

<b>Rodriguez v Spector</b>
2021 NY Slip Op 31449(U)
April 22, 2021
Supreme Court, New York County
Docket Number: 652799/2017
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART IAS MOTION 57

-----X  
 JOSE RODRIGUEZ,

Plaintiff,

- v -

JEREMY SPECTOR, DEAN PICCOLO, 227 EAST 10TH  
 STREET RESTAURANT CORPORATION D/B/A BRINDLE  
 ROOM

Defendant.

INDEX NO. 652799/2017

MOTION DATE 12/01/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
 MOTION**

-----X  
 HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for

DISCOVERY

Upon the foregoing documents, it is

Plaintiff moves or an Order, pursuant to CPLR § 3124, compelling Defendants Jeremy Spector and Dean Piccolo to produce their personal tax returns for the years 2015, 2016, 2017, 2018, 2019, and 2020, and other outstanding discovery. Plaintiff further moves for sanctions pursuant to Section 130-1.1 and contempt pursuant to N.Y. Jud. Law § 753 and an order compelling Defendants to pay Plaintiff's costs and attorney's fees related to this action.

Background

Plaintiff alleges that he and Defendants entered into a business venture for the exclusive purpose of owning and operating a restaurant located at 277 East 10th Street (hereinafter "Restaurant"). In 2009, the parties created a legal business entity, 277 East 10th Street

Restaurant Corporation dba Brindle Room, to collect income from profits generated by the Restaurant. The parties became partners in the Corporation pursuant to an executed and notarized Operating Agreement (hereinafter "Agreement") dated October 7, 2009. As per the Agreement, Plaintiff owns sixty-five (65) shares, or 32.50% of the Corporation.

Plaintiff contends that he worked a variety of jobs related to the opening of the Restaurant, including maintenance and construction. Additionally, once the Restaurant opened he worked over sixty hours weekly for the first year as bartender and waiter, and provided numerous other services required for the Restaurant to be successful. During that time, and until the filing of this Complaint, Plaintiff states that he continually asked about the finances and profits from the Restaurant and continuously inquired as to his compensation as an investor. Plaintiff resigned as an employee of the Restaurant in 2014. He claims that the Restaurant was successful at that time, but that he was not receiving any compensation as an owner. Plaintiff alleges that he continued to inquire about profit but was always denied both information and payment by Defendants.

Plaintiff commenced the present action for Breach of Contract, Unjust Enrichment, Fraud, Intentional Misrepresentation, Negligent Misrepresentation, and Accounting to recoup his duly owed compensation as an investor and owner in the Corporation, and for an accurate accounting of the Restaurant's finances.

#### Sanctions and Contempt

Plaintiff has not demonstrated any basis for requesting sanctions or an order holding Defendants in contempt. Accordingly, that portion of Plaintiff's motion is denied.

### Individual Defendants' Personal Tax Returns

The last status conference in this matter was held on February 20, 2020. The status conference order allowed Plaintiff to make the present motion to “compel production of personal tax returns.” Accordingly, Defendants contentions that Plaintiff’s motion is improper or untimely are unpersuasive as the motion was directed by court order.

There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action (*see* CPLR § 3101(a); *see also* *Osowski v. AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106, 887 N.Y.S.2d 11 [1<sup>st</sup> Dept. 2009]). “Material and necessary has long been interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial” (*see Forman v. Henkin* 139 A.D.3d 529, 22 N.Y.S. 3d178 [1<sup>st</sup> Dept. 2015]).

However, because of their “confidential and private nature” (*Roth v American Colonial Ins. Co.*, 159 AD2d 370, 553 NYS2d 13 [1990]), disclosure of tax returns is disfavored, and the party seeking such information is required to establish that the information contained in the returns “is indispensable to this litigation and unavailable from other sources” (*Briton v Knott Hotels Corp.*, 111 AD2d 62, at 63, 489 NYS2d 186 [1985]). Consistent with this authority, the party seeking to compel production of a tax return must identify the particular information the return will contain and its relevance, explain why other possible sources of the information sought are inaccessible or likely to be unproductive and limit examination of the return to relevant material through redaction of extraneous information (*Nanbar Realty Corp. v Pater Realty Co.*, 242 AD2d 208, 209–10, 661 NYS2d 216, 218 [1997]).

In support of his motion, Plaintiff contends that the tax returns are necessary as often in the restaurant business restaurant owners, managers, and staff under-report to the government

their actual wages because the wages are often paid to them in cash from the restaurant's or bar's patrons. Thus, since there is no paper trail in the form of payroll check stubs to document the wages earned, unscrupulous persons are able to skim off the top before reporting the remainder as income, and consequently, such persons will not accurately report their entire earnings to the IRS. Plaintiff argues that he needs Defendants' personal tax returns to verify and reconcile that the amounts reported on the corporate defendant's tax returns matches the amount reported on the individual defendants' tax returns.

Plaintiff has not demonstrated that the information he seeks isn't available through other sources. K-1 schedules and distribution information on corporate returns, salary records and checks for all employees have already been produced and Plaintiff has not sufficiently argued why Defendants' personal tax returns would disclose information not available through these other records. Accordingly, Plaintiff's motion to compel is denied.

Furthermore, Defendants have stated that they would provide their personal tax returns for examination under a confidentiality order. If Plaintiff seeks access to Defendants' personal tax returns, he should confer with Defendants' counsel regarding a proposed confidentiality order to oversee this disclosure.

#### Other Discovery

As to other outstanding discovery, defendants have demonstrated that there were two productions in response to plaintiff's discovery requests. Plaintiff's papers are unclear as to whether these productions were reviewed and found lacking prior to the present motion.

Accordingly, it is hereby

ORDERED that Plaintiff's motion to compel is denied; and it is further

ORDERED that counsel are directed to appear for a remote status conference, via Microsoft Teams, link to be provided by the Part Clerk, on June 24, 2021, at 12:00 PM.

4/22/2021  
DATE

SHAWN TIMOTHY KELLY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE