

Singh v Sukhram

2007 NY Slip Op 30857(U)

March 26, 2007

Supreme Court, Queens County

Docket Number: 0010162/2006

Judge: Peter O'Donoghue

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PETER J. O'DONOGHUE IA Part 13
Justice

NOHAR SINGH	x	Index Number <u>10162</u> 2006
- against -		Motion Date <u>November 14,</u> 2006
SAHADEO SUKHRAM, et al.		Motion Cal. Number <u>18</u>
x		Motion Seq. No. _____

The following papers numbered 1 to 13 read on this motion by defendant Buddy D. Ramsaran for, inter alia, an order dismissing the complaint against him pursuant to CPLR 3211(a)(7) and (g) for failure to state a cause of action, on this cross motion by defendant Sahadeo Sukhram for, inter alia, and order pursuant to CPLR 3211(a)(7) and (g) dismissing the complaint against him, on this cross motion by defendant Frank Singh for, inter alia, an order pursuant to CPLR 3211(a)(7) and (g) dismissing the complaint against him, and on this cross motion by plaintiff Nohar Singh for an order permitting the entry of a default judgment against defendant Buddy Ramsaran.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1
Notice of Cross Motion - Affidavits - Exhibits...	2-4
Answering Affidavits - Exhibits.....	5-8
Reply Affidavits.....	9-11
Other (Memorandum of Law).....	12-13

Upon the foregoing papers it is ordered that the motion is disposed of as follows:

The complaint alleges the following: Plaintiff Nohar Singh is the President and a major shareholder of Travelspan G.T., Inc. ("Travelspan Guyana") and Travelspan, Inc. ("Travelspan, NY"). Travelspan NY, which has been in business for more than eleven years, provides vacation packages and air charter services to the Caribbean area. The plaintiff organized Travelspan Guyana in

2002 for the purpose of operating an airline between Guyana and the United States. On or about April 11, 2006, Travelspan Guyana applied to the United States Department of Transportation ("DOT") for permission to provide passenger, cargo, and mail air transportation services between Guyana and the United States. The defendants filed objections to the application containing defamatory statements. On or about April 27, 2006, defendant Sahadeo Sukhram filed an objection which stated that the plaintiff is "a dishonest individual," "not a trustworthy individual," "unscrupulous," one who "secretly funneled money" out of Transwings Airways Corp., a company in which Sukram and the plaintiff were shareholders. On or about April 26, 2006, defendant Frank Singh filed an objection stating that the plaintiff was a man who "robbed and cheated on a previous airline operation he was running by the name of Transwing," that he was a man who left passengers "stranded" and without refunds due them, that he was a man who raided a corporate treasury and left stockholders with worthless shares. Defendant Singh attached to his written objection what purports to be a paid advertisement in a newspaper attacking the plaintiff as a "con artist," and he distributed the written objection and attached advertisement to eleven attorneys representing airlines. On or about May 2, 2006, defendant Buddy D. Ramsaran filed a written objection to Travelspan Guyana's application, stating that the plaintiff had "misappropriated" funds belonging to another corporation.

The cross motion by plaintiff Nohar Singh for an order permitting the entry of a default judgment against defendant Buddy Ramsaran is denied. In order to successfully oppose a motion to enter a default judgment, a party must demonstrate both a reasonable excuse for the default and a meritorious cause of action or defense. (See, Becker v University Physicians of Brooklyn, Inc., 307 AD2d 243.) Defendant Ramsaran successfully carried this burden.

The motion by defendant Ramsaran and the cross motions by defendant Singh and defendant Sukhram for, inter alia, an order pursuant to CPLR 3211(a)(7) and (g) dismissing the complaint against them for failure to state a cause of action are denied. The Noerr-Pennington doctrine (see, Eastern R.R. Presidents Conference v Noerr Motor Freight, Inc., 365 US 127; United Mine Workers of Am. v Pennington, 381 US 657) holds in substance that parties may not be subjected to liability for petitioning the government. (See, Arts4All Ltd. v Hancock, 25 AD3d 453; I.G. Second Generation Partners, L.P. v Duane Reade, 17 AD3d 206.) "Although the Noerr-Pennington doctrine initially arose in the antitrust field, the courts have expanded it to protect First Amendment petitioning of the government from claims brought under Federal and State law ***." (Alfred Weissman Real Estate, Inc. v Big V Supermarkets, Inc., 268 AD2d 101, 107; see, Concourse

Nursing Home v Engelstein, 278 AD2d 35; We, Inc. v City of Philadelphia, 174 F3d 322.) There is a "sham" exception to the Noerr-Pennington doctrine which "involves a defendant whose activities are not genuinely aimed at procuring favorable governmental action at all" or a defendant who is "not genuinely seeking official action." (See, Alfred Weissman Real Estate, Inc. v Big V Supermarkets, Inc., 268 AD2d 101, 109; Boone v Redevelopment Agency of City of San Jose, 841 F2d 886.) In the case at bar, the plaintiff's allegations are sufficient to bring this case within the "sham" exception to Noerr-Pennington doctrine. In this action involving public petition and participation as defined in Civil Rights Law § 76-a, the plaintiff has made an adequate showing that his complaint has a substantial basis in law. (See, CPLR 3211[g]; Related Properties, Inc. v Town Bd. of Town/Village of Harrison, 22 AD3d 587; Arts4All, Ltd. v Hancock, *supra*.) Insofar as summary judgment is concerned, there are issues of fact and credibility in this case which preclude that remedy. (See, Dayan v Yurkowski, 238 AD2d 541; T&L Redemption Center Corp. v Phoenix Beverages, Inc., 238 AD2d 504; First New York Realty Co., Inc. v DeSetto, 237 AD2d 219.)

Dated: March 26, 2007

J.S.C.