

**Minor v Combo Stores Co.**

2012 NY Slip Op 31667(U)

June 13, 2012

Supreme Court, Nassau County

Docket Number: 016437/09

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

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LISA MINOR and LISA MINOR AS THE TRUSTEE OF THE TRUST UWO SHIRLEY COOPERMAN, DECEASED, FBO ELLEN ABRAMS,

Plaintiffs,

-against-

COMBO STORES COMPANY, P & S REALTY COMPANY, SONS REALTY COMPANY, INITIAL REALTY COMPANY, FLATLANDS MANAGEMENT COMPANY, QUEENS SYNDICATE COMPANY, CAMBRIDGE V, LLC, QUINCY V, LLC, VICTOR VITLIN, JANICE SHEINBERG, ROBERT FEINERMAN and SHELLY HERMAN, AS EXECUTRIX OF THE ESTATE OF STEPHEN COOPERMAN,

Defendants.

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The following papers read on this motion:

- Notice of Motion..... X
- Cross-Motion..... XX
- Affirmation in Opposition..... XX
- Reply Affirmation..... XXX
- Memorandum of Law..... XXX

Motion by plaintiffs for leave to renew defendants Combo Stores Company, P & S Realty Company, Sons Realty Company, Initial Realty Company, Flatlands Management Company, Queens Syndicate Company, Cambridge V, LLC, Quincy V, LLC, Victor Vitlin, Janice Sheinberg, and Robert Feinerman's motion for partial summary judgment on their counterclaim and dismissing plaintiffs' third cause of action is **denied**. Cross-motion by defendants Combo Stores, P & S Realty, Sons Realty, Initial Realty, Flatlands Management, Queens Syndicate, Cambridge V, Quincy V, Victor Vitlin, Janice Sheinberg, and Robert Feinerman for leave to renew their motion for summary judgment is **granted**. Cross-motion by defendant Shelly Herman for leave to renew her motion for summary judgment is **granted**. Upon renewal, defendants' motions for summary judgment are granted, and plaintiffs' claims for an accounting with respect to each of the real estate partnerships are **dismissed**.

This is an action for an accounting. Plaintiff Lisa Minor is the trustee of a testamentary trust created by Shirley Cooperman, Lisa's mother, who died on September 20, 2000. At the time of her death, Shirley Cooperman was a partner in defendants Combo Stores Company and Queens Syndicate Company, which own commercial property in Queens. Shirley Cooperman was also a partner in defendants P & S Realty Company and Flatlands Management Company, which own commercial property in Brooklyn. Additionally, Shirley Cooperman was a partner in defendants Initial Realty Company and Sons Realty Company, which own commercial property in Nassau. In addition to her position as trustee, plaintiff is a member of the various partnerships in her own right.

Defendant Cambridge V, LLC is the general partner of Combo Stores. Defendant Quincy V, LLC is a partner in Queens Syndicate. Defendants Victor Vitlin, Janice Sheinberg, and Robert Feinerman are members of the management committees of Combo Stores and Queens Syndicate. Prior to his demise, Stephen Cooperman, Lisa's brother, was a general partner and involved in the management of all six of the partnerships.

Shirley Cooperman's will provides that plaintiff and Stephen Cooperman would each receive a 1/3 share of the residuary estate. The remaining 1/3 of the residuary estate was to be placed in trust for the benefit of Ellen Abrams. Stephen Cooperman was initially appointed as executor of his mother's estate. However, On September 7, 2005, Cooperman executed a "Receipt, Release, and Refunding Agreement," whereby he agreed to indemnify the estate for breach of his fiduciary duty.

Stephen Cooperman died on February 18, 2008. Defendant Shelly Herman is the executrix of Stephen Cooperman's estate, having received letters testamentary from a Massachusetts probate court. On April 3, 2008, letters of trusteeship with respect to the Ellen Abrams Trust were issued to plaintiff by the Nassau County Surrogate's Court. Letters testamentary with respect to Shirley Cooperman's estate were granted to plaintiff on April 9, 2008.

On May 14, 2008, Combo Stores and Queens Syndicate commenced an action against Stephen Cooperman's estate in the U.S. District Court for the District of Massachusetts based upon Cooperman's management of the Queens properties prior to his demise (3:08-CV-30095). On May 22, 2008, Cambridge and Quincy commenced a proceeding against Minor, as executrix of Shirley Cooperman's estate, in the Nassau County Surrogate's court for unjust enrichment. Cambridge and Quincy's unjust enrichment claim was based upon certain distributions which Shirley Cooperman received with respect to the Combo Stores, Queens Syndicate, and Initial properties. Shirley Cooperman received these distributions pursuant to an assignment which she received in 1981 from Hyman Kamen.

On November 11, 2008, Shelly Herman, on behalf of Stephen Cooperman's estate, commenced an action against plaintiff in Massachusetts Superior Court, Berkshire County. On December 17, 2008, P & S, Flatlands, Initial, and Sons commenced an action against Stephen Cooperman's estate in the U. S. District Court for the District of Massachusetts based upon Cooperman's management of the Brooklyn and Nassau properties (3:08-CV-30235).

On February 27, 2009, the parties involved in the Massachusetts federal lawsuits entered into a mediation settlement agreement which purports to "settle any and all claims among and between the parties." All of the real estate partnerships which are parties to the present action were parties to the mediation settlement agreement. The agreement provides that Lisa Minor shall transfer certain funds which were held in a Massachusetts bank to the partnerships. The agreement provides that Stephen Cooperman's estate shall transfer its interests in the partnerships to the partnerships. The agreement provides that Cooperman's estate shall transfer the estate bank accounts to the partnerships. The agreement provides that any interest of Cooperman's estate in the so-called "Kamen Agreement" shall be null and void.

The agreement provides that the partnerships shall retain the partnership distributions "sequestered" from Stephen Cooperman's estate. However, the agreement provides that Lisa Minor and the Ellen Abrams Trust shall be paid "all distributions and other payments from

the partnerships presently being sequestered by the partnerships.” In the agreement, Lisa Minor, individually and as trustee of the Ellen Abrams Trust, agrees to cooperate with the partnerships to convert the partnerships to limited liability companies.

The agreement provides that general releases shall be executed by all parties, except that the “Kamen lawsuit” pending in the Nassau Surrogate’s Court was not covered by the releases. In the agreement, the partnerships acknowledge that Lisa Minor and Stephen Cooperman’s estate entered into a separate settlement in the Berkshire County action. The settlement agreement is signed by all parties, including plaintiff.

By order dated June 12, 2009, the United States District Court for the District of Massachusetts granted Queens Syndicate’s motion to enforce the mediation settlement agreement. By order dated March 9, 2010, the District Court denied plaintiff’s motion to vacate the order to enforce and granted defendant’s motion to enforce the mediation settlement agreement to the extent of ordering plaintiff to execute the mutual release provided for in the agreement. The federal court determined that plaintiff was subject to the court’s jurisdiction and was a party to the federal actions by virtue of being a member of the partnerships. The federal court retained jurisdiction to enforce the settlement agreement. By order dated March 24, 2010, the District Court denied plaintiff’s motion to dismiss for lack of personal jurisdiction. The order enforcing the mediation settlement agreement was affirmed by the United States Court of Appeals for the First Circuit (**Quincy V v Herman**, 652 F.3d 116 [1<sup>st</sup> Cir 2011]).

The present action for an accounting was commenced on August 14, 2009. In the first cause of action, plaintiff seeks an accounting with respect to the affairs of Combo Stores. In the second cause of action, plaintiff seeks an accounting with respect to the affairs of Queens Syndicate. In the third cause of action, plaintiff seeks a declaratory judgment that the mediation settlement agreement does not cover her claims for an accounting. In their answer, defendants Combo Stores, P & S Realty, Sons Realty, Initial Realty, Flatlands Management, Queens Syndicate, Cambridge V, Quincy V, Vitlin, Sheinberg, and Feinerman (“the real estate partnerships”) counterclaim for specific performance of the mediation settlement agreement.

By order dated May 14, 2010, this court denied the real estate partnership defendants’ motion to dismiss the complaint based on the pendency of the Massachusetts federal action brought by Queens Syndicate and Combo Stores.

By order dated April 11, 2011, the court granted the partnership defendants' motion for summary judgment based upon res judicata to the extent of declaring that the mediation settlement agreement resolved plaintiffs' claims for an accounting with respect to Combo Stores and Queens Syndicate. Plaintiffs' cross-motion for partial summary judgment against defendants Combo, Vitlin, Scheinberg, Feinerman, and Queens Syndicate for profit distributions for the period July 2008 through July 2010 was denied on the ground that the distributions had been paid.

Plaintiffs move for leave to renew defendants' motion for summary judgment based upon a newly discovered "ratification and reaffirmation agreement" among the real estate partnerships dated December 29, 2010. Plaintiffs argue that enforcement of the mediation settlement agreement by the Massachusetts District Court was obtained by fraud because defendants failed to advise the federal court of the ratification and reaffirmation agreement. However, it appears that the purpose of the agreement was for the real estate partnerships to reaffirm the mediation settlement agreement, as among themselves, even though Lisa Minor was challenging the mediation settlement agreement. This court does not interpret the ratification and reaffirmation agreement as an acknowledgment by defendants that the mediation settlement agreement was not binding upon plaintiffs.

Plaintiff also moves for leave to renew based upon an assignment agreement dated April 17, 2009. However, the assignment agreement appears intended simply to implement the mediation settlement agreement. There is nothing in the assignment agreement to suggest that the mediation settlement agreement is not binding on plaintiffs. Plaintiffs' motion for leave to renew defendants' motion for summary judgment is **denied**.

Defendants move for leave to renew their motion for summary judgment based upon the decision of the First Circuit. Defendants argue that all of plaintiffs' claims for an accounting should be dismissed as encompassed by the mediation settlement agreement.

The assignment agreement and the ratification and reaffirmation agreement, as well as the other documents submitted to the court, establish that all of the family real estate partnerships that are parties to the present action were parties to the mediation settlement agreement. Thus, all of plaintiffs' claims for an accounting were encompassed within the mediation settlement agreement. Accordingly, defendants' motions for leave to renew their motions for summary judgment are **granted**. Upon renewal, defendants' motions for summary judgment dismissing all of plaintiffs' claims for an accounting are **granted**.

So ordered.

Dated JUN 13 2012 **ENTERED**  
 JUN 15 2012  
 NASSAU COUNTY  
 COUNTY CLERK'S OFFICE

  
 J.S.C.