No. 23-

IN THE

Supreme Court of the United States

VSHPHH TRUST,

Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the United States Court of Appeals for the Third Circuit err in concluding that a trustee of a trust established for the benefit of third parties can be a nominee for purposes of satisfying a debtor's obligations in an instance where the assets transferred to that trust were not transferred by, on behalf of, or otherwise for the benefit of the debtor?

PARTIES TO THE PROCEEDINGS

Petitioner (defendant-appellee in the United States Court of Appeals for the Third Circuit) is VSHPHH Trust.

Respondent (plaintiff-appellant in the United States Court of Appeals for the Third Circuit) is the United States of America.

Respondents (defendants in United States District Court for the District of New Jersey) are Ulysses Asset Sub II, LLC; Vapacha LLC; and Pachava Asset Trust.

CORPORATE DISCLOSURE STATEMENT

Petitioner VSHPHH Trust is not a public corporation, has no parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States of America v. Shant Hovnanian, et al.*, 23-1338 (3rd Cir. Feb. 5, 2024)

- *United States of America v. Shant Hovnanian, et al.*, Civ. 18-15099 (D.N.J. Dec. 27, 2022)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

VSHPHH Trust ("Petitioner"), by and through its counsel, John M. Hanamirian, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit ("the Third Circuit").

OPINIONS BELOW

The United States District Court for the District of New Jersey ("the District Court") order and opinion granting partial summary judgment in favor of the Respondent, and ordering the sale of certain real property located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey is recorded here at United States v. Hovnanian, Civil Action 18-15099 (ZNQ) (LHG) (D.N.J. Dec. 27, 2022), and attached as Petitioner's Appendix A ("Pet. App.") at 7a. Petitioner filed a timely Notice of Appeal with the Third Circuit on February 21, 2023. The Third Circuit issued an Opinion on February 5. 2024 affirming the District Court's Order on December 27, 2022. Pet. App. B at 1a. The Third Circuit issued a Mandate on March 28, 2024. The Third Circuit's Opinion is reported at United States of America v. Shant Hovnanian, et al, No. 23-1338 (3d Cir. 2024).

JURISDICTION

The judgment of the Third Circuit was entered on February 5, 2024. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1254, 1257. This Petition is timely filed pursuant to Supreme Court Rule 13.1.

INTRODUCTION AND STATEMENT OF THE CASE

Petitioner VSHPHH Trust ("Trust") appeals from an Order and Decision of the United States District Court for the District of New Jersey ("the District Court") entered on December 27, 2022 ("the Order") granting partial summary judgment in favor of the United States of America ("the Respondent") and ordering the sale of certain real property located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey, ("Village Mall") owned by the Trust to satisfy purported outstanding federal tax obligations of a third party taxpayer based upon a conclusion that the Trust was a nominee for that third party taxpayer.

The Third Circuit issued an Opinion on February 5, 2024 affirming the District Court's Order on December 27, 2022. Pet. App. A at 1a. Petitioner filed a timely Notice of Appeal on February 21, 2023. The Third Circuit issued a Mandate on March 28, 2024.

BACKGROUND

In 2007, Shant Hovnanian, the adult son of Vahak Sr. and Hasmig Hovnanian was assessed by the Internal Revenue Service, Department of Treasury ("IRS") with approximately $5.5 million in income tax liability for the years 2002-2004 and 2007. On January 16, 2018, the IRS filed a series of Notices of Nominee Federal Tax Lien in the Monmouth County Clerk's Office on parcels of real property owned by the Petitioner and transferred to trust by Vahak Sr. and Hasmig Hovnanian. The IRS sought to attribute those trust properties to Shant Hovnanian in the form of claims of nominee liability (the "Nominee Liens"). The property subject to this Petition is the Village Mall, a two-story office park owned by the Petitioner. Vahak Sr.

and Hasmig Hovnanian, purchased the land and built the Village Mall office building decades ago. The Petitioner Trust sole beneficiaries are Vahak Sr. and Hasmig's five (5) grandchildren. This is undisputed.

In its December 27, 2022 Order, the District Court found that "At all relevant times to this case, Defendant Nina Hovnanian was the Trustee of VSHPHH...", and "At all relevant times to this case, VSHPHH holds bare legal title to the Village Mall Property…". It is worth noting that the Petitioner trust name "VSHPHH" are Vahak Sr. and Hasmig's collective initials.

The following are indisputable: (1) Vahak Sr. and Hasmig Hovnanian created the Petitioner Trust; (2) Shant Hovnanian did not contribute property of any type, either directly or indirectly, to the VSHPHH Trust; and (3) Shant Hovnanian was never a beneficiary of the VSHPHH Trust, and was never an intended beneficiary of the VSHPHH Trust.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

This Court should reverse the Third Circuit's affirmation of the District Court's Order granting Plaintiff's Motion for Partial Summary Judgment finding that the VSHPHH Trust was Shant Hovnanian's nominee, paving the way for the sale of the Trust's property to partially satisfy Shant Hovnanian's purported federal tax liabilities, some of which arose beginning in 2002.

The Third Circuit's reliance on United States v. Patras, coupled with its finding that five out of six "Patras factors" were dispositive, is misplaced, as the facts

surrounding the Patras family do not remotely resemble the facts presented in the case at hand. A third party, such as the Petitioner VSHPHH Trust can be considered as taxpayer Shant Hovnanian's nominee only where the taxpayer "has engaged in a legal fiction by placing [or transferring] legal title to property in the hands of [that] third party while retaining some or all of the benefits of true ownership." United States v. Patras, 544 F. App'x at 141 emphasis added, citing Holman v. United States, 505 F.3d 1060, 1065 (10th Cir. 2013). There is no precedent to the contrary, i.e., no precedent where a nominee theory was applied by a court when a taxpayer never had title to property transferred to a trust or held in trust for others. Typically, in nominee cases, a taxpayer who owes tax, penalties, and interest endeavors to transfer his property to others, often referred to as a "straw man", so that the IRS is not able to seize his property to satisfy his tax debt. That does not exist in this case. The distinguishing, crucial fact that exists in the present case, and that does not exist in any published opinion cited by the Third Circuit, including Patras, is the fact that adult son taxpayer Shant Hovnanian never had title to the property owned by the VSHPHH Trust such as the Village Mall, or any other of the properties in this litigation burdened with IRS nominee liens, thus, he could not engage in a legal fiction by transferring title to the Village Mall property to anyone, such as a "straw man", to escape the IRS seizing his property to satisfy his tax debt. The ownership of the Village Mall property was (1) never his to conceal; (2) never his to sell to pay the United States; (3) never intended by his parents to belong to him; and (4) never could be conferred upon him as a beneficiary of the VSHPHH Trust because he was not a beneficiary of the VSHPHH Trust. The only beneficiaries

of any of the trusts in this litigation were Vahak Sr. and Hasmig Hovnanian's grandchildren. The government can only impose liens on property a taxpayer owns or impose nominee liens on property a taxpayer transfers to those the taxpayer controls, directly or indirectly. There was no taxpayer ownership or control here and no proof was presented to the contrary.

THE THIRD CIRCUIT ERRED WHEN IT AFFIRMED THE GRANT OF PARTIAL SUMMARY JUDGMENT IN FAVOR OF THE UNITED STATES FINDING THAT THE VSHPHH TRUST WAS SHANT HOVNANIAN'S NOMINEE

a. Faulty Application of the Patras Case.

The Third Circuit erred when it affirmed the grant of Respondent's Motion for Partial Summary Judgment and found that the VSHPHH Trust was Shant Hovnanian's nominee, paving the way for the sale of the Trust's property to partially satisfy Shant Hovnanian's purported federal tax liabilities, some of which arose beginning in 2002.

The Third Circuit's reliance on United States v. Patras, coupled with its finding that five out of six "Patras factors" were dispositive, is misplaced, as the facts surrounding the Patras family do not remotely resemble the facts presented in the case at hand. A third party, such as the grandparents' VSHPHH Trust can be considered as taxpayer Shant Hovnanian's nominee only where the taxpayer "has engaged in a legal fiction by placing [or transferring] legal title to property in the hands of [that] third party while retaining some or all of the benefits of

true ownership." United States v. Patras, 544 F. App'x at 141 emphasis added, citing Holman v. United States, 505 F.3d 1060, 1065 (10th Cir. 2013). There is no precedent to the contrary, i.e., no precedent where a nominee theory was applied by a court when a taxpayer never had title to property transferred to a trust or held in trust for others. Typically, in nominee cases, a taxpayer who owes tax, penalties, and interest endeavors to transfer his property to others, often referred to as a "straw man", so that the IRS would not be able to seize his property to satisfy his tax debt. That does not exist in this case. The distinguishing, crucial fact that exists in the present case, and that does not exist in any published opinion cited by the lower court's, including Patras, is the fact that adult son taxpayer Shant Hovnanian never had title to the property owned by the VSHPHH Trust such as the Village Mall, or any other of the properties in this litigation burdened with IRS nominee liens, thus, he could not engage in a legal fiction by transferring title to the Village Mall property to anyone, such as a "straw man", to escape the IRS seizing his property to satisfy his tax debt. The ownership of the Village Mall property was (1) never his to conceal; (2) never his to sell to pay the United States; (3) never intended by his parents to belong to him; and (4) never could be conferred upon him as a beneficiary of the VSHPHH Trust because he was not a beneficiary of the VSHPHH Trust, nor was he a beneficiary of any other Trust in this litigation. The only beneficiaries of any of the trusts in this litigation were Vahak Sr. and Hasmig Hovnanian's grandchildren. The government can only impose liens on property a taxpayer owns or impose nominee liens on property a taxpayer transfers to those the taxpayer controls, directly or indirectly. There was no taxpayer ownership or control here. The District Court

recognized this in 2019 in addressing the Trust's Motion to Dismiss when Judge Thompson stated:

> The VSHPHH Trust was settled by Defendant Shant's parents on December 28, 2012. ("VSHPHH Trust Agreement"); Defendant Shant and his sister, Defendant Nina, were named as co-trustees initially, but now Defendant Nina is the only trustee of the VSHPHH Trust. The children of Defendant Shant and Defendant Nina are the only beneficiaries. On January 1, 2015, Defendant Shant's parents transferred ownership of the Village Mall Property, an office building with several rented units, to the VSHPHH Trust.

In its December 27, 2022 Opinion however, the District Court stated "The deed is of no moment because the Government's position is not that Shant had actual possession of the Village Mall. Rather, the government's arguments and evidence assert that Shant retained possession of the Village Mall via its nominee, VSHPHH."

The District Court deemed actual ownership to be irrelevant despite the fact that in all the cited cases, the taxpayer was the actual owner at some point while there was a contemporaneous tax liability, or the taxpayer purposely orchestrated a transaction to conceal ownership in an effort to avoid a nominee situation. Id. The difference in this case is that Shant Hovnanian did not and does not own the Village Mall property. Instead, his parents, the trust settlors, purchased the land, built the Village Mall, and owned it for decades. The fact that the taxpayer, Shant Hovnanian, never had actual title or any form of

constructive ownership of the Village Mall differentiates this case from all of the cited lower court authorities.

The notion that Shant Hovnanian could have placed the title to the Village Mall with a third party such as the VSHPHH Trust for the purpose of avoiding any creditor, including Plaintiff, is simply untrue, and there is no support for that conclusion in the Record. Shant Hovnanian could not control entry to the Village Mall. Shant Hovnanian could not encumber the Village Mall property. Shant Hovnanian could not sell the Village Mall property. Shant Hovnanian could not borrow against the Village Mall property. Shant Hovnanian could not contract to improve the Village Mall property, simply because he had no authority to do so and the Village Mall was owned and was always owned by his parents, for decades, and then transferred by his parents to the VSHPHH Trust as part of their estate plan. The taxpayer had no power, and never had any power, to do what the Respondent alleges.

The facts in the Patras case are strikingly different than the facts in this case. In Patras, the delinquent taxpayer, Dr. Anthony Patras, bought a custom-built home in 1989 and was the only party on the deed to that home. He married his wife Ruth Patras in 1990 and then filed for bankruptcy protection in 1993. At the time of the bankruptcy, Dr. Patras owed the IRS approximately $140,000 for unpaid tax liabilities for the years 1991 and 1992, both of which arose while married to his wife. Dr. Patras remained in bankruptcy until 1999, and while in bankruptcy, he was ordered to sell the subject home to the Karaches for $800,000.00, which was a significant discount in relation to the fair market value of the home. Despite the sale, John Karach, a close personal friend of

Dr. Patras, allowed the Patrases to continue to live in the home. The Patrases paid all of the expenses while living in the home. When John Karach advised that he wanted to sell the home, Dr. Patras wanted to buy it back, but because he was still in bankruptcy and the tax liens were still in place, he could not, but he set in motion a series of duplicitous transactions which would end with Ruth Patras fraudulently regaining ownership of the home in 2001. All parties were aware that if the home were placed in Dr. Patras' name in 2001, the tax liens would have attached. The facts in Patras are a far stretch from the facts at issue in this Appeal.

The Patras case began with a purchase of real property by the taxpayer himself which he then sought to shield from his own tax liens. That taxpayer orchestrated and coordinated multiple fraudulent transactions in an attempt to ensure that he would ultimately reside in his home with his wife, who then held the title to the home, free from the claims of the IRS. After a three-day trial (not as a result of a summary judgment motion), the Court determined that Dr. Patras was the true owner of the home and the federal tax liens attached.

Shant Hovnanian was not the transferor of the Village Mall property to the Petitioner Trust. Shant Hovnanian could not be the transferor of the Village Mall property because he did not own that property. So, logically, how could he engage in a fraudulent transfer of property he never owned? There is no evidence to the contrary in the Record or in any public record associated with the ownership of the Village Mall. Rather, it is undisputed that Shant Hovnanian never owned the Village Mall property; it is undisputed that he was never intended to

own the Village Mall property; and lastly, it is undisputed that Vahak Sr. and Hasmig Hovnanian's grandchildren were always the sole beneficiaries of the Trust. There was no intent to shield any property or defraud the United States. Neither Vahak Sr. nor Hasmig Hovnanian had any creditors they sought to avoid with the transfer of the Village Mall and there was no tax or other planning urgency that prompted the transfer to the VSHPHH Trust. Nobody was facing imminent death associated with a medical condition. Nothing. No precipitating events. The grandparents were simply acting in good faith in their estate planning to provide for their five (5) grandchildren. The grandparents did not have to set up trusts to take care of their grandchildren but they thought it prudent estate planning to do so. Over decades the grandparents had amassed significant wealth building thousands and thousands of homes in Central and Southern New Jersey. Each of Vahak Sr. and Hasmig Hovnanian could have determined to simply do nothing at all. They could have provided that their assets would devolve pursuant to the terms of a will and this case would not exist. The Hovnanian parents certainly could have excluded Shant Hovnanian from their will, named the five grandchildren as beneficiaries of a testamentary trust and there could not be a viable claim from the United States. Instead, the Hovnanian grandparents thought it prudent estate planning to create the inter vivos irrevocable VSHPHH Trust during their lifetime to make sure that their grandchildren received the gifts they desired to give them from their substantial wealth, and to protect those assets as any grandparent would want to do. Rather than recognize this significant and common estate planning point, a widespread practice in this country among affluent grandparents in their estate planning, the District Court

sua sponte concluded, and the Third Circuit affirmed, that Vahak Sr. and Hasmig Hovnanian somehow assisted Shant Hovnanian in evading his creditors by transferring the Village Mall property to the Trust. That conclusion is simply unsupported by the Record, and it was not even presented as a basis for the Nominee Liens. The Court's result threatens and possibly upsets every estate plan for any person who includes a trust for minor children as a part of their final wishes.

The focus in nominee liability cases is on the taxpayer transferring property that they own to another party or entity to hold for the taxpayer on their behalf, while the taxpayer continues to fully enjoy all of the benefits of the property as if the property was never transferred. As one federal Court of Appeals has put it: "Suppose a person who wants to evade taxes parks his property with a friend or family member. That would be a fraudulent conveyance, and so the person to whom the property was conveyed would be deemed the taxpayer's 'nominee' and forced to cough it up." United States v. Swan, 467 F.3d 655, 658 (7th Cir. 2006); see also United States v. Nassar, 2014 WL 5822677, at *5 (S.D.N.Y. 2014) (key to nominee liability is "whether a taxpayer has engaged in a sort of legal fiction, for federal tax purposes, by placing legal title to property in the hands of another while, in actuality, *retaining* all or some of the benefits of being the true owner")(emphasis added); United States v. Jones, 2012 WL 569366, at *9 (C.D.Cal. 2012)(same).

As stated, the District Court's reliance on United States v. Patras, coupled with its finding that five out of six "Patras factors" were dispositive, is misplaced, as the facts surrounding the Patras family do not remotely

resemble the facts presented in the case at hand. As indicated previously, a third party (VSHPHH Trust) can be considered a taxpayer's (Shant Hovnanian) nominee only where the taxpayer "has engaged in a legal fiction by placing legal title to property in the hands of [that] third party while retaining some or all of the benefits of true ownership." United States v. Patras, 544 F. App'x at 141 emphasis added, citing Holman v. United States, 505 F.3d 1060, 1065 (10th Cir. 2013). A review of the application of each of the Patras factors reveals the following:

A. Patras Factors

To determine whether a trust is a taxpayer's nominee under New Jersey law, courts examine the following:

> (1) whether the nominee paid adequate consideration for the property;
>
> (2) whether the property was placed in the nominee's name in anticipation of a suit or other liabilities while the taxpayer continued to control. . . the property;
>
> (3) the relationship between the taxpayer and the nominee;
>
> (4) the failure to record the conveyance;
>
> (5) whether the property remained in the taxpayer's possession; and
>
> (6) the taxpayer's continued enjoyment of the benefits of the property.

Patras, 544 F. App'x at 141-42 (collecting cases under New Jersey law).

1. The First Patras Factor

In analyzing the first Patras factor, the District Court determination of whether or not adequate consideration was paid was on the wrong party. The Appellant argued that since the transaction was a gift to the Trust and grandchildren beneficiaries, of course there would only be nominal consideration, hence the term 'gift'. The District Court indicated, however, that the focus should have been on the recipient of the transfer, i.e., the grandchildren, and whether the recipients, i.e., the Trust and grandchildren, paid adequate consideration.

The recipients in this case are the grandchildren of the transferors, Vahak Sr. and Hasmig Hovnanian. The grantor of the property to the VSHPHH Trust was Vahak Sr. and/or Hasmig Hovnanian. Shant Hovnanian was neither a grantor nor a recipient, ever. Shant Hovnanian could not be a grantor as he had no legal title or other ownership rights to the property and as a result, he could not give away what he did not own. There was nothing necessitating a transfer of the Village Mall property from Vahak Sr. and Hasmig Hovnanian; Shant Hovnanian was the person with a tax liability, not his parents, and it is Shant Hovnanian's asset transfers that must be the Patras focus. Shant Hovnanian did not ever own the Village Mall property or any rights to that property and could not legally transfer that property to anyone, and accordingly focusing on whether there was adequate consideration for the transfer of the Village Mall to the Trust is a mistaken effort. Nonetheless, the "recipients" to whom the District

Court directed the analysis were the grandchildren. Contrary to the IRS's view, it is illogical that children receiving a gift would have to pay for it: by definition, a gift lacks adequate consideration.

In the normal course, a transfer of property by a taxpayer to a purported nominee for nominal consideration is relevant to a nominee claim because it establishes that the taxpayer took property that he already owned and parked it with a third party for no material compensation, and therefore no real purpose other than to hide the taxpayer's pre-existing asset from the IRS. See, e.g., Evseroff, supra, 2012 WL 1514860, at *11 (trust was taxpayer's nominee because "the Trust paid no consideration to Evseroff [the taxpayer] for the property"); see also United States v. Sollenberger, 150 F. Supp.3d 393, 402 (M.D. Pa. 2015)(where taxpayers sold their home to third party for "nominal consideration," the third party was deemed a mere nominee); United States v. Neal, 255 F.R.D. 638, 644 (W.D.Ark. 2008)(same). However, where a property owned by a third party, Vahak Sr. and Hasmig Hovnanian, is transferred by that third party, to the purported nominee, the VSHPHH Trust, the fact that the transfer is for nominal consideration is irrelevant to assessing a nominee claim, because the property never belonged to the taxpayer, Shant Hovnanian, either before or after the transfer. See De Beck v. United States, 2012 WL 12860949, at *39 (W.D.Tex. 2012) (recognizing that transfer of property from third party to alleged nominee does not establish nominee liability; government must show that it was the taxpayer who was "the beneficial owner of the Property before and after the transfer").

2. The Second Patras Factor

The second Patras factor focuses on the timing of the transfer and whether the transfer was made in anticipation of a suit or to avoid other liability. The transfer of the Village Mall property was a gift to the Trust by its owners, Vahak Sr. and Hasmig Hovnanian. Neither Vahak Sr. nor Hasmig Hovnanian, nor any grandchild of the Hovnanian's, was ever the subject of a potential civil or criminal investigation, and this is not disputed. The second Patras factor should have favored the Defendant Trust since neither the grantors nor the grantees were attempting to avoid any liability of any sort.

3. The Third Patras Factor

The third Patras factor involves the relationship between the taxpayer and the nominee. The husband and wife in Patras had a legal obligation toward one another as husband and wife, so it was logical for the court to attribute both a legal and equitable interest in the marital home to the delinquent taxpayer, especially since the initial purchase of the home was made just before the parties' marriage (in contemplation of marriage) and the tax liabilities owed were as the result of jointly filed returns. When the Patras home eventually ended up being owned by Ruth Patras, who did not earn enough to buy it or sustain it alone, it was consistent for the court to conclude that it actually belonged to Dr. Patras since he was the initial owner, married to the current owner, and orchestrated a series of transactions which allowed him to continuously reside in the home. The Patras' relationship was intertwined in a way that doesn't exist in this case. The taxpayer therein, Dr. Patras, was the one coordinating

and orchestrating various straw purchases of the home he originally owned in an effort to prevent the government's effort to seize that home.

The District Court noted that the Trust did not file tax returns, pointing to that fact as indicative of a lack of validity to the VSHPHH Trust, but did not mention that the Village Mall later remedied that situation. It is not uncommon for Trusts and other entities run by family for the benefit of family to fail to understand and properly administer assets. Nobody thinks about it because it is all family. If someone were trying to avoid creditors, the prudent thing would be to assure all of the indicia of ownership appear independent, or to disguise any failures in the administration of the family assets like Dr. Patras did with his home. Dr. Patras went to great lengths to have it appear as if the home was not his, with straw parties and other disguised ownership efforts. Again, though, that was done with an asset that belonged to the marital unit and was used by Dr. Patras and his wife as their home.

Nonetheless, if the District Court was correct and the VSHPHH Trust is invalid, then the transfer to trust would be deemed a transfer to the beneficiaries of the Trust, the grandchildren, not Shant Hovnanian or anyone else not identified as a beneficiary.

4. The Fourth Patras Factor

The District Court found that the Appellant satisfied the fourth Patras factor because the conveyance of the Village Mall to the VSHPHH Trust was properly recorded in 2015. The issue, of course, however, is that again, Shant Hovnanian was not the transferor. The analysis of whether the transfer of the Village Mall property was recorded

with the County Clerk is one where a court would be looking for deception, for example, a failure to record in an effort to hide. Shant Hovnanian could not hide the transaction as it was not his transaction to hide. Shant Hovnanian was not the transferor. Shant Hovnanian did not own the property to enable him to accomplish a transfer.

5. The Fifth and Sixth Patras Factors

The fifth and sixth Patras factors relate to "whether the property remained in the taxpayer's possession" and whether the taxpayer "continued enjoyment of said premises". The record reflects that for nearly two years, Shant Hovnanian was present at the Village Mall and used an office space to conduct business related to the operation of the office complex as well as his own business. It was his parents' building and he used it for his business. That does not mean he had ownership of the property, much like his status if he had borrowed his parent's car. The use of the word "remained" in Patras connotes that the taxpayer had possession or owned the transferred property before the transfer, which has not been proven or even alleged in this case. Shant Hovnanian helped manage the Village Mall complex as a son would and used one of the offices. This is not possession of the property in the Village Mall, this is limited use and very limited control for a very limited time. Possession means possession - you own it, and in this Patras factor analysis, that must be true both before and after the transfer. There is no factual basis for the District Court's conclusion in that regard.

In analyzing Patras factors five and six, the District Court said "The deed is of no moment because the Government's position is not that Shant Hovnanian

had actual possession of the Village Mall. Rather, the Government's arguments are that Shant Hovnanian retained possession of the Village Mall via its nominee, VSHPHH.". The problem with Shant Hovnanian "retaining" possession of the Village Mall is that he never had possession in the first place. The District Court ignored that Shant Hovnanian never owned the property and instead used his two-year stint as a co-trustee and property manager as a basis to satisfy Patras factors five and six.

The authorities cited by the District Court to support its position regarding factors five and six, however, do not support the District Court's conclusion. In re Richards, 231 B.R. 571, 579 (E.D. Pa. 1999).

In re Richards involved a married couple in a bankruptcy proceeding who incurred tax liabilities as a result of a failed business. The couple bought a home in 1984, around the same time the tax liabilities surfaced, and almost immediately placed their home into the name of their five-year-old son, in trust, naming themselves as trustees. They continued to (1) reside in the home for several years; (2) borrowed against the equity in the home; (3) named themselves as the owners on the loan application; and (4) attempted to deduct the mortgage interest and property taxes on their individual income tax returns. There was "substantial evidence in the record establishing that the Richards retained possession of the Residence….as their sole living quarters even after the transfer…". In Re Richards, 580.

There are two significant differences between the Richards' trust and the VSHPHH Trust: (1) In Richards,

the delinquent taxpayer owned the home prior to the transfer to the trust, so the Court found that Patras factor five was satisfied (though the Court was using a similar test to Patras it did not use the exact factors). Second, in Richards, the trust was created soon after the taxpayer's debts became known, so the second Patras-type factor was also satisfied. In sum, the Court in Richards found that factors one and three carried little weight, factor two was relevant since the home was transferred contemporaneously to the time the debt was incurred. Further, the court found that factor four was credited to the taxpayer since the transfer to trust was recorded. Factors five and six were satisfied because the Richards' resided in the home before the transfer to the trust, after the transfer to the trust and acted in many ways as though they were the owners by borrowing money against the home without disclosing the trust's ownership and using their own funds to improve the home.

The Richards case is far different than the case before this Court as the taxpayer and VSHPHH Trust are two different entities altogether with no evidence of any collusion or complicity. Moreover, there is no other beneficiary-party involved as there is in the present case with the Hovnanian grandchildren. All of the cases cited by the District Court involve a delinquent taxpayer unsuccessfully attempting to shield their own property from the claims of a governmental entity. Shant Hovnanian did no such thing. In this case, Vahak Sr. and Hasmig Hovnanian owned the Village Mall for decades prior to transferring it to the VSHPHH Trust.

6. Faulty Application of the Other Cited Cases

In Holman v. United States, 728 F.2d 462 (1984), another case cited by the District Court in further support of their conclusion, Dr. Bruce Holman and his wife Audrey Holman, the alleged delinquent taxpayers, sought to form a trust to hold all of their personal and real property. Originally, Dr. Bruce Holman, his wife and Dr. Holman's mother were the trustees, but a few months after the trust was created, Dr. Holman's mother resigned leaving only the Holman husband and wife as trustees. The Holman husband and wife, their four children, and a trust entitled "The Bruce Holman Educational Trust", were the beneficiaries of the Trust. In Holman, the delinquent taxpayers created the trust, controlled the trust, and benefitted from the trust's assets. This case is vastly different from Holman.

The District Court also cited G.M. Leasing Corp., et al v. The United States, et al, 429 U.S. 338 (1977), which is a case addressing alter ego liability as opposed to nominee liability. In short, the delinquent taxpayer, George Norman, Jr. was believed to have owed the IRS approximately $951,000 for tax years 1970 and 1971. The taxpayer formed G.M. Leasing Corp. in 1972 to purportedly lease automobiles. Through its investigation, IRS personnel discovered that the vehicles housed at Norman's residence were luxury vehicles registered to G.M. Leasing Corp., or to another company Norman created, and that neither Norman nor his wife had any vehicles registered in their own names. The IRS also discovered that G.M. Leasing Corp. did not have a license to conduct any business within Salt Lake County, Utah

and that the business had no telephone listing. They also learned that G.M. Leasing Corp. had no employees, paid no wages, and had no sales. The court therein found that the automobiles observed at the Norman residence were "show" or "collector" luxury cars and not the type that would typically be used in a leasing business. Id. at 343. The IRS also learned that Norman himself originally held title to some of the automobiles which he then transferred to G.M. Leasing Corp. in 1972. Id. at 347. Those facts, and others, caused the court to conclude that G.M. Leasing Corp was Norman's alter ego and simply a repository for some of his assets, thus the cars were able to be seized to partially resolve Norman's outstanding tax liability. So again, unlike the facts present in the case underlying this Appeal, the property in question in G.M. Leasing Corp. (1) once belonged to the taxpayer; (2) was transferred to a shell company created by Norman; (3) that transfer was contemporaneous with Norman's knowledge that his federal tax liability was then reduced to a legal obligation; and (4) Norman created a third party entity to attempt to disguise the true ownership of the vehicles for the purpose of shielding those assets from seizure by the IRS.

The G.M. Leasing Corp. case does not support the conclusion of the District Court in this case. Shant Hovnanian never owned the Village Mall, never transferred the Village Mall, and was never the beneficiary of the Village Mall.

Lastly, the District Court cited Berkshire Bank v. Town of Ludlow, MA., 708 F.3d 249 (2013) to support its decision. In Berkshire Bank the taxpayer, William Livermore, owned fifteen acres of land in Ludlow, Massachusetts. His plan was to subdivide the land into

eleven sections and the development would be known as Leland Estates. Livermore obtained a mortgage commitment from Berkshire Bank which stipulated that the loan would be made to "William A. Livermore or his nominee" and that if Livermore assigned the commitment to a nominee, that he would be required to guarantee the loan personally. Livermore then created WAL Development, LLC ("WAL"), which was formed exclusively to develop Leland Estates. Livermore was WAL's sole member, owner, registered agent, and manager. WAL's business address was Livermore's home address and it seems WAL is likely an acronym for William A. Livermore. Livermore transferred title to the property to WAL by quitclaim deed for no consideration. Livermore signed all documents in the name of WAL, but he personally guaranteed repayment. As parcels were sold, Livermore used some of the proceeds to pay his personal expenses. The foregoing is readily distinguishable and is not supported for the conclusion that the VSHPHH Trust was a nominee.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

DATED this 25th day of April, 2024.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED FEBRUARY 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1338

UNITED STATES OF AMERICA

v.

SHANT S. HOVNANIAN; PETER HOVNANIAN, in his capacity as trustee for the Pachava Asset Trust; NINA HOVNANIAN, both in her individual capacity and as trustee for the VSHPHH Trust; ADELPHIA WATER COMPANY INC; MTAG SERVICES LLC; ULYSSES ASSET SUB II LLC; TOWNSHIP OF HOWELL; VAPACHA LLC; PACHAVA ASSET TRUST; VSHPHH TRUST

Pachava Asset Trust and VSHPHH Trust,

Appellants.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3-18-cv-15099)
District Judge: Zahid N. Quraishi

Submitted Under Third Circuit L.A.R. 34.1(a)
on February 2, 2023

Before: KRAUSE, PORTER, and CHUNG,
Circuit Judges.

(Filed February 5, 2024)

Appendix A

OPINION[*]

KRAUSE, *Circuit Judge.*

VSHPHH Trust ("VSHPHH" or the "Trust") appeals the District Court's grant of partial summary judgment in the Government's favor and its Order of Sale of a VSHPHH-held property, the Village Mall, to satisfy co-defendant Shant Hovnanian's outstanding federal tax obligations. Specifically, the Trust argues that the District Court erred by treating VSHPHH as Hovnanian's third-party nominee because Hovnanian never held title to the Village Mall. Because the record establishes that Hovnanian exercised substantial control over the Village Mall after it was transferred to the Trust, we will affirm.

I. DISCUSSION[1]

To satisfy a delinquent taxpayer's outstanding liabilities, the Government may attach liens to property that is under the taxpayer's control or the control of a third party who is the taxpayer's nominee. *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 349-51, 97 S. Ct. 619, 50 L. Ed. 2d 530 (1977). State law determines whether a third party may be treated as the taxpayer's nominee.

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* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

1. The District Court had jurisdiction under 26 U.S.C. § 7402(a) as well as 28 U.S.C. §§ 1340 and 1345. We have jurisdiction under 28 U.S.C. § 1291. We review a grant of summary judgment de novo. *Am. Home Assurance Co. v. Superior Well Servs., Inc.*, 75 F.4th 184, 188 n.4 (3d Cir. 2023).

See Drye v. United States, 528 U.S. 49, 58, 120 S. Ct. 474, 145 L. Ed. 2d 466 (1999). Here, the Trust argues that the District Court erroneously determined that it was a third-party nominee under New Jersey law. Specifically, the Trust argues that it is not a third-party nominee under the six factors articulated in *United States v. Patras*, 544 F. App'x 137 (3d Cir. 2013). Those factors are:

> (1) whether the nominee paid adequate consideration for the property; (2) whether the property was placed in the nominee's name in anticipation of a suit or other liabilities while the taxpayer continued to control . . . the property; (3) the relationship between the taxpayer and the nominee; (4) the failure to record the conveyance; (5) whether the property remained in the taxpayer's possession; and (6) the taxpayer's continued enjoyment of the benefits of the property.

Id. at 141 (alteration in original) (quoting *United States v. Patras*, 909 F. Supp. 2d 400, 410 (D.N.J. 2012), *aff'd*, 544 F. App'x 137) (summarizing New Jersey case law). The Trust's contention is not persuasive.

The fourth of these factors weighs in Hovnanian's favor, as the transfer of title was recorded. But this factor is not dispositive and may be accorded relatively little weight if the other factors suggest that the Trust acted as Hovnanian's nominee. *See Patras*, 544 F. App'x at 142. That is the case here, where the remaining five factors weigh in favor of treating VSHPHH as a third-party nominee.

First, VSHPHH was paid only nominal consideration for the Village Mall, as the Trust purchased title to the property for a single dollar. Second, the timing of the transfer suggests that the Village Mall was placed in the Trust's possession in order to circumvent Hovnanian's tax liabilities and to assist Hovnanian financially, as Hovnanian's parents did not transfer title to VSHPHH until after the IRS filed several multimillion-dollar federal tax liens against Hovnanian and shortly before Hovnanian finalized his divorce. Third, Hovnanian's close relationship with VSHPHH—he was the co-trustee of VSHPHH with his sister, and his children were named beneficiaries of the Trust— counsels strongly in favor of treating the Trust as a third-party nominee.

The fifth and sixth factors also suggest that the Trust acted as a third-party nominee, as Hovnanian retained significant control over the Village Mall after the transfer and continued to enjoy the benefits of the property. Hovnanian was the co-trustee of VSHPHH when the Trust obtained title to the Village Mall in 2015, and he remained in that role until 2017. After the transfer, Village Mall tenants considered Hovnanian to be their landlord and viewed him as the person in charge of the property. Hovnanian made decisions about the property's expenses, often without meaningful input from his co-trustee, and he used his personal account to pay the property's expenses, even satisfying a lien on the property using money obtained from his divorce proceedings. He also comingled profits from the Village Mall with his personal assets and used them to pay for his personal expenses.

The Trust argues that none of the six *Patras* factors can be satisfied because Hovnanian himself never held title to the Village Mall. But we have never suggested that a delinquent taxpayer must have actually possessed title to a piece of property in order for a nominee lien to attach. On the contrary, a party acts as a third-party nominee when the property remains under the delinquent taxpayer's control despite the legal fiction that title to the property is technically in the name of the third party. *See, e.g.*, *Holman v. United States*, 505 F.3d 1060, 1065 (10th Cir. 2007) ("Although in many instances the delinquent taxpayer will have transferred legal title to a third party, an actual transfer of legal title is not essential to the imposition of a nominee lien."). The undisputed facts here confirm that Hovnanian exercised substantial control over the Village Mall after 2015, even if he never actually held title to the property, and that the Mall was transferred to the Trust so that the property would not be subject to Hovnanian's tax liabilities. Under these circumstances, we are satisfied that the District Court did not err by concluding that the Trust obtained title to the Village Mall as Hovnanian's third-party nominee.[2]

2. The Trust also argues that the District Court should have exercised its discretion to decline to order a sale of the Village Mall. But the Trust forfeited this argument by failing to raise it before the District Court. *See Del. Dep't of Nat. Res. & Env't Control v. U.S. Army Corps of Eng'rs*, 685 F.3d 259, 280 n.22 (3d Cir. 2012).

II. CONCLUSION

For the foregoing reasons, we will affirm the District Court's grant of partial summary judgment and its Order of Sale.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, FILED DECEMBER 27, 2022

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 18-15099 (ZNQ) (LHG)

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHANT S. HOVNANIAN, *et al.*,

Defendants.

OPINION

QURAISHI, District Judge

THIS MATTER comes before the Court upon several Motions for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Motions for Entry of Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The first Motion for Partial Summary Judgment was filed by Plaintiff the United States of America ("the Government") against Defendant Nina Hovnanian in her capacity as trustee for the Pachava Asset Trust ("MSJ against Pachava", ECF No. 122). The second Motion for Partial Summary Judgment and Motion for Entry of Judgment was filed by the Government against Defendant Nina Hovnanian in her capacity as trustee

for the VSHPHH Trust ("MSJ against VSHPHH", ECF No. 123). Defendants Pachava Asset Trust ("Pachava") and VSHPHH Trust ("VSHPHH") each separately filed Motions for Summary Judgment against the Government ("Pachava MSJ", ECF No. 124; "VSHPHH MSJ", ECF No. 125). The Court will also consider the Motion for Order of Sale of the 572 Wyckoff Mills Property ("Wyckoff Order of Sale", ECF No. 121) and the Motion for Order of Sale of the Village Mall Property ("Mall Order of Sale", ECF No. 123) filed by the Government.

The Government filed a Brief in Support of its Motion ("Gov. Moving Br. against Pachava", ECF No. 122-2) and a Statement of Undisputed Material Facts ("Gov. Pachava SUMF", ECF No. 122-1) with respect to its Motion against Pachava. Pachava filed a Brief in Opposition to the Government's Motion ("Pachava Opp'n to Gov. Motion", ECF No. 129) along with its Counter Statement of Undisputed Material Facts ("Pachava Counter SUMF", ECF No. 129-10). The Government filed a Reply in response to Pachava's Opposition ("Reply to Pachava", ECF No. 135).

The Government also filed a Brief in Support of its Motion ("Gov. Moving Br. against VSHPHH", ECF No. 123-2) and a Statement of Undisputed Material Facts ("Gov. VSHPHH SUMF", ECF No. 123-1) with respect to its Motion against VSHPHH. VSHPHH filed a Brief in Opposition to the Government's Motion ("VSHPHH Opp'n to Gov. Motion", ECF No. 128) along with its Counter Statement of Undisputed Material Facts ("VSHPHH Counter SUMF", ECF No. 128-8). The Government filed

a Reply to VSHPHH's Opposition ("Reply to VSHPHH", ECF No. 136).

Pachava filed a Brief in Support of its Motion ("Pachava Moving Br.", ECF No. 124-3) and a Statement of Undisputed Material Facts ("Pachava SUMF", ECF No. 124-6). The Government filed a Brief in Opposition to Pachava's Motion ("Gov. Opp'n to Pachava Motion", ECF No. 130), along with a Response to Pachava's Undisputed Material Facts ("Gov. Counter to Pachava SUMF", 130-1). Pachava filed a Reply to the Government's Opposition. ("Pachava Reply", ECF No. 137.)

VSHPHH filed a Brief in Support of its Motion ("VSHPHH Moving Br.", ECF No. 125-3) and a Statement of Undisputed Material Facts ("VSHPHH SUMF", ECF No. 125-4). The Government filed a Brief in Opposition to VSHPHH's Motion ("Gov. Opp'n to VSHPHH Motion", ECF No. 131) along with a Response to VSHPHH's Undisputed Material Facts ("Gov. Counter to VSHPHH SUMF", 131-1). VSHPHH filed a Reply to the Government's Opposition. ("VSHPHH Reply", ECF No. 138.)

The Court has carefully considered the parties' submissions and decides the Motions without oral argument pursuant to Federal Rule of Civil Procedure 78 and Local Civil Rule 78.1. For the reasons set forth below, the Court will GRANT the Government's Motion for Partial Summary Judgment against Pachava Asset Trust, GRANT the Government's Motion for Partial Summary Judgment against VSHPHH, GRANT the Government's Motion for Order of Sale of the 572 Wyckoff Mills Property,

DENY Pachava's Motion for Summary Judgment, DENY VSHPHH's Motion for Summary Judgment, and GRANT the Government's Rule 54(b) Motions.

I. BACKGROUND

A. The Parties

The Government alleges that Defendant Shant Hovnanian ("Shant") owes more that $16 million in federal tax liabilities that arose because he engaged in illegal tax shelters. At all times relevant to this case, Defendant Shant Hovnanian's primary residence is located at 520 Navesink River Road, Red Bank, New Jersey. At all times relevant to this case, Defendant Nina Hovnanian was the trustee of VSHPHH and is also currently the trustee of the Pachava Asset Trust. At all times relevant to this case, Pachava holds bare legal title to the property commonly known as 520 Navesink River Road, Red Bank, New Jersey. At all times relevant to this case, VSHPHH holds bare legal title to the Village Mall property, which is located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey.

B. Procedural History

The Government filed its Complaint on October 18, 2018. ("Compl.", ECF No. 1.) In its efforts to collect the alleged $16 million in owed federal taxes, the Government now seeks to attribute two pieces of real property to Shant: 520 Navesink River Road, Middletown Township, New Jersey (Block 1043, Lot 67.02) (the "Navesink

Property"); and 1 Dag Hammarskjold Boulevard, Freehold, New Jersey (Block 143, Lot 25.04) (the "Village Mall Property").[1] As a result, the Government also seeks to attach federal tax liens and foreclose on these pieces of real property in order to satisfy Shant's income tax liability. (*Id.* ¶¶ 18-35, 43-49.) On January 16, 2018, the Government filed a notice of federal tax lien in the Office of the County Clerk of Monmouth County against Shant for his unpaid federal income taxes. (*Id.* ¶¶ 47, 49, 50.) The Government listed both Pachava and VSHPHH as his nominees. (*Id.* ¶¶ 47, 49.) On October 18, 2018, the Government filed this action seeking an order that it has valid federal tax liens against the Navesink Property and the Village Mall Property, and that the liens may be foreclosed against such properties. (*Id.* at 11.) On February 12, 2019, Defendant Nina Hovnanian ("Nina"), in her capacity as trustee, filed the Motions to Dismiss seeking dismissal for both Pachava and VSHPHH, which the Court ultimately denied. ("Order", ECF No. 25.)

C. Undisputed Facts

The Court has found the following facts to be relevant and undisputed.

Nina is the daughter of Vahak and Paris Hovnanian, and the sister of Shant Hovanian. (Pachava SUMF, ¶ 1.) Nina is the current trustee for both Pachava and

1. The Government also alleges that Defendant Shant is the true and equitable owner of another piece of real property, 572 Wyckoff Mills Road, Howell Township, New Jersey (Block 143, Lot 26.01), through Defendant Adelphia Water Company, Inc. (Compl. ¶¶ 36-42).

VSHPHH. (*Id.*) Pachava owns the title to the family home—the home at issue in this litigation—which is the Navesink Property located at 520 Navesink River Road, Red Bank, New Jersey. (*Id.* ¶ 7; Gov. Pachava SUMF ¶ 6.) After the home was built in 2008, Shant, his wife, and his children moved onto the property. (Pachava Counter SUMF ¶ 10; Gov. Pachava SUMF ¶ 10.) Shant and his wife were responsible for paying the expenses of the property. (*Id.* ¶ 14; *Id.* ¶ 14.) Namely, several household expenses for the Navesink Property, like utility bills, were paid predominately from a Morgan Stanley bank account ending in 1955 that was in the name of Pachava. (*Id.* ¶ 29; *Id.* ¶ 29.)

On January 5, 2012, Shant's mother, Paris Hasmig Hovnanian, recorded a deed transferring the legal title of 520 Navesink to the Shant S. Hovnanian Asset Trust for $1. (*Id.* ¶ 20; *Id.* ¶ 20.) The Shant S. Hovnanian Asset Trust was created by Shant for the benefit of his children. (*Id.* ¶ 20; *Id.* ¶ 20.) His wife, Hilde Jenssen ("Hilde") was named as trustee. (*Id.*; *Id.*) Also on January 5, 2012, the Shant S. Hovnanian Asset Trust filed a corrective deed to reflect legal title to the 520 Navesink property was transferred to the Pachava, not the Shant S. Hovnanian Asset Trust. (*Id.* ¶ 22; *Id.* ¶ 22.) In a document dated October 11, 2011, the Shant S. Hovnanian Asset Trust changed its name to the Pachava Asset Trust. (*Id.* ¶ 23; *Id.* ¶ 23.) Following their divorce in 2015, Shant and Hilde agreed Peter Hovnanian, Shant's cousin, should be the replacement trustee. (*Id.* ¶ 39; *Id.* ¶ 39.) On December 20, 2017, Shant's sister, Nina, was named as trustee for the trust up to and including the time the instant action

was filed. (*Id.* ¶ 58; *Id.* ¶ 58.) Shant never paid any rent while living at the 520 Navesink Property. (Gov. Pachava SUMF ¶ 13.)

VSHPHH is a named defendant with respect to the Village Mall property. (Gov. VSHPHH SUMF ¶ 9.) The Village Mall is a two-floor office complex located at 1 Dag Hammarskjold Boulevard, Freehold, New Jersey. (*Id.* ¶ 8; VSHPHH Counter SUMF ¶ 8.) Shant's parents formed VSHPHH on December 28, 2012. (*Id.* ¶ 55; *Id.* ¶ 55.) Shant and Nina were named as co-trustees of VSHPHH. (*Id.* ¶ 57; *Id.* ¶ 57.) On January 1, 2015, Shant's parents transferred the Village Mall to VSHPHH for $1.00. (*Id.* ¶ 9; *Id.* ¶ 9.) Shant resigned as trustee of VSHPHH in 2017, leaving Nina as the sole trustee. (*Id.* ¶ 62; *Id.* ¶ 62.) VSHPHH never filed income tax returns (Form 1041) with the IRS. (*Id.* ¶ 65; *Id.* ¶ 65.) The first floor of the Village Mall contained tenants that paid rent. (*Id.* ¶ 13; *Id.* ¶ 13.) Shant, on the other hand, did not pay rent for any usage of space at the Village Mall. (*Id.* ¶ 20; *Id.* ¶ 20.)

After several years of audits, the partnership Shant Hovnanian used in his tax shelter was tried before the U.S. Tax Court in December of 2010. (Pachava Counter SUMF ¶ 17; Gov. Pachava SUMF ¶ 17.) The Tax Court issued its decision on September 20, 2011, ruling against Shant's partnership, and requested further information to compute the exact amounts due. (*Id.* ¶ 18; *Id.* ¶ 18.) The Tax Court entered its final decision on December 21, 2011. (*Id.* ¶ 19; *Id.* ¶ 19.) The Tax Court upheld the Service's determination and the Second and Third Circuits affirmed the Tax Court's decisions. (*Id.* ¶ 1; *Id.* ¶ 1.) A delegate of

the Secretary of the Treasury made the following federal income tax (Form 1040) assessments against Shant for the tax periods identified below:

Tax Period	Date of Assessment	Amount of Tax Assessment	Balance as of September 30, 2018
2002	10/22/2008 2/13/2013	$3,914,430 $241,764	$12,274,759
2003	10/22/2008 2/13/2013	$7,964 $309,108	$840,528
2004	2/13/2013	$983,773	$3,074,834
2007	3/29/2010	$11,223	$19,268
			Total $16,209,389

(*Id.* ¶ 2; *Id.* ¶ 2.) The Court entered default judgment as to the amount owed by Shant for these taxes. (*Id.* ¶ 3; *Id.* ¶ 3.)

D. Jurisdiction

The Court has subject matter jurisdiction over the Government's claims under 28 U.S.C. § 1331.

II. LEGAL STANDARD

A moving party is entitled to summary judgment where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to

judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact in dispute is material when it "might affect the outcome of the suit under the governing law" and is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Disputes over irrelevant or unnecessary facts will not preclude granting a motion for summary judgment. *Id.* "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the nonmoving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004) (quoting *Anderson*, 477 U.S. at 255). A court's role in deciding a motion for summary judgment is not to evaluate the evidence and decide the truth of the matter but rather "to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

A party moving for summary judgment has the initial burden of showing the basis for its motion and must demonstrate that there is an absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). After the moving party adequately supports its motion, the burden shifts to the nonmoving party to "go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (internal quotation marks omitted). To withstand a properly supported motion for summary judgment,

the nonmoving party must identify specific facts and affirmative evidence that contradict the moving party. *Anderson*, 477 U.S. at 250. A court should grant summary judgment where the non-movant's evidence is merely colorable or not significantly probative, because "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial,'" *Coit v. Garman*, 812 F. App'x 83, 85-86 (3d Cir. 2022) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)) (citation omitted).

There is also "no genuine issue as to any material fact" if a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex*, 477 U.S. at 322. However, summary judgment is not appropriate "if reasonable minds could differ as to the import of the evidence." *See Anderson*, 477 U.S. at 250-51.

III. DISCUSSION

A. Pachava Trust Motions

In its Motion for Partial Summary Judgment against Pachava, the Government argues that, given the facts of this case, it is seeking a determination that Pachava is Shant's nominee and that the tax liens assessed against him consequently attach to the Navesink Property. (Gov. Moving Br. against Pachava at 4.) To that extent, the Government argues that Pachava simply held title of the Navesink Property and Shant actually had control over the property, as evidenced by him paying the property's

bills, living on the property, and being the decisionmaker for anything that had to do with the property. (*Id.* at 2.)

"When there is a tax lien on a taxpayer's property, the Government may seek to satisfy it by levying upon property the taxpayer controls." *United States v. Patras*, 544 F. App'x 137, 140 (3d Cir. 2013). When the "Government seeks to reach" real property, the Court must determine what rights the taxpayer has in such property to determine if it is subject to the lien. *Drye v. United States*, 528 U.S. 49, 58, 120 S. Ct. 474, 145 L. Ed. 2d 466 (1999). If the property is under the control of a third party found to be the delinquent taxpayer's nominee or alter ego, it can be subject to a tax lien. *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 350-51, 97 S. Ct. 619, 50 L. Ed. 2d 530 (1977). A third party is a taxpayer's nominee where "the taxpayer has engaged in a legal fiction by placing legal title to property in the hands of [that] third party while actually retaining some or all of the benefits of true ownership." *Patras*, 544 F. App'x at 141 (citing *Holman v. United States*, 505 F.3d 1060, 1065 (10th Cir. 2007)); *see also Fourth Inv. LP v. United States*, 720 F.3d 1058, 1066 & n.3 (9th Cir. 2013).

As laid out in *Patras*, the test for a nominee relationship under both federal and New Jersey law is generally set out with six factors:

1. Whether the nominee paid adequate consideration for the property;

2. Whether the property was placed in the nominee's name in anticipation of a suit or

> other liabilities while the taxpayer continued to control . . . the property;
>
> 3. The relationship between the taxpayer and the nominee;
>
> 4. The failure to record the conveyance;
>
> 5. Whether the property remained in the taxpayer's possession; and
>
> 6. The taxpayer's continued enjoyment of the benefits of the property.

Hovnanian, 2019 U.S. Dist. LEXIS 43267, 2019 WL 1233082, at *7-8 (quoting *Patras*, 544 F. App'x at 141-42). These factors should not be applied rigidly or mechanically. *In re Richards*, 231 B.R. 571, 579 (E.D. Pa. 1999). The overarching key to the nominee test is determining if a party exercises "active" or "substantial" control over the property. *In re Richards*, 231 B.R. at 579. If a taxpayer is the true owner of the property, that property is subject to the tax lien.

At this juncture, it is worth noting that Pachava's Opposition brief is identical to the one that it filed for its Motion for Summary Judgment against the Government. For this reason, the Court will address both Pachava's Opposition and its Motion for Summary Judgment together. Defendant Pachava first argues that "the IRS's theory of the case is that the real property transactions wherein the Properties were transferred to the Pachava

Asset Trusts were the result of fraudulent conveyances." (Pachava Opp'n to Gov. Motion at 18; Pachava MSJ at 16.) Pachava goes on to argue that the Government's claims fall under the New Jersey's Fraudulent Transfer Act ("FTA"), which has a four-year statute of limitations and the Government has waited beyond those four years to file its claim, thus precluding them from pursuing the nominee lien. (*Id.* at 19-20; *Id.* at 16-17.) Although the Government never asserts any alter ego liability in its Motion for Partial Summary Judgment, Pachava argues that the Government's alter ego claim fails. Defendant next argues that the nominee claim fails because "Shant was never in title to the Properties, and a 'federal tax lien does not arise or attach to property in which a person has no interest under state law.'" (*Id.* at 22-23; *Id.* at 19-20.)

Pachava also adopts faulty arguments that Shant does not satisfy the *Patras* factors. (*Id.* at 32; *Id.* at 29.) It claims the first factor is not satisfied because "the property never belonged to the taxpayer." (*Id.*; *Id.*) The second factor is not met because the second factor relates to the transfer of property by the transferor, not the transferee, such that the analysis would be that Shant's parents were the persons seeking to avoid a claim. (*Id.* at 33; *Id.* at 30.) According to Pachava, the third factor is not met because the analysis looks at the relationship between the nominee and the transferor and there is no relationship between Shant's mother and the Pachava Trust. (*Id.*;*Id.*) Lastly, factor four is not satisfied because the conveyance was recorded and factors five and six are not met because there is no showing that Shant lived at the Navesink Property. (*Id.*; *Id.*) Based on these arguments, Pachava argues that

the Government's Motion for Partial Summary Judgment against Pachava should be denied, and instead Pachava's Motion for Summary Judgment should be granted.

Pachava's arguments are largely mistaken. "While related, the concepts of 'nominee[,'] 'transferee[,'] and 'alter ego' are independent bases for attaching the property of a third party in satisfaction of a delinquent taxpayer's liability." *E.g., Oxford Cap. Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000). Although a nominee has "true beneficial ownership of property," a fraudulent transfer seeks to avoid a transfer made to generally hinder, delay, or defraud creditors. *Id.* The Government can enforce its liens against the taxpayer's property, including property held by a nominee or alter ego. *Hovnanian*, 2022 U.S. Dist. LEXIS 56558, 2022 WL 909868, *3 ("the right to foreclose on these liens extends to property held by third parties who are 'acting as a nominee or alter ego . . . .'") (quoting *United States v. Wunder*, Civ. No. 16-9452, 2019 U.S. Dist. LEXIS 112230, 2019 WL 2928842, *4 (D.N.J. July 8, 2019), *aff'd*, 829 F. App'x 589 (3d Cir. 2020)). That said, the Government did not need to—nor did it—bring any claims under alter ego liability or the FTA. Thus, the statute of limitations with respect to the FTA and the arguments against alter ego liability are misplaced.

Pachava's arguments that the nominee claims are insufficient are also mistaken. Pachava seems to conflate the plain language of the rule set forth in *Patras*. For example, factor one asks whether the *nominee*—in this case, Pachava—paid adequate consideration, not the taxpayer as Pachava asserts. *Patras*, 544 F. App'x at

142. As for the second factor, courts are clear that the proper analysis is whether the *nominee* purchased the property in anticipation of a suit or other liabilities and nothing to do with the transferor, as Pachava claims. *Id.* Pachava also misapplies the third *Patras* factor because the rule clearly states that the Court needs to consider "the relationship between the *taxpayer* and the *nominee*", not the taxpayer and the transferor as argued by Pachava. *Id.* at 141 (emphasis added). Accordingly, the Court rejects Pachava's arguments.

Turning to the *Patras* factors themselves, the first, second, and fourth factors focus on the mechanics of the transfer and, for the reasons set forth below, they favor a conclusion that Pachava was just Shant's nominee. The first factor is satisfied because it is undisputed that the transfer from Shant's mother to Pachava was only for one dollar (Gov. Pachava SUMF ¶ 20;)—clearly, a nominal amount. (Ex. 101, Deed, at 1.) *See Coles v. Osback*, 22 N.J. Super. 358, 92 A.2d 35, 36 (N.J. Super. Ct. App. Div. 1952) (holding that the first factor was satisfied because the sale price of the property was below market value). Moreover, the second factor is satisfied because it is likewise undisputed that the Hovnanians recorded the transfer of the Navesink Property after Shant lost a case before the United States Tax Court with regard to his tax liabilities (Ex. 101, Deed, at 1; Gov. Pachava SUMF ¶ 17). *See id.* (holding that the second factor was satisfied after the debtor placed the property in his son's name after suit was filed against him). As for the fourth factor, the conveyance was recorded, which does militate against finding Pachava is a nominee, but this factor alone

is not dispositive. *Patras*, 544 F. App'x at 142. *See also Gilchinsky v. National Westminster Bank N.J.*, 159 N.J. 463, 732 A.2d 482, 491 (N.J. 1999) (lack of concealment was "only marginally relevant" in NJFTA case); *In re Richards*, 231 B.R. 571, 579 (E.D. Pa. 1999) (according the fact that the transfer was recorded "relatively little weight"). On balance, factors one, two, and four (and the relevant undisputed evidence before the Court) therefore favor a conclusion that Pachava is a mere nominee.

Patras factors three, five and six examine the relationship between the nominee and taxpayer, as well as whether the taxpayer retained possession and enjoyed the benefits and bore the burdens of owning the property. *Patras*, 544 F. App'x at 141. Factor three looks at the relationship between the taxpayer and the nominee. Here, factor three is satisfied because Shant is so closely intertwined with everyone involved in Pachava. Namely, Shant "was the one who settled the Pachava Trust," "his mother contributed the property," his wife at the time served as the original trustee, his cousin followed his wife as trustee following the divorce, "his sister [currently] serves as trustee, and his children are the sole beneficiaries." (Pachava Dep. at 27:21-25.) *Hovnanian*, 2019 U.S. Dist. LEXIS 43267, 2019 WL 1233082, at *6. Factors five and six look at whether the property remained in the taxpayer's possession, and whether the taxpayer's continued to enjoy the benefits of the property. As proof of factors five and six, the Government's evidence includes unrebutted deposition testimony it elicited from Shant's wife at the time, Hilde Jenssen ("Hilde Dep.", ECF No. 122-9), and corroborated by deposition testimony from,

Jennifer Generoso, a corporate designee-witness for Morgan Stanley, the firm that managed Pachava's financial account ("Generoso Dep.", ECF No. 122-5). Specifically, Hilde's testimony was that the Navesink Property was Shant's primary residence starting in 2008 where he, she, and their children all resided[2] (Hilde Dep. 19:5-17; "Generoso Dep.", ECF No. 122-5, at 10:4-25), Shant did not pay rent while residing there (*id.* at 20:9-11), and he paid for all of the property's expenses (*id.* at 19:18-21:13; "Gandolfo Dep.", ECF no. 122-7, at 53-5-54:9). *See Patras*, 511 F. App'x at 142 (fifth factor satisfied because it was established that the defendant resided in the property uninterrupted and without a lease to support his assertion that payments he was making constituted rent).

In summation, the undisputed record indicates that: the transfer was made for minimal consideration (factor one), the transfer happened after Shant lost a case before the United States Tax Court (factor two), Shant had a close relationship via familial relations with each of the trustees (factor three), and the property remained in Shant's possession as it was his primary residence for the time in question (factors five and six). This is consistent with the Government's position that Pachava is a mere nominee. *See Jugan v. Friedman*, 275 N.J. Super. 556, 646 A.2d 1112, 1119 (N.J. Super. Ct. App. Div. 1994) (a debtor's

2. Shant initially claimed to have resided at Village Mall ("MacGillivray Dep.", ECF No. 123-6, 87:16-88:8) but this claim contradicts the Government's evidence that he was living at the Navesink Property. Shant's initial claim that he was living at Village Mall was promptly abandoned following the Government's Motion for Partial Summary Judgment. (VSHPHH Opp'n to Gov. Motion at 28.)

wife was a nominee because the debtor had transferred the property at issue to his wife (factor 3) without receiving any consideration (factor 1) for the purpose of evading his creditors (factor 2) while continuing to control and enjoy the benefits of the property (factors 5 and 6)); *Coles*, 92 A.2d at 38-40 (a son was the nominee owner of property for the benefit of his parents (factor 3), who lived there (factors 5 and 6); that the sale price of the property was below market value (factor 1); and that the debtor placed the property in his son's name after suit was filed against him (factor 2)); *Sweney v. Carroll*, 118 N.J. Eq. 208, 178 A. 539, 542-44 (N.J. Ch. 1935) (considering similar factors); *cf. Holman*, 505 F.3d at 1065 (a third party is a nominee where the taxpayer retains the benefit of ownership); *Shades Ridge Holding Co. v. United States*, 888 F.2d 725, 728-29 (11th Cir. 1989) (weighing similar factors to determine "who has 'active' or 'substantial' control" (citation omitted).

For these reasons, the Court concludes that there is no genuine dispute that the Pachava Trust is Shant's nominee and Shant is the beneficial owner of the Navesink Property—effectively subjecting the Navesink Property to the tax lien. Accordingly, the Court will grant the Government's Motion for Partial Summary Judgment against the Pachava Asset Trust and deny Defendant Pachava's Motion for Summary Judgment.

Appendix B

B. VSHPHH Trust Motions

1. Motion for Summary Judgment

In its Motion for Partial Summary Judgment against VSHPHH, the Government is seeking a determination that VSHPHH is also Shant's nominee and that the tax liens assessed against him consequently attach to the Village Mall property as well. (Gov. Moving Br. against VSHPHH at 1.) To that extent, the Government argues that VSHPHH simply held title of the Village Mall property and Shant actually had control over the property, as evidenced by him paying the property's bills from his personal account, collecting the property's rents into his business' account, using the property rent-free, and not filing any income tax returns for the Trust because rent received for the property was not considered income for the Trust. (*Id.* at 2-3.)

Similar to Pachava, VSHPHH submitted the same arguments for both its Opposition and its Motion for Summary Judgment. The Court will once again address both at the same time. VSHPHH argues essentially the same points as Pachava; that the "the IRS's theory of the case is that the real property transactions wherein the Office Complex was transferred to VSHPHH was the result of fraudulent conveyances." (VSHPHH Opp'n to Gov. Motion at 18; VSHPHH MSJ at 15.) VSHPHH also argues that the nominee claim fails because "Shant was never in title to the Properties, and a 'federal tax lien does not arise or attach to property in which a person has no interest under state law.'" (*Id.* at 21; *Id.* at 17.) To support

its position, VSHPHH argues that the facts do not satisfy the *Patras* factors. The first factor fails because Shant's parents transferred the property, not Shant himself. (*Id.* at 31; *Id.* at 27.) The second factor fails because it relates to the transfer of property by the transferor, not the transferee, such that the analysis would be that Shant's parents were the persons seeking to avoid a claim. (*Id.*; *Id.*) The third factor is not met because the analysis looks at the relationship between the nominee and the transferor and there is no relationship between Shant's parents and VSHPHH. (*Id.*;*Id.*) Lastly, VSHPHH argues that factor four is not met because the conveyance was recorded, and factors five and six are not met because there is no showing that Shant remained on the property and continued to enjoy the benefits of the property. (*Id.* at 32; *Id.* at 28.) In fact, as noted above, Shant initially represented that he resided at the Village Mall (MacGillivray Dep., 87:16-88:8), but this position was promptly abandoned in VSHPHH's Opposition, which noted that "the assertion that Mr. Shant Hovnanian resided at the Office Complex is absurd." (*Id.* at 28.) Based on these arguments, VSHPHH contends that the Government's Motion for Partial Summary Judgment should be denied, and instead their Motion for Summary Judgment should be granted.

Using the same standard and *Patras* factors noted in section III.A *supra*, the Court determines that the *Patras* factors are satisfied with respect to VSHPHH. VSHPHH makes similar faulty arguments as those made by Pachava, which evidence a misunderstanding of the *Patras* factors. Factor one is again satisfied because Shant's parents transferred the Village Mall to VSHPHH for only

$1.00 in 2015. (Gov. VSHPHH SUMF ¶ 9.) Factor two is satisfied because the transfer to VSHPHH occurred after Shant lost his case with regard to his tax liabilities (Gov. VSHPHH SUMF ¶ 4). Factor three is satisfied because the taxpayer (Shant), and the nominee (VSHPHH) are closely related in that, at the time of the transfer, Shant and his sister were co-trustees of the Trust, and their children were the sole beneficiaries. Shortly after the transfer of the Village Mall Property and after Shant lost his case in Tax Court, he resigned as trustee of VSHPHH, leaving his sister as sole trustee. Although factor four weighs in favor of VSHPHH because the transfer was recorded, as noted above, this factor alone is not dispositive. The fifth and sixth factors are satisfied because the Village Mall remained in Shant's possession, and Shant continued to enjoy the benefits of the Village Mall, which were especially made evident by VSHPHH's deposition, as set forth below. ("VSHPHH Dep.", ECF No. 123-4, 27:6-9, 37:16-18, 54:14-20.)

Nina, testifying as a Rule 30(b)(6) witness on behalf of VSHPHH, testified that after the Village Mall was transferred to VSHPHH, Shant continued to exercise substantial control until he resigned as trustee in 2017. (*Id.* 27:6-9, 37:16-18, 54:14-20.) When VSHPHH took legal title to the Village Mall, rent checks from the first-floor tenants continued to be paid to a bank account held in the name of Shant's father, which was authorized by Shant. (*Id.* 67:7-25.) The rent that was collected was not used for paying expenses of the Village Mall. (Ex. 104, Hollobaugh Exp. Report, at 37.) Instead, rent was deposited from the father's account into Shant's account in the name of one

of Shant's businesses—HovSat, Inc. *Id.* In early 2017, Shant instructed the tenants to pay rental income directly to HovSat, rather than to his father's account or into a VSHPHH account. (VSHPHH Dep., 67:9-15, 104:12-20); *see, e.g., Berkshire Bank v. Town of Ludlow, Mass.*, 708 F.3d 249, 253 (1st Cir. 2013) (finding an LLC was a nominee in part where a taxpayer admitted to taking 10-15% of the revenue to pay personal expenses). Nina never had authority over the HovSat account and could not access it. (VSHPHH Dep., 68:2-5.) Moreover, not only did Shant not pay rent for any of the space he used in the Village Mall, but he used the rental income from the Village Mall for his personal expenses (Ex. 105, Paulikens Exp. Report, at 8) and none of the funds from the Village Mall were ever distributed to the VSHPHH beneficiaries. (Ex. 104, Hollobaugh Exp. Report, Ex. K.) Shant was also paying for the Village Mall's real estate taxes from his personal business account. (*Id.*; Ex. 105, Paulikens Exp. Report, at 21-22.) Other Village Mall expenses, like utilities and real estate taxes, were also paid from Shant's personal business account. (Ex. 104, Hollobaugh Exp. Report, Ex. K.)

Unsurprisingly, VSHPHH argues that it was not Shant's nominee and therefore the tax liens cannot be placed on the Village Mall. (*See generally*, VSHPHH Opp'n to Gov. Motion.) Although VSHPHH insists that it does not satisfy the six *Patras* factors, it fails to cite meaningful evidence in response to the Government's showing. The sole evidence VSHPHH refers to is with respect to the fifth factor—whether the property remained in Shant's possession (Ex. A, 128-1). *Patras*, 544 F. App'x at 141. To

that effect, VSHPHH provides the deed of the Village Mall which illustrates that the transfer of the Village Mall was between Shant's parents and VSHPHH. (Ex. A at 1.) The deed is of no moment because the Government's position is not that Shant had actual possession of the Village Mall. Rather, the Government's arguments and evidence assert that Shant retained possession of the Village Mall *via its nominee*, VSHPHH. Thus, VSHPHH's reference to the deed does not raise a genuine issue of material fact with respect to factor five.

Based on the Government's showing as to five of the six *Patras* factors, the Court finds that there is no genuine dispute that VSHPHH is Shant's nominee. Accordingly, the Court will grant the Government's Motion for Partial Summary Judgment.

2. Motion for Order of Foreclosure and Sale of the Village Mall Property

As part of its Motion for Partial Summary Judgment as to VSHPHH, the Government requests that the Court authorize the foreclosure and sale of the property. (Gov. Moving Br. against VSHPHH at 14.) This section of the Government's Motion for Partial Summary Judgment is unopposed.

In light of the Court's judgment, the Court may order a forced sale of the Village Mall. 26 U.S.C. § 7403; *United States v. Bogart*, 715 F. App'x 161, 169 (3d Cir. 2017); *see also United States v. Rodgers*, 461 U.S. 677, 693-94, 103 S. Ct. 2132, 76 L. Ed. 2d 236 (1983) ("[W]e must read

the statute [§ 7403] to contemplate, not merely the sale of the delinquent taxpayer's own interest, but the sale of the entire property (as long as the United States has any claim or interest in it")). The decision to force a property sale is in the Court's discretion, however, the discretion not to sell is limited and "should be exercised rigorously and sparingly, keeping in mind the Government's paramount interest in prompt and certain collection of delinquent taxes." *Id.* at 711.

Courts must consider several factors where a § 7403 sale would cause undue hardship to an innocent third party:

> (1) the extent to which the Government's financial interests would be prejudiced if it were relegated to a forced sale of the partial interest actually liable for the delinquent taxes; (2) whether the third party with a non-liable separate interest in the property would, in the normal course of events (leaving aside § 7403 and eminent domain proceedings, of course), have a legally recognized expectation that separate property would not be subject to forced sale by the delinquent taxpayer or his or her creditors; (3) the likely prejudice to the third party, both in personal dislocation costs and in . . . practical undercompensation; and (4) the relative character and value of the non-liable and liable interests held in the property.

Id. at 710-11.

To the extent that the Court has already determined that VSHPHH is Shant's nominee *supra* implies that it was not an "innocent" third party, and the exercise of equitable discretion may not even be warranted. *Bogart*, 715 F. App'x at 169. Nonetheless, the application of the *Rodgers* factors yields the same result. First, there is no evidence that Shant has any assets other than the properties enumerated herein that the Government could attach to satisfy the tax debt; the Government, therefore, has a strong interest in a forced sale of the property. *Id.* (citing *United States v. Winsper*, 680 F.3d 482, 489-90 (6th Cir. 2012)). Although the second factor would weigh against foreclosure "under normal circumstances," it is neutralized by the Court's finding that Shant participated in the transfer of the property in an attempt to frustrate the Government's efforts to collect his taxes. *Id.* (citing *United States v. Barr*, 617 F.3d 370, 376 (6th Cir. 2010); *accord United States v. Bierbrauer*, 936 F.2d 373, 376 (8th Cir. 1991)). The third factor appears to be neutral insofar as there has been no showing with respect to prejudice or under-compensation to third parties, *e.g.*, the tenants of the Village Mall Property (indeed it is entirely possible a new owner may prefer that they remain). Finally, no other interest in the property is greater than Shant's. *Id.* at 170. On balance, therefore, the factors do not warrant the exercise of the Court's equitable discretion to decline to decree the sale. *Id.* (affirming the district court's decision to enter the order of sale). Accordingly, the proposed Order of Sale submitted with the Government's Motion will be issued.

3. Motion for Entry of Final Judgment Regarding Village Mall Property

As part of its Motion for Partial Summary Judgment, the Government also requests that the Court's resolution of the Village Mall Motion, including any order of sale, as well as the default judgment previously entered against Shant as to the amount of his liability ("Clerk's Judgment", ECF No. 35), be entered as a final judgment under Fed. R. Civ. P. 54(b). The Government says it will not move to enforce its lien through sale of the Village Mall property without the Rule 54(b) certification because it anticipates prospective buyers being hesitant to purchase the property without a final order. (Gov. Moving Br. against VSHPHH at 20.) VSHPHH is silent on the Government's Motion for Entry of Judgment.

Federal Rule of Civil Procedure 54(b) provides a mechanism for a district court to render "final" its judgment as to fewer than all claims in a given matter. It is understood that certification of a judgment as final under the Rule is the exception rather than the usual course before a district court. *See Elliott v. Archdiocese of New York*, 682 F.3d 213, 220 (3d Cir. 2012). The Rule provides, in pertinent part:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties

> only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Fed. R. Civ. P. 54(b).

A decision to certify a final decision involves two separate findings: (1) there has been a final judgment on the merits, *i.e.*, an ultimate disposition on a cognizable claim for relief; and (2) there is "no just reason for delay." *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7, 100 S. Ct. 1460, 64 L. Ed. 2d 1 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436, 76 S. Ct. 895, 100 L. Ed. 1297 (1956)). If this initial hurdle is cleared, the court must then determine that the matter is "ready for appeal . . . taking into account judicial administrative interests as well as the equities involved." *Id.* at 8. In making this latter determination, the district court is obligated to explain the exercise of its discretion. *See Cemar, Inc. v. Nissan Motor Corp.*, 897 F.2d 120 (3d Cir. 1990) (dismissing appeal, vacating order, and remanding when the district court failed to explain its reason for Rule 54(b) certification).

On July 25, 2019, the Court entered default judgment against Shant for the federal income tax liabilities for the years 2002, 2003, 2004, and 2007 in the amount of $16,209,389 as of September 30, 2018, "with interest accruing after that date according to law until paid." (Clerk's Judgment, ECF No. 35.) The default judgment is a final judgment on the merits for the purposes of Rule 54(b) because it is an ultimate disposition of the Government's

claims against Shant. *See Dawidoicz v. Rutgers Univ.*, Civ. No. 18-3285, 2021 U.S. Dist. LEXIS 82842, 2021 WL 1720782, at *5 (D.N.J. April 29, 2021). Likewise, the Court's decision, *supra*, to enter summary judgment on behalf of the Government with respect to VSHPHH also constitutes a final judgment because it ultimately disposes of the Government's claims against VSHPHH.

Here, there is also no "just reason for delay" in entering the partial judgment the Government seeks. "Where the adjudicated and unadjudicated claims share significant similarities, such as involving the same parties, the same legal issues, or the same evidence, Rule 54(b) certification is disfavored." *Indivior Inc. v. Dr. Reddy's Labs. S.A.*, Civ No. 17-7111, 2020 U.S. Dist. LEXIS 153297, 2020 WL 4932547, at *12 (D.N.J. Aug. 24, 2020). While the Court understands the Third Circuit Court of Appeal's aversion to piecemeal appeals, it does not believe that delaying the instant matter any further would promote justice. *Sussex Drug Products v. Kanasco, Ltd.*, 920 F.2d 1150, 1153 (3d Cir. 1990) ("[d]isfavoring piecemeal appeals is a long-standing policy of the federal courts"). At issue in this case are at least three properties: 572 Wyckoff Mills, 520 Navesink, and Village Mall. (*See generally*, Gov. Moving Br. against VSHPHH, Gov. Moving Br. against Pachava.) These three properties are all separable. They are distinct properties, whose title are held by three separate titleholders, that require separate evidence to prove ownership and tax lien attachment, that are the subject of three separate motions, that can all be sold separately. They all also follow Shant's twenty-year evasion of taxes that have totaled over $16 million, which

as the Government points out, is continuing to accrue interest. The Government also correctly notes that the economics of this matter warrant the entry of an order of sale that is final because buyers will be more hesitant to purchase without a final order. (*Id.*) For these reasons, the Court will enter final judgment with respect to the foreclosure and order of sale of the Village Mall.

C. Wyckoff Mills Property: Motion for Order of Sale and Final Judgment

The Government moves for similar entry of an Order of Sale for the property commonly known as 572 Wyckoff Mills, Howell Township, New Jersey ("572 Wyckoff Mills"). ("Motion for Order of Wyckoff Sale", ECF No. 121.) The Government also argues that the Default Judgments against Shant and Adelphia Water should be marked as final judgments because there is no just reason for delay. (*Id.* at 1.) This Motion is also unopposed.

The Government argues that under 26 U.S.C. § 7403, the United States may "direct a civil action to be filed in a district court . . . to enforce the lien" regarding federal taxes where there has been a refusal or neglect to pay them against property where the taxpayer holds "right, title, or interest." In its Complaint, the Government alleges that Shant owned 572 Wyckoff Mills through Defendant Adelphia Water Company, Inc. (Compl. ¶ 50.) It also asserted that Defendants Ulysses Asset Sub II, LLC ("Ulysses") and the Township of Howell may claim interests in the Property. (*Id.* ¶¶ 51-52.)

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As noted above, the Court entered default judgment against Shant for $16,209,389 in unpaid federal tax liabilities for the years 2002, 2003, 2004, and 2007. (Clerk's Judgment.) The Court also determined that Adelphia Water is Shant's nominee. (ECF Nos. 112, 113.) Thus, the Government's federal tax liens for Shant's liabilities encumber 572 Wyckoff Mills, and the Court can order the sale of the Property under 26 U.S.C. § 7403.

Further, the remaining claims as to the property have been resolved. Former Defendant Township of Howell has been voluntarily dismissed from this matter. ("Order of Dismissal", ECF No. 99.) The Government and Ulysses, which are the only remaining parties that may claim an interest in 572 Wyckoff Mills, have agreed to the terms of the sale and distribution of the proceeds. ("Stipulation", ECF No. 120.)

Using the same *Rodgers* analysis the Court used in III.B.2 *supra*, the Court will grant the Government's request for an order of sale and entry of final judgment. To the extent that the Court has already determined that Adelphia Water is Shant's nominee implies that it was not an "innocent" third party, and the exercise of equitable discretion may not even be warranted. *Bogart*, 715 F. App'x at 169. Nonetheless, the application of the *Rodgers* factors once again yields the same result. First, there is no evidence that Shant had any assets other than the properties enumerated herein that the Government could attach to satisfy the tax debt; the Government, therefore, had a strong interest in a forced sale of the property. *Id.* (citing *United States v. Winsper*, 680 F.3d 482, 489-90

(6th Cir. 2012)). Although the second factor would weigh against foreclosure "under normal circumstances," it is neutralized by the Court's finding that Shant participated in the transfer of the property in an attempt to frustrate the Government's efforts to collect his taxes. *Id.* (citing *United States v. Barr*, 617 F.3d 370, 376 (6th Cir. 2010); *accord United States v. Bierbrauer*, 936 F.2d 373, 376 (8th Cir. 1991)). Although the third factor may have originally weighed against foreclosure, the parties' stipulation to the Order of Sale neutralizes this factor as well. *Id.* at 169-70. Finally, no other interest in the property is greater than Shant's interest. *Id.* at 170. On balance, therefore, the factors do not warrant the exercise of the Court's equitable discretion to decline to decree the sale. *Id.* (confirming the District Court's decision to enter the order of sale). The proposed Order of Sale submitted with the Government's Motion will therefore be entered.

The Court will also grant the Government's request for entry of final judgment pursuant to Rule 54(b) as to 572 Wyckoff Mills for the same reasons articulated for the Village Mall property.

IV. CONCLUSION

For the reasons stated above, the Court will GRANT the Government's Motion for Partial Summary Judgment against Pachava Asset Trust, GRANT the Government's Motion for Partial Summary Judgment against VSHPHH Trust, GRANT the Government's Motion for Order of Sale of the Village Mall Property, GRANT the Government's Motion for Order of Sale of the 572 Wyckoff Mills Property,

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DENY Pachava's Motion for Summary Judgment, DENY VSHPHH's Motion for Summary Judgment, and GRANT the Government's Rule 54(b) Motions. An appropriate Order will follow.

Date: **December 27, 2022**

/s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE