

Ali v Ali

2013 NY Slip Op 30308(U)

February 6, 2013

Sup Ct, New York County

Docket Number: 114496/11

Judge: Barbara Jaffe

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

PRESENT: JAFFE
Justice

PART 5

Index Number : 114496/2011
ALI, HAMAD
vs.
ALI, FARES HAMAD
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s). <u>1</u>
Answering Affidavits — Exhibits <u>+ memo of law</u>	No(s). <u>2, 3</u>
Replying Affidavits	No(s). <u>4</u>

Upon the foregoing papers, it is ordered that this motion is

**MOTION AND CROSS MOTION(S) ARE DECIDED
IN ACCORDANCE WITH ANNEXED DECISION AND ORDER.**

FILED
FEB 11 2013
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 2/6/13

[Signature], J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART: OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE
- Cross-motion*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
HAMAD ALI, as President of Best Brothers Realty Corp.
and Good Friends Realty Corp. and Individually

Plaintiff,

- against -

Index No. 114496/11

Argued: 10/16/12

Motion seq. no.: 002

Motion cal. no.: 004

DECISION AND ORDER

FARES HAMAD ALI, DIGNO M. CASTILLO, and
MURSHED M. ALI,

Defendants.
-----X

BARBARA JAFFE, JSC:

For plaintiff:

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For Murshed:

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Klein & Solomon, LLP
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By notice of motion dated July 2, 2012, plaintiff moves pursuant to CPLR 3212 for an order granting him summary judgment against defendant Murshed M. Ali. Murshed opposes, and by notice of cross-motion dated August 20, 2012, moves pursuant to CPLR 3212 for an order granting him summary judgment on plaintiff's claims against him.

I. BACKGROUND

Plaintiff is president of Good Friends Realty Corporation (Good Friends), owner of 2923 Frederick Douglas Boulevard in Manhattan. (Affirmation of Daniel D. Kim, Esq., dated July 2, 2012 [Kim Aff.], Exh. A). Non-party Saleh Mobariz is part-owner of Good Friends; defendant Fares Hamad Ali is plaintiff's son and possesses no ownership interest in Good Friends. (*Id.*).

On March 1, 2005, Murshed began leasing a commercial space at 2923 Frederick Douglas Boulevard, operating a grocery store there. (*Id.*, Exh. E). The lease, which was signed

by plaintiff, Mobariz, and Murshed, specifies a 10-year term and an initial monthly rent of \$4,500, with annual increases. (*Id.*). As pertinent here, the lease specifies a monthly rent of \$5,476 for March 2010 to February 2011. (*Id.*).

On July 1, 2010, a lease modification and extension agreement and an agreement to issue a rent credit were executed by Good Friends and Murshed reflecting, *inter alia*, an additional eight-year term, assignment of the lease to Uptown 2 Deli, Inc., and a rent decrease to \$5,000 monthly. (*Id.*). The lease modification and extension agreement contains signatures identified as plaintiff's, Mobariz's, and Murshed's; plaintiff and Mobariz are identified as managing members of Good Friends. (*Id.*). The rent credit agreement contains signatures identified as Fares's and Murshed's; Fares is identified as manager of Good Friends. (*Id.*).

On March 1, 2011, Good Friends and Uptown 2 Deli executed a second agreement to issue a rent credit reflecting a decrease to \$4,000 monthly. (*Id.*). The agreement contains three signatures, one appearing to be plaintiff's and identified as "Hamad Ali, by Fares Ali as attorney of fact," a second appearing to be Mobariz's and identified as "Saleh Mobariz, by Fares Ali as attorney of fact," and Murshed's signature on behalf of Uptown 2 Deli. (*Id.*).

Sometime thereafter, plaintiff commenced a landlord-tenant proceeding against Murshed for non-payment of rent. (*Id.*, Exhs. A, B, C). On or about December 27, 2011, plaintiff commenced the instant action with the filing of a summons and verified complaint, asserting, in pertinent part, that Fares and Murshed conspired to commit fraud by executing the lease modifications and agreements to issue rent credits without his knowledge, thus seeking a judgment declaring that the agreements are void, compelling Murshed to disclose any documents he executed with Fares, enjoining Murshed from selling his business, and awarding him

compensatory and punitive damages. (*Id.*, Exh. A). Sometime thereafter, Murshed joined issue with service of his answer. (*Id.*, Exh. G). By order dated April 4, 2012, the landlord-tenant action against Murshed was consolidated with the instant action.

By affidavit dated July 5, 2012, plaintiff identifies himself as the majority owner of Good Friends and states that the July 1, 2010 and March 1, 2011 agreements were executed without his knowledge and that Fares forged his signature on the lease modification and extension agreements and on the March 1, 2011 agreement to issue rent credit. (*Id.*, Exh. C). He denies that the corporation authorized Fares to “change any terms of the existing lease [or] . . . to reduce rents or give rent credits to Murshed.” (*Id.*).

By affidavit dated August 5, 2012, Mobariz identifies himself as 50 percent owner of Good Friends and states that in 2003, plaintiff, with his consent, appointed Fares as manager of 2923 Frederick Douglas Boulevard and “entrusted him with all aspects of managing the [b]uilding.” He additionally states that he authorized Fares to negotiate amendments to Murshed’s lease and that the amendments were executed with his approval.

By affidavit of the same date, Murshed states that Fares was the manager of 2923 Frederick Douglas Boulevard between 2003 and 2011 and that “Fares was [his] contact in communicating with the landlord, collecting monthly rent on its behalf, . . . and managing all tenant business, including leasing.”

II. CONTENTIONS

Plaintiff denies that Fares had actual authority to execute the July 1, 2010 and March 1, 2011 agreements absent any corporate resolution or other document endowing him with such authority. (Kim Aff.). He also maintains that Fares had no apparent authority, as Murshed knew,

or should have known, that Fares forged his signature given the incorrect identification of him as managing member. (*Id.*).

In opposition, and in support of his cross-motion, Murshed asserts that Fares had apparent authority to execute the agreements by virtue of being the building's manager, and that in any event, he had actual authority as Mobariz expressly authorized him to negotiate a modification of his lease. (Def. Mem. of Law). Moreover, he claims that Fares's forgery of plaintiff's and Mobariz's signatures does not render the agreements void, that plaintiff has no standing to prosecute the instant matter, and that he failed to join Uptown 2 Deli, a necessary party. (*Id.*).

In reply, plaintiff observes that neither Murshed nor Mobariz deny that Fares forged his signature on the July 1, 2010 modification and extension agreement and that, in consolidating the instant matter with the two landlord-tenant proceedings, Uptown 2 Deli became a named defendant here by operation of law. (Affirmation of Daniel D. Kim, Esq., in Reply, dated Sept. 10, 2012).

III. ANALYSIS

A party seeking summary judgment must demonstrate, *prima facie*, entitlement to judgment as a matter of law by presenting sufficient evidence to negate any material issues of fact. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the movant meets this burden, the opponent must rebut the *prima facie* showing by submitting admissible evidence, demonstrating the existence of factual issues that require trial. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Bethlehem Steel Corp. v Solow*, 51 NY2d 870, 872 [1980]). Otherwise, the motion must be denied, regardless of the sufficiency of the opposition. (*Winegrad*, 64 NY2d at 853).

An individual has no standing to seek recovery for injury sustained by a corporation.

(*Bizkal v Gramercy Capital Corp.*, 95 AD3d 469 [1st Dept 2012]; *Spear, Leeds & Kellogg v Bullseye Secs.*, 291 AD2d 255 [1st Dept 2002]).

This is true regardless of the level of the [individual]'s interest in the corporation: 'The fact that an individual closely affiliated with a corporation (for example, a principal shareholder, or even a sole shareholder) is incidentally injured by an injury to the corporation does not confer on the injured individual standing to sue on the basis of either that indirect injury or the direct injury to the corporation.'

(*MatlinPatterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]).

However, a shareholder may sue a third party if his or her injury results from the breach of a duty "owing to the shareholder from the wrongdoer, having its origin in circumstances independent of and extrinsic to the corporate entity." (*Id.*).

Accordingly, as plaintiff seeks damages sustained by Good Friends resulting from the execution of the July 1, 2010 and March 1, 2011 agreements, and absent any duty owed him by Murshed independent of his status as Good Friends's tenant, plaintiff lacks standing to prosecute the instant matter against Murshed. (*See Evangelista v Slatt*, 20 AD3d 349 [1st Dept 2005] [business owner lacks standing to assert claim for legal malpractice against attorneys who represented business]; *Rogers v Ciprian*, 26 AD3d 1 [1st Dept 2005] [sole owner of corporation lacks standing to assert claims for damages occasioned by delay in employee's hiring as damages sustained by corporation, not her]).

In light of this determination, the parties' remaining contentions need not be addressed.

IV. CONCLUSION

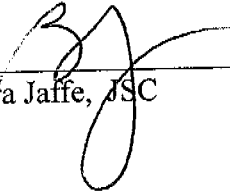
Accordingly, it is hereby

ORDERED, that plaintiff's motion for an order granting him summary judgment is

denied; and it is further

ORDERED, that defendant Murshed M. Ali's cross-motion for summary judgment is granted, and the complaint is hereby severed and dismissed as against him.

ENTER:



Barbara Jaffe, JSC

DATED: February 6, 2012
New York, New York

FILED
FEB 11 2013
COUNTY CLERK'S OFFICE
NEW YORK