

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION— CIVIL**

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<b>GINA SCOTOLATI, ARK, INC.</b>	:	January Term, 2005
<b>v.</b>	:	Case No. 02244
<b>ANN HOFFMAN, ARK, INC. and ARK CREATIVES, INC.</b>	:	
<b>v.</b>	:	
<b>GINA SCOTOLATI and MARK SCOTOLATI and MEDIAMARK, INC., MEDIAMARK SPOTLIGHT, INC. and JANE DOE and JUDY DOE</b>	:	Commerce Program
<i>Additional Defendants</i>	:	

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**OPINION**

This case concerns a dispute between two shareholders. Each shareholder owns 50% of the stock in two corporations.

**Findings-of-Fact**

1. Ark, Inc. (“Ark, Inc.”) is a Philadelphia, Pennsylvania corporation that offers interior decoration services to its clients. It was formed in June 2003.
2. Defendant/Counterclaim Plaintiff Ann Hoffman (“Hoffman,”) and Plaintiff/Counterclaim Defendant Gina Scotolati (“Scotolati,”) are 50/50 shareholders in Ark, Inc.
3. In 2003 and 2004, Ark, Inc. provided interior decorating services to a Michigan-based entity named ProQuest Information and Learning Center (“ProQuest.”)
4. MediaMark, Inc. (“MediaMark, Inc.”) is a Philadelphia, Pennsylvania corporation that sells promotional products to other businesses in exchange for fees.

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5. MediaMark was incorporated in January 2004.
6. Hoffman and Scotolati are 50/50 shareholders in MediaMark, Inc.
7. Scotolati managed book-keeping for both Ark, Inc. and Media Mark, Inc., and signed most of the checks therefrom.
8. In 2004, Scotolati began to solicit ProQuest to acquire the promotional products offered by MediaMark.
9. By November 2004, Scotolati and Hoffman were discussing termination of their business relationship.
10. On November 9, 2004, Scotolati submitted to ProQuest a Fee Schedule representing the fees that MediaMark would charge ProQuest, if ProQuest sold through its internal online internet the products of MediaMark.<sup>1</sup>
11. On November 11, 2004, Scotolati, on behalf of MediaMark, ordered from AIT two computers, a server, a database back-up system, and a printer.
12. On November 19, 2004, Scotolati instructed AIT to acquire on behalf of MediaMark the domain name “mediamarkspotlight.com”.
13. On December 2, 2004, at Scotolati’s direction, AIT installed the two computers, the server, database back-up system, and printer, which Scotolati had ordered on behalf of MediaMark, at Scotolati’s private residence.
14. Between December 3–6, 2004, Scotolati and Hoffman culminated their discussions to terminate the business relationship by entering into a settlement agreement. However, the parties failed to carry out the terms.
15. On December 7, 2004, AIT entered the server of Ark, Inc. and MediaMark on orders from Scotolati. Entry into the server took place without the knowledge or

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<sup>1</sup>(Exh. P–10).

authorization of Hoffman. The purpose of this entry was to retrieve and copy all of the business and financial data of Ark, Inc. and MediaMark.

16. On December 8, 2004, Hoffman learned about the improper entry into the server and locked Scotolati out of the business premises.
17. By the end of 2004, Scotolati, as the person in charge of the checkbooks, diverted \$64,655.87 from Ark, Inc. to MediaMark.
18. On December 27, 2004, Scotolati incorporated an entity named MediaMark Spotlight, Inc. ("Spotlight.") Scotolati is the sole shareholder of Spotlight.
19. Currently, Spotlight is the entity benefiting from the use of the domain name "mediamarkspotlight.com", which Scotolati had obtained on behalf of MediaMark on November 19, 2004.
20. On January 13, 2005, ProQuest forwarded a check in the amount of \$24,900 to Spotlight. Spotlight deposited the check in its account.
21. The \$24,900 check, although paid from ProQuest to Spotlight, originated from business solicitations carried out by Scotolati on behalf of MediaMark.
22. Spotlight used the funds from ProQuest to pay for the two computers, server, database back-up system, and printer, which had been ordered by Scotolati on behalf of MediaMark, but had been installed at Scotolati's residence.
23. With the database obtained from the server of Ark, Inc. and MediaMark, and the funds received from ProQuest, Spotlight began to operate its business.
24. Examination of Spotlight's bank records shows that throughout 2005, the business of Spotlight was indistinguishable from the business MediaMark.
25. Examination of the financial records shows that in the year 2005, Spotlight

generated \$66,301.00 in income for its owner, Scotolati.<sup>2</sup>

26. In January 19, 2005, Scotolati filed the instant suit against Hoffman and Ark, Inc.

Scotolati's Amended Complaint sought appointment of a receiver on behalf of Ark, Inc. in anticipation of dissolution thereof. Hoffman filed her Answer and Counterclaim to the Amended Complaint. The case proceeded to arbitration.

27. On September 18, 2007, the Arbitrator issued an "Arbitral Opinion and Award."

The Arbitrator found the following:

- Both Hoffman and Scotolati had breached their settlement agreement, dated December 3–6, 2004, requiring Hoffman to buy all the shares of Scotolati in Ark, Inc., and Scotolati to receive payment of \$42,000. The Arbitrator ordered Scotolati to relinquish her shares in Ark, Inc. to Hoffman, and ordered Hoffman to pay Scotolati the \$42,000 plus pre-judgment interest of \$7,003.50;
- Scotolati had improperly used funds owned by Ark., Inc. for personal use. The funds used personally by Scotolati amounted to \$11,691.75. The Arbitrator ordered Scotolati to reimburse such funds to Ark, Inc. without interest;
- Scotolati had used funds owned by Ark, Inc. to improperly pay expenses of MediaMark. The funds improperly diverted to MediaMark amounted to \$64,655.87. The Arbitrator ordered Scotolati to reimburse such funds to Ark, Inc. without interest;
- The mutual prayer for dissolution of Ark, Inc. was denied because the

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<sup>2</sup> Pennsylvania National Bank Discovery Materials, 2005, p. 2, attached to the Findings-of-Fact and Conclusions-of-Law of Plaintiff Hoffman.

parties had failed to give proper notice to creditors, as required by 15 Pa. 1981 *et seq.*

28. The findings from the Arbitrator are accepted by this Court without reservation.

29. Hoffman filed a petition to vacate or modify the Arbitral Award. The petition was denied.

30. By May 31, 2005, Hoffman wound down the affairs of Ark, Inc. and paid most of its creditors. Allegedly, only two creditors remained unpaid. The unpaid debt owed by Ark, Inc. allegedly exceeds \$100,000.

31. Trial on this matter was held on June 22, 2011, before the Honorable Judge Albert W. Sheppard, Jr.

32. Judge Sheppard died unexpectedly before he could issue a verdict.

33. This case was transferred to the Honorable Judge Patricia A. McInerney.

34. On December 13, 2011, oral argument was held before Judge McInerney. The parties and their respective counsel agreed that Judge McInerney should “review the record and make a decision standing in Judge Sheppard’s shoes.”<sup>3</sup>

### **Conclusions-of-Law**

35. The *alter ego* theory for piercing the corporate veil “is applicable when the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable. The *alter ego* theory is available whenever one party seeks to hold the corporation owner liable for any claim or debt.”<sup>4</sup>

36. This Court was able to determine that the business of Spotlight was indistinguishable from the business of MediaMark in the year 2005.

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<sup>3</sup> Transcript of oral argument, pp. 5-6

<sup>4</sup> Advanced Tel. Sys. v. Com-Net Prof'l Mobile Radio, LLC, 2004 Pa. Super. 100, P43; 846 A.2d 1264, 1278 (Pa. Super. 2004).

37. Examination of the record did not reveal whether the Business of Spotlight continued to be indistinguishable from the business of MediaMark beyond 2005.
38. Since the business of Spotlight was indistinguishable from the business of MediaMark in year 2005, this Court concludes that Spotlight was the alter ego of Media throughout that year.
39. “A transfer made ... by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made ... if the debtor made the transfer ... with actual intent to hinder, delay or defraud any creditor of the debtor....<sup>5</sup> In determining actual intent ... consideration may be given, among other factors, to whether ... the transfer ... was disclosed or concealed.”<sup>6</sup>
40. Under the Pennsylvania Uniform Fraudulent Transfer Act, a “creditor” is “a person who has a claim.”<sup>7</sup>
41. Examination of the record shows that Scotolati transferred assets of MediaMark to Spotlight with an actual intent to defraud Hoffman. The record further shows that Scotolati concealed the transfer from both MediaMark and Hoffman.
42. “In an action for relief against a transfer ... under [the Pennsylvania Uniform Fraudulent Transfer Act,] a creditor ... may obtain ... avoidance of the transfer ... to the extent necessary to satisfy the creditor’s claim.... [T]o the extent a transfer is voidable in an action by a creditor ... the creditor may recover judgment for the value of the asset transferred ... or an amount necessary to satisfy the creditor’s claim, whichever is less. The judgment may be entered against ... the first

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<sup>5</sup> Pennsylvania Uniform Fraudulent Transfer Act, 12 Pa. C.S.A. § 5104(a)(1).

<sup>6</sup> 12 Pa. C.S.A. § 5104(b)(3).

<sup>7</sup> 12 Pa. C.S.A. § 5101(b)—Definitions.

transferee of the asset or the person for whose benefit the transfer was made.<sup>8</sup>

43. The value of Spotlight for the year 2005 is limited to the value of the income generated for its owner, Scotolati.

44. The value of Scotolati's income through Spotlight, for the year 2005, amounted to \$66,301.00.

45. Judgment is entered against Scotolati in the amount of \$66,301, which represents the amount of income earned by Scotolati through Spotlight, as the alter ego of MediaMark, in the year 2005.<sup>9</sup>

46. This Court confirms the Arbitral decisions contained in the "Arbitral Opinion and Award" dated September 18, 2007.

By The Court,



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Patricia A. McInerney, J.

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<sup>8</sup> 12 Pa. C.S.A. § 5107(a)(1); § 5108(b)(1).

<sup>9</sup> At oral arguments held on December 13, 2011, counsel for Ann Hoffman stated that "the issue of ownership of MediaMark ... has to be settled because although it was submitted as part of the arbitration, [the Arbitrator] never touched on it." Transcript of Oral Arguments dated December 13, 2011, pp. 7-8. However, the record shows that neither party pled resolution of the issue of ownership of MediaMark, Inc. in the instant action.

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GINA SCOTOLATI and MARK SCOTOLATI and	:	
	:	Commerce Program
MEDIAMARK, INC., MEDIAMARK SPOTLIGHT, INC. and	:	
	:	
JANE DOE and JUDY DOE	:	
	:	
<i>Additional Defendants</i>	:	

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ORDER

AND NOW, this   28   day of February, 2012, after trial, upon examination of the record, and in accordance with the Findings-of-Fact and Conclusions-of-Law issued contemporaneously herewith, it is **Ordered** as follows:

1. Plaintiff/Counterclaim Defendant Gina Scotolati shall transfer all of her shares in Ark, Inc. to Defendant/Counterclaim Plaintiff Ann Hoffman. Defendant /Counterclaim Plaintiff Ann Hoffman shall pay Gina Scotolati \$42,000 for the shares in Ark, Inc., plus prejudgment interest in the amount of \$7,003.50, as determined by Arbitrator Thomas B. Rutter, J.D.;
2. After the shares of Ark, Inc. are transferred from Gina Scotolati to Ann Hoffman, Gina Scotolati shall pay \$11,691.75 to Ark, Inc. This amount, as determined by arbitrator Thomas B. Rutter, J.D., represents funds

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- improperly diverted for personal use, from Ark, Inc. to Gina Scotolati;
3. After the shares of Ark, Inc. are transferred from Gina Scotolati to Ann Hoffman, Gina Scotolati shall pay \$64,655.87 to Ark, Inc. This amount, as determined by Arbitrator Thomas B. Rutter, J.D., represents funds improperly diverted by Scotolati to pay for the expenses of MediaMark, Inc.
  4. Plaintiff/Counterclaim Defendant Gina Scotolati shall pay \$66,301.00 to MediaMark, Inc. This amount represents income realized by Scotolati through Spotlight, as the *alter ego* of MediaMark, during the year 2005.

**By The Court,**

  
**PATRICIA A. MCINERNEY, J.**