

estate owned by Roland Investments, Inc. The receiver is also permitted to utilize professionals such as an appraiser, an accountant and a real estate agent to assist in the execution of this Order, all to be paid from the proceeds of the sale of real estate.

- 5) William Roland shall receive any proceeds from the liquidation of Roland Investments, Inc. only after all third party creditors, if any, receive payment, and only after the Estate of Francis Roland has been paid all sums due in this action. If the proceeds from the liquidation of Roland Investments are insufficient to pay all obligations, William Roland is personally liable for any shortfall.
- 6) William Roland shall pay to the Estate of Francis Roland 1/2 of the net proceeds of \$33,493.53, plus interest at the rate of 6% per year, derived from the unauthorized sale by Roland Investments, Inc. of property located at 1701—1712 North Front Street, in Philadelphia, Pennsylvania. Interest shall be calculated beginning from the day the above property was sold.
- 7) William Roland shall pay to the Estate of Francis Roland the rental value of \$2.50 per square foot net, plus 6% interest per year, to be calculated from the death of Francis Roland, for the unauthorized use by William Roland of 1/2 of the property located at 1600—1623 North Front Street, in Philadelphia, Pennsylvania.

By The Court,



GLAZER, J.

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

RECORDED
INDEXED
FILED
JUL 11 2010
CLERK OF COURT

GERALDINE ROLAND, PERSONAL REPRESENTATIVE of	:	November Term, 2010
	:	
the ESTATE OF FRANCIS ROLAND	:	Case No. 02629
	:	
<i>Plaintiff</i>	:	
v.	:	
WILLIAM ROLAND AND ROLAND INVESTMENTS, INC.	:	Commerce Program
	:	
<i>Defendants</i>	:	

FINDINGS OF FACT

1. Plaintiff, Geraldine Roland (“Geraldine Roland” or “plaintiff,”) is the widow of decedent Francis Roland (“Francis Roland” or “decedent,”) ¹ and the personal representative of his estate (*hereinafter*, “the Estate of Francis Roland” or “the Estate.”)
2. Individual defendant William Roland (“William Roland” or “defendant,”) is the surviving brother of decedent.
3. Corporate defendant Roland Investments, Inc. (“Roland Investments,”) is a corporation based in Philadelphia, Pennsylvania.
4. Roland Investments is successor-in-interest of Reliable Wagon and Automobile Body Builders, Inc. (“Reliable Wagon,”) a Philadelphia, Pennsylvania corporation formed in 1931.²
5. Until July 1, 1995, Roland Investments was entirely owned by Rose Roland,

¹ Trial Transcript, Testimony of Geraldine Roland, 65:25–66:1-7.

² Articles of Amendment—Domestic Business Corporation, Trial Exhibit P-7.



- mother of decedent Francis Roland and his surviving brother William Roland.
6. Rose Roland sold 100% of her interest in Roland Investments to her sons, Francis Roland and William Roland.³
 7. When Rose Roland sold her interest in Roland Investments, Francis Roland and William Roland became 50-50 owners thereof.
 8. Francis Roland died on October 1, 2007.
 9. At the time of death, Francis Roland had an ownership interest in a company known as “Philadelphia Spring.”
 10. The assets of Philadelphia Spring were liquidated and the Estate of Francis Roland received proceeds therefrom.
 11. Geraldine Roland entrusted William Roland with \$50,000 of Philadelphia Spring. This amount was entrusted to William Roland to cover outstanding obligations of Philadelphia Spring.
 12. William Roland used the \$50,000 to pay expenses related to his personal business.
 13. At the death of Francis Roland, the Estate and William Roland became 50-50 owners of Roland Investments.
 14. At the time Francis Roland died, Roland Investments owned two real properties located respectively at 1600–1623 North Front Street, and 1701–1712 North Front Street, in Philadelphia, Pennsylvania (hereinafter, the “1600 Property” and “1700 Property.”)
 15. After Francis Roland died, his estate sought to liquidate the assets of Roland Investments. However, William Roland froze the Estate out of all the affairs of

³ Stock Purchase Agreement, Trial Exhibit P–5.

Roland Investments, and denied the Estate access to the 1600 and 1700 Properties.

16. Since the death of Francis Roland, William Roland and Roland Investments have not made available to the Estate any financial statements of Roland Investments.
17. Since the death of Francis Roland, William Roland has called no directors or shareholders meeting on behalf of Roland Investments.
18. William Roland has taken no steps to replace the vacancy created in the board of Roland Investments by the death of Francis Roland.
19. After the death of Francis Roland, William Roland maintained exclusive control over the 1600 and 1700 Properties without seeking authorization from the Estate.
20. William Roland has been using the 1600 Property to operate an automobile repair business known as Reliable Wagon.⁴
21. William Roland and Reliable Wagon have paid no rent to the Estate of Francis Roland for the unauthorized use of one-half of the 1600 Property which is owned by the Estate.
22. After the death of Francis Roland, William Roland allowed a portion of the 1600 Property to be used by a third party to warehouse or display used automobiles and used white goods.⁵
23. The 1600 Property has been used by the third party without authorization from the Estate of Francis Roland.
24. The Estate of Francis Roland has received no proceeds from the unauthorized use of the 1600 Property by the third party.

⁴ E-mail from the City of Philadelphia Office of License Issuance to counsel for plaintiff, Trial Exhibit P-19.

⁵ Trial testimony of private detective Gary De Finis, p. 60.

25. After the death of Francis Roland, Roland Investments sold its 1700 Property. William Roland, as president of Roland Investments, signed the deed which conveyed the 1700 Property to buyer, Mr. James Mayberry, for consideration of \$45,000.⁶
26. Neither William Roland nor Roland Investments sought approval by the Estate for the sale of the 1700 Property.
27. Roland Investments did not pay to the Estate of Francis Roland any proceeds derived from the sale of the 1700 Property. Instead, William Roland withheld the net proceeds from the sale of the 1700 Property, in the amount of 33,492.53, after paying all overdue real estate taxes thereon.⁷
28. On November 17, 2010, the Estate of Francis Roland filed a Complaint against William Roland individually, and against corporate defendant Roland Investments. Subsequently, the Estate of Francis Roland filed an Amended Complaint.
29. On August 22, 2011, this court issued an Order-and-Opinion upon a motion for partial summary judgment filed by the Estate of Francis Roland. In the Order-and-Opinion, this court held that the Estate of Francis Roland and William Roland were “each 50% owners of Roland Investments” which in turn was 100% owner of the 1600 Property.⁸
30. On July 20, 2012, this court issued an Order-and-Opinion upon a second motion for partial summary judgment filed by the Estate of Francis Roland. The Order-

⁶ Indenture dated June 7, 2011 Between Reliable Wagon & Automobile Body Builders Incorporated and James Mayberry, Trial Exhibit P—8; Settlement Statement dated June 7, 2011, Trial Exhibit P—32.

⁷ Trial testimony of William Roland, p. 51.

⁸ Order-and-Opinion dated August 22, 2011, Control No. 11070304, issued by the Honorable Judge Arnold L. New upon the motion for partial summary judgment of plaintiff, the Estate of Francis Roland, Case No. 1011-02629.

and-Opinion held that the 1700 Property was an asset of Roland Investments at the time it was sold to James Mayberry.⁹ The Order-and-Opinion also reasserted that Roland Investments is owned by the Estate of Francis Roland and William Roland on a 50-50 basis.

31. Trial in this action was held on September 10-11, 2012.
32. At trial, the Estate offered testimony from an expert who has been involved in the commercial real estate business for at least forty forty-years, Mr. Michael Barmash, vice president of Colliers International, formerly known as Lanard & Axilbund. Mr. Barmash testified that the fair rental value of the 1600 Property was “probably 2-3 dollars per square foot net...”¹⁰ The court finds this testimony credible.
33. At trial, the Estate presented credible testimony and evidence that the widow of Francis Roland, Geraldine Roland, had attempted to list the 1600 Property for sale with Colliers International for a gross sale price of \$675,000 “or for such reduced gross sale price as Owner may hereafter approve,” or lease the premises for a price of \$2.75 per square foot “or such reduced price as Owner may hereafter approve.”¹¹ William Roland did not allow the 1600 Property to be listed for sale or lease.

CONCLUSIONS-OF-LAW

1. In Pennsylvania, “the freezing out of minority holders with the purpose of continuing the business for the benefit of the majority holders ... is a violation of

⁹ Order-and-Opinion dated July 20, 2011, Control No. 12012484.

¹⁰ Trial Testimony of Michael Barmash, p. 146:13-16.

¹¹ Trial Exhibit P—13.

- the fiduciary duty owed to minority shareholders.”¹²
2. A fiduciary duty “generally involves a situation where by virtue of the respective strength and weakness of the parties, one has the power to take advantage of, or exercise undue influence over, the other.”¹³
 3. “[E]qual holders of a close corporation are each entitled to the other’s performance of fiduciary duties of loyalty, good faith and full disclosure.”¹⁴ A 50-50 shareholder “who controls or dominates the corporation owes fiduciary duties to the corporation.”¹⁵
 4. Shareholder oppression is defined as the “unjust or cruel exercise of authority or power” by the controlling shareholder over the non-controlling shareholder, even though each is owner of 50% of the stock.¹⁶
 5. Oppressive conduct by a controlling shareholder refers to “conduct that substantially defeats the reasonable expectations held by minority shareholders in committing their capital to the particular enterprise.”¹⁷
 6. “Upon application of any shareholder ... the court may remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation....”¹⁸
 7. “[T]he court may entertain proceedings for the involuntary winding up and dissolution of the corporation when ... (1) The acts of ... those in control of the corporation are illegal, oppressive or fraudulent and ... it is beneficial to the

¹² In re Jones & Laughlin Steel Corp., 488 Pa. 524, 531; 412 A.2d 1099, 1103 (Pa. 1980) (citing Wisbecker v. Hosiery Patents, Inc., 51 A.2d 811, 814 (Pa. 1947)).

¹³ eToll, Inc. v. Elias/Savion Adver., 2002 Pa. 347, p. 37; 811 A.2d 10, 22 (Pa. Super. 2002).

¹⁴ Baron v. Pritzker, 52 Pa. D. & C.4th 14 (2001).

¹⁵ Baron v. Pritzker, 52 Pa. D. & C.4th 14 (2001).

¹⁶ Leech v. Leech, 2000 Pa. Super. 334, P6; 762 A.2d 718, 720 (Pa. Super. 2000).

¹⁷ Ford v. Ford, 2005 Pa. Super. 237, P8; 878 A.2d 894, 900 (Pa. Super. 2005).

¹⁸ 15 Pa. C.S.A. § 1726(c).

interests of the shareholders that the corporation be wound up and dissolved [or]
(2) The corporate assets are being ... wasted and it is beneficial to the interests of the shareholders that the corporation be wound up and dissolved.”¹⁹

8. “[T]he court may appoint a liquidating receiver with authority to collect the assets of the corporation. The liquidating receiver shall have the authority, subject to the order of the court, to dispose of all or any part of the assets of the corporation.... The assets of the corporation, or the proceeds resulting from a disposition thereof, shall be applied to the expenses of the liquidation and to payment of the liabilities of the corporation....”²⁰
9. Under the participation theory, “the court imposes liability on the individual [director of a corporation] as an actor rather than as an owner. Such liability is not predicated on a finding that the corporation is a sham and a mere alter ego of the individual corporate officer. Instead, liability attaches where the record establishes the individual's participation in the tortious activity.”²¹
10. Finally, prejudgment interest is defined as “compensation allowed to the creditor for delay of payment by the debtor, and is said to be impliedly due whenever a liquidated sum of money is unjustly withheld.”²² The legal rate of interest is 6 % per year.²³
11. Since the death of Francis Roland, William Roland has frozen the Estate out of the affairs of Roland Investments, has exercised exclusive control over the corporation, and has neither paid to the Estate any rents for the unauthorized use

¹⁹ 15 Pa. C.S.A. § 1981(a)(1); 15 Pa. C.S.A. § 1981 (a)(2).

²⁰ 15 Pa. C.S.A. § 1985.

²¹ Parker Oil Co. v. Mico Petro & Heating Oil, LLC, 2009 Pa. Super 105, P5 (Pa. Super. 2009) (citing Wilcks v. Milzoco Builders, Inc., 470 A.2d 86 (Pa. 1983)).

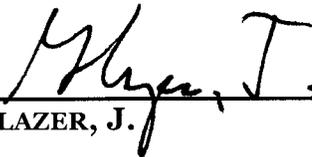
²² TruServ Corp. v. Morgan's Tool & Supply Co., 39 A.3d 253, 264 (Pa. 2012).

²³ 41 P.S. § 202 (2012).

of 1/2 of the 1600 Property, nor 1/2 of the proceeds from the unauthorized sale of the 1700 Property. The tortious conduct of William Roland amounts to shareholder oppression and breach of his fiduciary duty to Roland Investments and to the Estate. The conduct of William Roland warrants his removal as director of Roland Investments, the appointment of a liquidating receiver, winding down the business of Roland Investments, payment to the Estate of Francis Roland of fair rental value in the amount of \$2.50 per square foot net plus 6% interest per year for the unauthorized use by William Roland of 1/2 of the 1600 Property, and payment to the Estate of 50% of the net proceeds plus 6% interest per year from the unauthorized sale of the 1700 Property.²⁴

The court shall issue a contemporaneous Order consistent with the above Findings-of-Fact and Conclusions-of-Law.

By The Court,



GLAZER, J.

²⁴ At trial, Geraldine Roland credibly testified that she had entrusted William Roland with funds derived from the sale of assets of Philadelphia Spring, a company in which decedent Francis Roland owned an interest. See Findings-of-Fact, *supra*, ¶¶ 9-12. The money entrusted to William Roland was to be used to cover any winding down obligations of Philadelphia Spring. See Trial Testimony of Geraldine Roland, pp. 74:22-25, 75: 1-2. Geraldine Roland credibly testified that William Roland improperly used such funds to pay the expenses of his personal business. Geraldine Roland also testified that when she discovered misuse of the funds, she took the bank account away from William Roland. *Id.* pp. 84:1-86:5. However, Plaintiff produced no bank account statements showing whether William Roland misused the entire amount of \$50,000, or only a portion thereof. Plaintiff failed to meet its burden of proof as to the amounts of funds improperly used by William Roland, and plaintiff may not collect damages stemming from the improper use of proceeds derived from the assets of Philadelphia Spring.