

Levine v Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP

2025 NY Slip Op 34050(U)

October 17, 2025

Supreme Court, New York County

Docket Number: Index No. 652616/2021

Judge: Jennifer G. Schechter

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION**

PRESENT: HON. JENNIFER G. SCHECTERPART 54*Justice*

-----X

SCOTT LEVINE,

INDEX NO. 652616/2021

Plaintiff,

- v -

DECISION AFTER TRIAL

PLATZER, SWERGOLD, LEVINE, GOLDBERG, KATZ &
JASLOW, LLP, HENRY G. SWERGOLD, CLIFFORD A.
KATZ, HOWARD M. JASLOW,

Defendants.

-----X

This action concerns the value of plaintiff Scott Levine's interest in Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP (the Old Firm) as of the date of its dissolution on March 19, 2021 (Partnership Law §§ 73, 74; *see Cohen v Akabas & Cohen*, 79 AD3d 460, 462 [1st Dept 2010]). A bench trial was held on March 3-6, 2025 (*see* Dkts. 514-517), after which the parties filed post-trial briefs (Dkts. 518, 519). Most of the parties' positions are based on their experts' opinions (*see* Dkts. 409, 410, 412, 413). The experts largely agreed on the proper valuation approach (*see* Dkt. 410 at 3). Their major disputes are the value of the Old Firm's accounts receivable, work in progress (WIP), contingency/flat-fee cases, and its lease based on "information known or susceptible of proof as of the date" of the date of dissolution (*see Miller Bros. Indus. v Lazy River Inv. Co.*, 272 AD2d 166, 168 [1st Dept 2000]). The lease is particularly important; if the court agreed with defendants about it being a liability, plaintiff would be owed little or even no money notwithstanding other issues. Based on the evidence at trial, defendants' arguments that the Old Firm had no value whatsoever because the lease was a liability and that the contingency/flat-fee cases were absolutely worthless are rejected. These contentions significantly undercut defendants' expert's credibility (*see Rosenthal v Erber*, 2023 WL 5044045, at *3 [Sup Ct, NY County Aug. 8, 2023] ["That (the) expert could conclude based on the record evidence that the Company was worth \$0 significantly undermines his credibility. The notion that the Company is worthless is belied by the significant value (respondent) continues to derive from it"]). Yet, some of plaintiff's expert's opinions also lacked credibility. While both experts are qualified, they each took overly aggressive positions on certain issues that conflicted with the credible evidence. In fact, ultimately the parties' critiques of each other's experts were more compelling than their defense of their own experts' methodologies. The truth, as is often the case with dueling hired-gun valuation experts, is somewhere in middle. The court also addresses other minor issues affecting value. However, before reaching the value of Old Firm, the court must first address the parties' dispute about plaintiff's percentage equity interest.

DECISION AFTER TRIAL

Plaintiff's Interest

Defendants contend that plaintiff only has a 25% interest because the Old Firm did not have a written partnership agreement and the partners purportedly did not enter into any agreement governing their exact percentage interest. They rely on the default rules that partners "share equally in the profits and surplus remaining after all liabilities" (Partnership Law § 40[1]) and that an unequal agreement on the division of income does not necessarily govern the partners' percentage equity interests (*see Capizzi v Brown Chiari LLP*, 224 AD3d 1266, 1268 [4th Dept 2024]; *see also 220-52 Assoc. v Edelman*, 253 AD2d 352, 353 [1st Dept 1998]).

Plaintiff contends that he has a 40.362% interest in the Old Firm based on his K-1s and NYC Schedule Cs, which reflect this percentage interest since 2019 (Dkt. 411 at 6-7; *see, e.g.*, Dkt. 433 at 5). This includes the 2021 K-1 that plaintiff was provided in September 2022 after this action had been commenced (*see* Dkt. 507 at 2), and the cover letter indicates that it reflects plaintiff's "distributive share" but "may not correspond to actual distributions" (*id.* at 1; *see* Dkt. 519 at 9 ["The 2020 IRS Partner's Instructions for Schedule K-1 state that the 'ending percentage share shown on the Capital line is the portion of the capital you would receive if the partnership was liquidated at the end of its tax year by the distribution of undivided interests in the partnership's assets and liabilities'"]). Notably, typically when a partner left the Old Firm, the parties entered into a separation agreement that referred "to the former partner's then 'equity interest' and that such 'equity interest' was the same as the 'share of profits, losses, and capital'" reflected on the most recent Schedule K-1 (Dkt. 519 at 10; *see* Dkt. 514 at 86-100; *see also* Dkt. 411 at 8-9). The partners, moreover, had a fairly-consistent method of distributing excess cash—they did so in accordance with the percentage stake set forth on the partners' K-1s (*see* Dkt. 514 at 89-91).

In this case, it is undisputed that income did not correlate to equity. The court finds that the tax returns, separation agreements, method of distributing of excess cash, and plaintiff's credible testimony on this topic are convincing evidence that the partners had an agreement on their equity interests that deviated from the statutory default of equal ownership (*see Kalaijian v Grahel Assoc., LLC*, 193 AD3d 832, 833 [2d Dept 2021], citing *Czernicki v Lawniczak*, 74 AD3d 1121, 1125 [2d Dept 2010]; *see also Livathinos v Vaughan*, 121 AD3d 485, 486 [1st Dept 2014]). The court therefore finds that plaintiff has a 40.362% interest in the Old Firm.

Accounts Receivable

Plaintiff's expert valued the Old Firm's accounts receivable at \$3,540,080 (Dkt. 412 at 16). The court agrees with defendants that the methodology plaintiff's expert used to assess the collectability of the accounts receivable is not reliable. It was arbitrary and not based on historical collectability (*see* Dkt. 519 at 15 [he "assigned estimated collectability percentages of 90%, 80%, 60%, 40%, 5%, and 5%, respectively, to the six groups going from newest to oldest"]). The court considered the justifications for his approach and is unpersuaded (*see id.* at 15-19; *see also* Dkt. 518 at 11-16). While the court also did not

find defendants' expert's methodology to be particularly compelling, it is the only possibly reliable starting point from which the court can determine the value of the accounts receivable. The court is unconvinced, however, that they are worth only \$1,493,735. Plaintiff persuasively argues that this amount is understated (Dkt. 519 at 17-19; *see* Dkt. 411 at 25-26; *see also* Dkt. 413 at 6-7). While the total difference between the experts' valuations means little to the court given the complete lack of weight afforded to plaintiff's valuation, based on the flaws in defendants' methodology and using the actual collections in 2022 as a sanity check, the court finds that based on the information available at the time of dissolution the value of the accounts receivable is \$2 million (*see In re Adelphia Communications Corp.*, 512 BR 447, 495 [Bankr SDNY 2014]; *see also Capone v Castleton Commodities Intl. LLC*, 2022 WL 17414113, at *2 [Sup Ct, NY County Dec. 2, 2022]).

WIP

Defendants' expert valued the Old Firm's WIP at \$441,000 based on a 60% realization factor (*see* Dkt. 518 at 16-17). Plaintiff's expert valued the WIP at \$1,226,497 (*see* Dkt. 519 at 19-20). While the court finds plaintiff's value to be somewhat optimistic, plaintiff's critiques of defendant's expert are persuasive (*see id.* at 20-23; *see also* Dkt. 411 at 27-29). So too was plaintiff's objection to defendants' attempt to disavow their stipulation (*see id.* at 22). The court finds that the value of the WIP is \$900,000.

Contingency/Flat-Fee Cases

Plaintiff values the cases at \$2,096,243 (*see* Dkt. 519 at 23-27), while defendants' expert determined that he could not value them (*see* Dkt. 518 at 19-21). Although the court did not find plaintiff's expert's methodology particularly persuasive, the cases clearly had significant value and the court is unconvinced that such value cannot be reasonably approximated based on known information at the time of dissolution. Plaintiff notes that "annual revenues averaged \$2,033,865.65 over that five-year period and Marcum's valuation of \$2,096,243 for contingency fee cases and fixed-fee/flat-fee matters was in line with those annual revenues" (Dkt. 519 at 26). While this backward-looking view is not on its own enough to determine value, it is probative evidence that defendants failing to assign any value to what was unquestionably a significant part of the Old Firm's business is untenable and would result in a valuation not rooted in reality or consistent with settled law (Dkt. 411 at 29-33; *see Gottlieb v Greco*, 298 AD2d 300, 301 [1st Dept 2002]; *In re Thelen LLP*, 24 NY3d 16, 29 [2014]; *see also Capone*, 2022 WL 17414113, at *2). Based on the firm's historical performance and its financial records the court finds that the value of these cases is \$2 million.

The Lease

There is ample credible evidence that defendants intended and knew that they would continue practicing law together under the auspices of a new law firm at the time of the dissolution of the Old Firm (Dkt. 519 at 12-14; *see* Dkt. 374 at 2 ["To be clear, my clients intend to continue practicing together as partners, without Mr. Levine, consistent with their

legal rights"], 3 ["my clients intend to ensure the continued employment of the dozens of attorneys and staff that rely on them for their livelihood, especially during these very challenging economic times"]; *see also* Dkt. 300). Indeed, defendants essentially admitted this at the outset of the case (Dkt. 223 at 7 ["On March 19, 2021 – after the dissolution of the Old Firm – Swergold, Katz, and Jaslow formed a new law firm, called Platzer, Swergold, Goldberg, Katz & Jaslow LLP[], maintaining all of the Old Firm's employees and its premises"]; Dkt. 366 at 6 ["Consistent with settled New York partnership law, on March 19, 2021, the Old Firm was dissolved and the Partners formed Platzer, Swergold, Goldberg, Katz & Jaslow, LLP"], 14 ["The Partners established the New Firm, maintaining every single employee of the Dissolved Firm. All but one of the Dissolved Firm's clients followed the Partners to the New Firm. Mr. Levine's name was promptly removed from the letterhead, correspondence, bank accounts, voicemail, and the website. The Partners sought to assume the Dissolved Firm's lease obligations (amounting to over \$3 million through October 31, 2024), service contracts, an outstanding bank loan, and two PPP loans. They are also maintaining payroll and benefits to all employees"])). The court does not credit their testimony to the contrary. Defendants were aware for months that plaintiff might withdraw and there were indications that negotiations were breaking down (*see* Dkt. 411 at 3; *see also* Dkt. 242 at 2). Even if they may not have expected him to abruptly withdraw exactly when he did in March 2021, the credible evidence establishes that they immediately proceeded to continue working together as they had intended all along. Consequently, the court finds that there is no basis to conclude that the lease was a liability of the Old Firm.

To be sure, neither party submitted any persuasive evidence of the lease's value. All the court can conclude on this record is that at the time of dissolution the new firm assumed the lease with every expectation of fulfilling the obligation to pay rent and without any reason to expect the Old Firm would owe money in the event of default (*see* Dkt. 153 at 48). And since there is no credible evidence of whether the rent was above or below market value or any other reliable indicator of value (*see* Dkt. 519 at 15; *see also* Dkt. 413 at 12), the value of the Old Firm will not be adjusted based on the value of the lease (*see* Dkt. 519 at 11 ["The value of a leasehold estate may be positive, zero, or negative, depending on the relationship between market rent and contract rent"])).

This is not an inequitable windfall for plaintiff. Defendants correctly argue with respect to other issues that value must be determined based on what was known or knowable at the time of dissolution. The credible evidence at trial proved that the partners intended to continue working together for the foreseeable future without any indication of how many more years they would do so. The court has no basis to speculate about this issue to justify finding a liability based on an expected likelihood of default. Nor can the court rely on the actual duration of their tenancy or the amount eventually owed to the landlord based on information not knowable until 2024.

Other Issues

The court agrees with defendants that plaintiff is improperly seeking to double count his capital account of \$393,598 (Dkt. 518 at 26), a deduction must be made for \$200,000 of storage liability "for 'closed files' predating New Firm work" (*id.* at 27), and that there is no basis for an adjustment based upon "'perquisites and personal expenses' of \$369,265" (*id.*). However, even though "the Court agrees with Defendants that there is 'double counting' because Levine's capital account is included in the 'Total Adjusted Partners' Equity," since "Levine would only be receiving credit for 40.362% of the \$393,598 ... he should receive the other 59.638% or \$234,734" (Dkt. 519 at 29). So aside from deducting \$200,000 from the value of the Old Firm and adding a \$234,734 credit on top of his pro rata interest, no other positive or negative adjustments are warranted (*see* Dkt. 411 at 33-37; *see also* Dkt. 410 at 7-8).

The parties' other arguments, including defendants' contentions regarding the quality of plaintiff's work and his supposed disloyalty, are unavailing.

Accordingly, it is ORDERED that by October 23, 2025, the parties shall jointly prepare, e-file and email the court a Word version of a proposed order directing the entry of judgment jointly and severally against the individual defendants based on 40.362% of the value of the Old Firm consistent with this decision with 9% pre-judgment interest from the dissolution date.


20251017144656JSCHECTERBA77385AFEF408ABD7B34EDBCA04539

DATE: 10/17/2025

JENNIFER G. SCHECTER, JSC

Check One:

☒

Case Disposed

☐

Non-Final Disposition