

**Barry v Schafra**

2002 NY Slip Op 30052(U)

August 28, 2002

Supreme Court, New York County

Docket Number: 0605471/1999

Judge: John C. Gannon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: \_\_\_\_\_  
Justice

PART 61

*Barry S. Myungchun*  
*etc - v -*  
*Schupmann J. etc*

INDEX NO. 00547199  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 014  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**SCANNED**

SEP 04 2002

per

decision and order.

MOTION/CWS IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_

Dated: 8/28/02

888  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 61

-----X

STANLEY BARRY, as Managing Partner  
of 200 Eleventh Associates,

Plaintiff,

-against- : Index No. 605471/99

JAY SCHAFFRA'' and N.V. FAMKA INC.,

Defendants. :

-----X

JAY H. SCHAFFRANN, :

Third-party Plaintiff, :

-against-

EDMOND KARAM and OSWALDO KARAM,

Third-Party Defendants. :

-----X

GANS, LOUISE GRUNER, J.

Third-party defendants Edmond Karam and Oswaldo Karam move, pursuant to CPLR § 3211 (a)(4), (7), (8), for dismissal of the third-party action. For the following reasons, their motion is granted.

This action was commenced by plaintiff stakeholder to determine defendants' competing interests in partnership distributions. Plaintiff was discharged by stipulation and defendant Jay H. Schafrann ("Schafrann") asserted numerous cross-claims in an effort to recover the disputed funds.

Third-party defendants, the sole shareholders of defendant Famka, contend the court lacks personal jurisdiction over them due to improper service. Schafrann presents a strong argument

that jurisdiction was obtained in that third-party defendants exercised control over defendant Famka's purposeful activities in New York (see *Kreutter v McFadden Oil Corp*, 71 NY2d 460 [1988]; *Namer v America Networks International Inc*, 2000 US Dist **LEXIS** 18114 [SD NY, Dec. 14, 2000]). However, the issue of jurisdiction need not be pursued to ultimate resolution because, even assuming jurisdiction, the third-party action would be subject to dismissal.

Schafrann seeks to implead third-party defendants, pursuant to CPLR § 1007. However, in that Schafrann does not contend that third-party defendants are individually liable for the cross-claims asserted against him by Famka -- fraud and legal malpractice -- his third-party complaint is procedurally defective (CPLR § 1007). Even if the third-party complaint was proper to the extent it seeks relief beyond that contested by Famka (*Cohen Agency v Perlman*, 51 NY2d 358, 365 [1980]; *Gair Co, Inc v Cambridge Carpet, Ltd*, 160 AD2d 371, 371-372 [1st Dept 1990]), Schafrann fails to allege any basis for liability against third-party defendants (cf. *Shulenberg v Zucker Co*, 119 Misc2d 977, 979 [**Sup Ct, New York County** 1983]). The third-party complaint is therefore dismissed.

Accordingly, it is

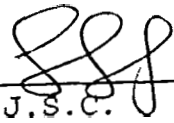
ORDERED that the motion to dismiss the third-party complaint is granted and the third-party complaint is dismissed; and it is further

ORDERED that the Clerk of Court is directed to enter judgment accordingly; and it is further

ORDERED that this action shall proceed to trial as scheduled.

This constitutes the decision and order of the court.

DATED: 8/28/02

ENTER:   
J.S.C.  
**HON. JISE I GANS**