

Star Meth Corp. v Steiner

2008 NY Slip Op 32917(U)

October 21, 2008

Supreme Court, New York County

Docket Number: 605647/00

Judge: Joan A. Madden

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

PRESENT: MADDEN
Justice

PART 11

PETER SCHORR
- v -
STUART STEINER

INDEX NO. 605647/00
MOTION DATE 5-1-08
MOTION SEQ. NO. 4
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to for dismissal

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the attached memorandum Decision + order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
OCT 27 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: Oct 27, 2008

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 11

-----X
STAR METH CORP.,

Index No. 605647/00

Plaintiff,

-against-

STUART STEINER,

Defendant.

FILED
OCT 27 2008
COUNTY CLERK'S OFFICE
NEW YORK

Joan A. Madden; J.:

Defendant Stuart Steiner ("Steiner") moves for an order dismissing plaintiff's third amended verified complaint. Plaintiff Star Meth Corp. ("Star Meth") opposes the motion, which is granted for the reasons below.

Background

This action seeks to recover damages in connection with defendant Stuart Steiner's ("Steiner's") embezzlement scheme directed against methadone maintenance clinics, including a clinic known as the East Harlem Clinic, which was managed by plaintiff Star Meth Corp. ("Star Meth") and its predecessor Seymei Management Corp ("Seymei").¹ In particular, it is alleged from 1987 through January 1993, Steiner embezzled funds from Star Meth by padding the clinic's payrolls with the names of fictitious employees, cashing their pay checks, and retaining the money.

The action was originally brought by plaintiffs Peter Schorr, Allegra Schorr Fitch, and

¹In another action commenced under Index No. 112322/05, Seymei, sued Steiner based on the same embezzlement scheme at issue in this action. By decision and order dated September 1, 2006, Justice Edward H. Lehner granted Steiner's motion to dismiss on the ground that Seymei lacked the capacity to sue.

Andrew Schorr, in their individual capacities as assignees of certain interests of the shareholders of Star Meth, Harmour Management Corp., and Has Meth Corp (together “the management corporations”). The complaint alleged that these plaintiffs were assigned an interest in the management corporations by Harold Schorr (Peter's father), Theodore Schorr (Andrew's father), and Seymour Schorr (Allegra's father), the founders of the corporations (hereinafter “the Schorr brothers”).

By decision and order dated April 10, 2004, the court found that the individual plaintiffs lacked standing to sue since the injuries were committed against the management corporations and not the plaintiffs individually. The court also dismissed claims brought against Steiner in connection with his activities at a methadone clinic known as the Kocppel Clinic, which was managed by Harmour Corp, and later became Has Meth Corp, finding that since these corporations had filed for bankruptcy, only the bankruptcy trustee had the capacity to sue on their behalf. However, the court granted plaintiffs’ motion for leave to replead to the extent of permitting them to assert derivative claims on behalf of Star Meth.

Plaintiffs filed a second amended verified complaint on May 12, 2004. Steiner moved to dismiss the newly amended complaint on various grounds including that the new pleading failed to allege a derivative claim under New York law on behalf of Star Meth. Plaintiffs opposed the motion and alternatively requested that Star Meth be permitted to assert a direct claim against Steiner.

By decision and order dated March 7, 2005, this court dismissed the complaint on the grounds that the individual plaintiffs failed to show a beneficial interest in the shares of Star Meth at the time of the alleged wrongs, and based on the absence of allegations adequate to

satisfy the demand requirement contained in Business Corporation Law §626(c). The court also denied Star Meth's request to assert a direct claim, noting that Star Meth was dissolved in 1994, or approximately six years before the commencement of this action, and that there was nothing in the record to show that the action was brought for the purpose of winding up Star Meth's corporate affairs. Plaintiffs appealed. By decision and order dated December 20, 2007, the Appellate Division modified the March 7, 2005 decision to the extent of permitting plaintiffs to assert a direct claim on behalf of Star Meth. See Schorr v. Steiner, 46 AD3d 435 (1st Dept 2007).

In the meantime, on January 27, 2005, Justice Herman Cahn issued a decision after a non-jury trial in a consolidated action involving a dispute over the ownership and control of the East Harlem Clinic. See East Harlem Management Group, Inc. v. Mary Ann Phipps Silbermann, as Administrator of the Estate of Eugene Silbermann; Index No. 601540/97 (hereinafter "the Silbermann action").² In that decision, Justice Cahn rejected the Schorr brothers' claim that they owned the East Harlem Clinic, through their management corporations, including Star Meth, (which, in 1992, was replaced as manager of the East Harlem clinic by East Harlem Management Group, Inc.), and held that defendant Eugene Silbermann, M.D. "alone possessed any and all proprietary rights" to the clinics, and that the management corporations managed the methadone maintenance program "pursuant to a terminable at-will oral agreement terminated by Dr. Silbermann...." (Cahn decision, at 17, 18).

Justice Cahn also found that "all income generated from patient services [was] paid only to Dr. Silbermann and deposited into an account over which he had exclusive control" (*id.*, at 13),

²Dr. Silbermann died after the trial, and his wife and administrator of his estate was substituted as plaintiff.

and that “all employees were paid out of the funds received as direct reimbursements by Dr. Silbermann, deposited in his account”(id, at 14, 15). Justice Cahn also determined that the Schorr brothers’ management duties related “purely to the business aspects of [the methadone maintenance] [p]rogram,” and that “Dr Silbermann delegated issues involving the professional staff to a distinct employee of the Program, one Stuart Steiner.” (id, at 13). Additionally, Justice Cahn rejected the Schorr brothers’ assertions that Steiner, or any of the employees of the methadone maintenance program, were employees of their management companies. Justice Cahn’s decision was affirmed by the Appellate Division on January 5, 2006. East Harlem Management Group, Inc. v. Silbermann, 25 AD3d 361 (1st Dept 2006).

On February 28, 2008, Star Meth filed a third amended verified complaint in this action, which seeks to recover compensatory and punitive damages in connection with Steiner’s scheme involving the fictitious employees, and asserts claims for fraud, breach of fiduciary duty, and unjust enrichment.

Star Meth predicates its right to recover from Steiner on the allegations that the Clinic was owned and operated by Seymour Schorr and the Schorr brothers and that the involvement by Dr Silbermann was “nominal” (third amended verified complaint, ¶ 8). Star Meth also alleges that the Schorr brothers established, incorporated and funded the management corporations for the clinics and that Seymour Schorr and the Schorr brothers were responsible for payment of all expenses, including employee salaries (id., ¶ 16), and that Steiner’s scheme resulted in Steiner receiving in excess of \$2 million in salaries paid by Seymour Schorr (id., ¶ 31).

Steiner now moves to dismiss the third amended verified complaint, asserting that based

on the determinations made by Justice Cahn in the Silbermann action, and in accordance with the doctrine of collateral estoppel, Star Meth lacks standing to assert the claims contained in the third amended verified complaint. In support of the motion, Steiner points to allegations that the Schorr brothers owned the East Harlem Clinic, employed Steiner, and paid compensation to the clinics' employees, and note that these allegations directly contradict the Justice Cahn's factual determinations in the Silbermann action.

In opposition, Star Meth contends that it has standing to seek recovery from Steiner based on an agreement between the Schorr brothers and Silbermann. Specifically, in his affidavit submitted in opposition to the motion, Seymour Schorr states that:

For his participation and involvement in the East Harlem Clinic as its sponsor, Silbermann and I agreed that Silbermann would receive a fixed monthly amount from the revenues generated from the operation of the East Harlem Clinic. I did agree, from time to time, to increase the fixed monthly amount payable to Silbermann whenever either there was an increase in patient population or an increase in the Medicaid reimbursement rates for services performed by the East Harlem Clinic. This compensation arrangement remained unchanged for the 25 years that Star Meth and other Schorr related entities operated the East Harlem Clinic.

It was further agreed between Silbermann and me, on behalf of Star Meth, as well as other Schorr related entities involved in the operation and management of the East Harlem Clinic, that the remainder of revenues and income generated by the operation of the East Harlem Clinic belonged to, and would be paid to, Star Meth and other Schorr related entities to pay the expenses of the East Harlem Clinic and to retain the balance of the remaining revenues and income as their compensation for their services. This arrangement also remained unchanged for the 25 year period from 1972-through March 19, 1997, the date that the Schorr relationship with Silbermann ended.

Steiner's admitted embezzlement ...through the use of the "fictitious employce" scheme caused substantial financial damages

to Star Meth and Seymei³ because the funds taken by Steiner belonged to, and were paid out of the agreed compensation due, Star Meth and Seymei. If Steiner had not embezzled nearly \$1 million in revenues generated from the operation of the East Harlem Clinic, then those revenues would have been retained by Star Meth and Seymei as and for their agreed compensation for operating and managing the East Harlem Clinic.

(Schorr affidavit, ¶¶ 4, 5 & 7).

Star Meth also relies on excerpts from the deposition and trial testimony of Dr. Silbermann which indicates that he had an agreement with the Schorr brothers that after he took his compensation that remaining moneys would go to operate the clinic and the Schorr brothers would pay expenses out of the moneys and any remaining funds would go to them. Notably, Dr. Silbermann does not identify employee compensation as one of the expenses paid by the Schorr brothers and/or their management corporations. In addition, Star Meth points to Silbermann's deposition testimony that Steiner was employed by the Schorr brothers.

Star Meth next asserts that the identical grounds now advanced by Steiner for dismissal were made to, and rejected by, the Appellate Division, which permitted Star Meth to assert direct claims against Steiner, and thus the law of the case doctrine bars Steiner from asserting these grounds now.

In reply, Steiner asserts that the law of the case doctrine does not apply since the Appellate Division did not consider the collateral estoppel argument or have before it a complaint asserting direct claims on behalf of Star Meth.

³Any claims asserted by Seymei are not the subject of this action by Star Meth and in any event such claims would be barred by Justice Lehner's decision and order dated September 1, 2006, which granted Steiner's motion to dismiss claims brought by Seymei. See footnote one, infra.

Discussion

The doctrine of collateral estoppel or “issue preclusion” prevents a party from relitigating an identical issue which has previously been decided against it in a prior action in which it had a fair opportunity to fully litigate the issue. See Allied Chemical v Niagara Mohawk Power Corp., 72 NY2d 271 (1988), cert denied, 488 US 1005 (1989). “The policies underlying the application [of collateral estoppel] are avoiding relitigation of a decided issue and the possibility of inconsistent results. Buechel v. Bain, 97 NY2d 295, 303 (2001)(citation omitted).

Here, the factual allegations in the third amended verified complaint which are central to Star Meth’s theory of liability were determined against the Schorr Brothers and their management companies, including Star Meth, by Justice Cahn in the Silbermann action, and cannot be relitigated here. As indicated above, Justice Cahn held that the Schorr brothers and their management companies have no ownership interest in the East Harlem Clinic, and that Dr. Silbermann, M.D. had all proprietary rights to the clinics, and that the management corporations managed the methadone maintenance program based on “a terminable at-will oral agreement terminated by Dr. Silbermann....” (Cahn decision, at 17, 18). Despite this holding, the third amended verified complaint basis Steiner’s liability to Star Meth on allegations that the Schorr brothers “owned and operated” the East Harlem Clinic, and that “the involvement and participation of Dr. Silbermann in the operation of the clinic was nominal”(third amended verified complaint, ¶ 8).

As for the funding of the clinics, although Justice Cahn held that employees’ salaries were

paid exclusively through direct reimbursements deposited into Dr. Silbermann's account,⁴ the third amended verified complaint alleges that the Schorr Brothers were "wholly responsible for the payment of all expenses incurred by each clinic, including by not limited to employee salaries and related benefits," and that Steiner received in excess of "\$2,000,000 representing salaries paid by Seymour Schorr, the Schorr brothers and the various management companies for the fictitious employees" (*id.*, ¶¶ 16, 31).

Similarly, allegations made in connection with the breach of fiduciary duty claim that Steiner damaged Star Meth by retaining the salary paid to him by the Schorr brothers, conflicts with Justice Cahn's finding the employee salaries were paid out of funds in Dr. Silbermann's account.⁵ Additionally, allegations that Steiner breached his position of trust and authority as Administrative Director of the clinics and "stole money paid by private patients" are insufficient to provide a basis for recovery since Justice Cahn found that all income generated from patient services was paid only to Dr. Silbermann and deposited into an account over which he had exclusive control.⁶

⁴Justice Cahn also found that Dr. Silbermann was the payee of all Medicaid reimbursements, and sole account holder of all deposits of such proceeds.

⁵ Despite Dr. Silbermann's deposition testimony indicating that the Schorr brothers hired Steiner, Justice Cahn's determination that Steiner was an employee of Dr. Silbermann is entitled to estoppel effect. In addition, even assuming that Steiner although not an employee of Star Meth, owed the Star Meth a fiduciary duty, the allegations in the third amended verified complaint do not provide a basis for finding that Star Meth damaged as a result of such a breach.

⁶In addition, contrary to Justice Cahn's decision, which found that Steiner was hired by Dr. Silbermann to deal with issues involving the professional staff, the third amended verified complaint alleges that Steiner was hired by the Schorr brothers to handle the day-to-day operations of the clinic. Furthermore, while Justice Cahn held that the Schorr brothers were only responsible for the business aspects of the program, the third amended verified complaint alleges

Thus, as the allegations that provide the factual underpinnings for Star Meth's theory of recovery regarding its ownership of the clinic, its payment of employee salaries and its entitlement to money received by the clinics, are contradicted by the determinations made by Justice Cahn that Dr Silbermann owned the clinics, was directly paid all funds from private patients, and as the employer of the clinic's staff paid employee salaries directly from his own account, the third amended verified complaint cannot stand.

Next, although Star Meth's argues in opposition that the basis for Steiner's liability does not depend on the Schorr Brothers' ownership of the clinic but rather on an agreement with Dr. Silbermann to permit the management companies to retain any revenue remaining after paying the clinic's expenses, the third amended verified complaint contains no allegations regarding such an agreement. In any event, as the alleged fictitious employee scheme involved Steiner taking money used to pay employee salaries, Justice Cahn's determination that these salaries were not paid by the Schorr brothers or their management companies but by Dr. Silbermann through moneys taken directly from his account, precludes a theory of liability based on the scheme as described in the third amended complaint.

Under these circumstances, collateral estoppel applies to bar Star Meth from asserting the claims contained in the third amended verified complaint since they are based on factual issues that were necessarily determined to the contrary in the Silbermann action after Star Meth's successor-in-interest had a full and fair opportunity to be heard.⁷ See Browning Avenue Realty

that the Schorr brothers "made all strategic decisions involving the clinics."

⁷While the named plaintiff in the Silbermann action was East Harlem Management Corp. and not Star Meth, collateral estoppel nonetheless applies since, as its predecessor in interest,

Co. v. Rubin, 207 AD2d 263, 266 (1st Dept 1994), lv denied, 85 NY2d 804 (1995)(holding that plaintiff's claims must be dismissed on the ground of collateral estoppel where the issues raised by the complaint were identical to those necessarily decided in federal court after plaintiff had a full and fair opportunity to be heard): Intern'l 800 Telecom Corp. v. Kramer, Levin, Nessen, Kamin & Frankel, 155 Misc2d 975 (Sup Ct., NY Co. 1992)(dismissing plaintiff's claims for fraud and overbilling when these claims were necessarily decided against plaintiff in earlier actions)

Next, contrary to Star Meth's position, the law of the case doctrine does not prevent Steiner from arguing that collateral estoppel bars Star Meth from asserting claims based on issues determined against it in the Silbermann action. "The 'law of the case' doctrine is a rule of practice which provides that once an issue is judicially determined, either directly or by implication, it is not to be reconsidered by a Judges or courts of coordinate jurisdiction in the course of the same litigation." Holloway v. Cha Cha Laundry, Inc., 97 A.D.2d 385, 386 (1st Dept. 1983)(citations omitted); see also, Clark v. New York Telephone Co., 52 A.D.2d 1030 (4th Dept. 1976), aff'd 41 N.Y.2d 1069 (1977).

Here, the law of the case doctrine does not apply since the Appellate Division did not determine either directly or by implication whether the complaint at issue here provided a basis for recovery in light of Justice Cahn's determinations in the Silbermann action. Although Steiner stated in his brief submitted to the Appellate Division that as a result of the Silbermann action any money allegedly stolen in the fictitious employment scheme belonged to Dr. Silbermann, the

Star Meth is in privity with East Harlem Management Corp, and both management corporations were owned and controlled by the Schorr brothers. See Shirc Realty Corp. v. Schorr, 55 AD2d 356 (2d Dept 1977)(holding that owners of a defunct family corporation were bound by the determination against the corporation and could not use the corporate veil to relitigate previously decided issues).

Appellate Division did not address the issue but only found that Star Meth's proposed direct claims were "potentially meritorious." See Schorr v. Steiner, 46 AD3d at 436. Notably, at that time, the Appellate Division did not have before it Star Meth's complaint asserting a direct claim and thus did not have the opportunity to determine whether Star Meth's claims were barred based on issues decided in the Silbermann action.

Finally, the court notes that the third amended verified complaint contains allegations related not only to the East Harlem Clinic but also to the Koeppl Clinic, which was not operated by Star Meth, but rather by Harmour Management Corp., and Has Meth Corp. Thus, Star Meth has no right to recover based on any losses incurred at the Koeppl Clinic as a result of Steiner's alleged wrongdoing. Moreover, as indicated above, the claims against Steiner on behalf of Harmour Management Corp., and Has Meth Corp were previously dismissed by this court on the ground that these managements corporations had filed for bankruptcy and thus only the bankruptcy trustee had a basis for bringing any claims on their behalf. Accordingly, the allegations in the third amended verified complaint relating to the Koeppl Clinic are without merit.

Conclusion

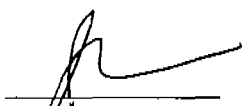
In view of the above, it is

ORDERED that defendant's motion to dismiss is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing the third amended verified complaint in its entirety.

DATED: October 21, 2008

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OCT 27 2008
11
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