

## YA Global Invs., LP v. Gonzalez

Superior Court of New Jersey, Appellate Division

January 24, 2019, Submitted; February 19, 2019, Decided

DOCKET NO. A-0351-17T4

### Reporter

2019 N.J. Super. Unpub. LEXIS 380 \*; 2019 WL 660981

YA GLOBAL INVESTMENTS, LP, Plaintiff-Respondent,  
v. **RAINIER GONZALEZ**, PACER HEALTH  
CORPORATION, PACER ECI, LLC, Ei3 ENERGY, LLC,  
PACER HEALTH STAFFING, INC., PACER STAFFING,  
INC., BRICK MOUNTAIN BILLING, INC., BRICK  
MOUNTAIN MEDIA, LLC, 5G WIRELESS  
COMMUNICATIONS, INC., CONNECTED MEDIA  
TECHNOLOGIES, INC., EYI INDUSTRIES, INC., and  
ICOA, INC., Defendants-Appellants.

**Notice:** NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY [RULE 1:36-3](#) FOR  
CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** [\*1] On appeal from Superior Court of  
New Jersey, Law Division, Union County, Docket No. L-  
2090-14.

### Core Terms

summary judgment, corporate veil, corporations,  
defendants', PIERCED, contracts, impose liability, trial  
court, no merit, reconsideration, commingled,  
enterprise, DOCUMENTS, citations, companies,  
ORDERING, PURPOSES, terms, disregarding,  
financially, formalities, assertions, attorney's,  
colleagues, integrated, references, struggling, blatantly,  
employees, purported

**Counsel:** Andrew M. Wolfenson, attorney for  
appellants.

Sills Cummis & Gross, PC, and Bressler, Amery &  
Ross, PC, attorneys for respondent (Joshua N. Howley  
and William R. Tellado, on the brief).

**Judges:** Before Judges Alvarez and Reisner.

### Opinion

#### PER CURIAM

In this commercial dispute, defendants appeal from an  
April 21, 2017 amended order, granting summary  
judgment in favor of plaintiff YA Global Investments, LP  
(YAGI), and piercing the corporate veil to impose liability  
on defendants **Rainier Gonzalez** (Gonzalez) and Brick  
Mountain Billing, Inc. (Billing) for the sum of \$5,100,000  
plus interest. Defendants also appeal from an August  
30, 2017 order denying their motion for reconsideration.

Defendants raise the following issues on this appeal:

#### POINT I

THE COURT COULD NOT FIND THAT THE  
DEFENDANTS WERE GUILTY OF MAKING  
FRAUDULENT CONVEYANCES OR THAT THE  
CORPORATE VEIL COULD BE PIERCED WHERE  
ALL MONIES RECEIVED BY THE CORPORATE  
DEFENDANTS WERE USED FOR PROPER  
BUSINESS PURPOSES.

#### POINT II

IMPOSITION OF LIABILITY AND A JUDGMENT  
AGAINST BRICK MOUNTAIN BILLING, LLC, WAS  
IMPROPER AS THERE WAS NO EVIDENCE  
PRESENTED THAT BRICK MOUNTAIN  
BILLING [\*2] RECEIVED, IMPROPERLY OR  
OTHERWISE, ANY MONIES FROM THE OTHER  
DEFENDANTS.

#### POINT III

THE COURT IMPROPERLY APPLIED THE  
SUMMARY JUDGMENT STANDARD, AND ITS  
FINDING REGARDING FRAUDULENT  
CONVEYANCES AND PIERCING OF THE  
CORPORATE VEIL WAS INCORRECT AND  
MUST BE REVERSED.

#### POINT IV

THE SUPPLIED PROOFS CLEARLY SHOW THAT

THE COURT COULD NOT, UNDER THE SUMMARY JUDGMENT STANDARD OR OTHERWISE, FIND THAT THE DEFENDANTS WERE GUILTY OF MAKING FRAUDULENT CONVEYANCES OR THAT THE CORPORATE VEIL SHOULD BE PIERCED.

*POINT V*

THE COURT ERRED IN ORDERING A JUDGMENT AMOUNT AGAINST THE DEFENDANTS, **RAINIER GONZALEZ** AND BRICK MOUNTAIN BILLING, INC., WHICH REFLECTED MONIES RECEIVED BY THE OTHER CORPORATE DEFENDANTS AND NOT MONIES ALLEGEDLY PROVIDED TO THEM.

*POINT VI*

THE COURT'S EXCLUSION OF PAYMENTS MADE BEFORE EXECUTION OF THE LIMITED WAIVER DOCUMENTS MEANS THAT ANY MONIES RECEIVED BY THE CORPORATE DEFENDANTS PRIOR TO THE DOCUMENTS' EXECUTION SIMILARLY CANNOT BE CONSIDERED, THEREBY REDUCING THE POSSIBLE AMOUNT OF ANY JUDGMENT WHICH COULD BE ENTERED AGAINST DEFENDANTS, **RAINIER GONZALEZ** AND BRICK MOUNTAIN BILLING.

After reviewing the record de novo, we find that summary judgment was properly granted. See [Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41, 34 A.3d 1248 \(2012\)](#). We also find no [\*3] abuse of the trial court's discretion in denying reconsideration. See [Cummings v. Bahr, 295 N.J. Super. 374, 389, 685 A.2d 60 \(App. Div. 1996\)](#). We affirm for the reasons stated by Judge Robert J. Mega in his comprehensive written opinions issued with the orders on appeal. We decline to address appellant's point VI, because it was not raised in the trial court. [Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234-35, 300 A.2d 142 \(1973\)](#). Defendants' remaining arguments are not supported by the record<sup>1</sup> and are without sufficient merit to warrant discussion. [R. 2:11-3\(e\)\(1\)\(E\)](#). We add these brief comments.

Gonzalez created and controlled a series of

corporations, all of which he treated as one enterprise, and the assets of which he commingled, disregarding any corporate formalities. Gonzalez caused two of the corporations (the Pacer defendants) to borrow tens of millions of dollars from YAGI, and to acquire from YAGI an assignment of several struggling companies that the Pacer defendants committed to turning around financially. At Gonzalez's direction, the Pacer defendants blatantly violated their contracts with YAGI by siphoning off \$5.1 million in earnings from one of the purchased companies and using the money for purposes not permitted by the agreements with YAGI. Those contracts were fully integrated documents that could not be varied or amended [\*4] by alleged oral agreements. Hence, we find no merit in defendants' arguments that someone from YAGI verbally assured them that they could depart from the terms of those contracts, and that YAGI was somehow bound by the terms of a 2010 Pacer Health Corporation Executive Summary that YAGI neither signed nor agreed to in writing.

We also find no merit in defendants' argument that the trial court erred by rendering judgment against Billing, the only one of Gonzalez's corporations that still appeared to be solvent. In response to plaintiff's statement of material facts, defendants admitted that Gonzalez treated all of the "corporate Gonzalez [d]efendants" (a term that included Billing) as one enterprise and commingled their funds; that Billing paid salaries for Gonzalez and his employees; and that Gonzalez and his two colleagues worked for all of his corporations including Billing.

Affirmed.

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End of Document

<sup>1</sup> Many of defendants' purported citations to the record either do not support their factual assertions or are references to the transcripts of their attorney's motion arguments, rather than citations to legally competent evidence. See [R. 2:6-2\(a\)\(5\)](#).