  - (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
  - (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
  - (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

Defendant fails to address the indicia at all, instead raising the issue of corporate veil. Notwithstanding, the record does not establish Defendants' actual intent<sup>2</sup> as a matter of law. For example, Defendant Jones deposed that he changed corporate models because "it's a better way to practice, I think." David H. Jones Depo, p. 32. This is evidence contradicting actual intent to defraud, which a jury must consider. Moreover, the record does not establish as a matter of law that Defendants intended to incur, or reasonably should have believed they would incur, debts beyond their ability to pay.<sup>3</sup> The record is simply unclear as to the entirety of the Defendants' financial condition and what Defendants were actually capable of paying, when. Therefore, this Court HEREBY DENIES Plaintiff's motion for summary judgment with respect to these elements.

- b. Continuation Theory and De Facto Merger – However, with respect to Continuation Theory, this Court finds that Plaintiff has proved his case. Individual Defendant David Jones undisputedly transferred all assets from one corporate entity to another for \$0.00. Also undisputedly, the same staff worked for each entity in the same location. Without dispute, the only thing that changed was the corporate name. For the same reasons, this Court finds a De Facto Merger as a matter of law. Therefore, this Court HEREBY GRANTS summary judgment on Continuation Theory and De Facto Merger.
- 2) Individual Defendant David H. Jones' Motion for Summary Judgment – Defendant moves for summary judgment on grounds that the corporate veil protects him from individual liability in this case. Defendant has failed to prove that as a matter of law. Indeed, this Court fails to see the relevance of the corporate veil to the instant suit. Therefore, this Court HEREBY DENIES Defendant's motion.

SO ORDERED this 5<sup>th</sup> day of February, 2018.



Jay Roth, Judge  
Fulton County State Court

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(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

<sup>2</sup> See *id.*, 1(a)(1).

<sup>3</sup> See *is.*, 1(a)(2)(B).