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| Livathinos v Vaughan |
| 2014 NY Slip Op 30773(U) |
| March 27, 2014 |
| Supreme Court, New York County |
| Docket Number: 106791/2008 |
| Judge: Jeffrey K. Oing |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: JEFFREY K. OING
J.S.C. Justice

PART 48

Index Number : 106791/2008
LIVATHINOS, SPYRIDON
vs.
VAUGHAN, ROBERTA F.
SEQUENCE NUMBER : 011
PRECLUDE

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).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

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

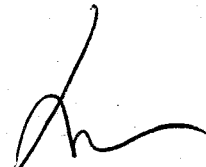
"This motion is decided in accordance with the annexed decision and order of the Court."

FILED

MAR 31 2014

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: 3/27/14



JEFFREY K. OING, J.S.C.

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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

-----x

SPYRIDON LIVATHINOS,

Plaintiff,

Index No.: 106791/2008

- against -

Mtn Seq. Nos. 011
012, 013 & 014

ROBERTA F. VAUGHAN, individually and as
President of TRINITY STEWART ASSOCIATES,
INC., 287 REALTY CORP., and JAMES S.
VAUGHAN,

DECISION AND ORDER

Defendants.

FILED

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MAR 31 2014

JEFFREY K. OING, J.:

NEW YORK
COUNTY CLERK'S OFFICE

In motion sequence no. 011, defendants, Roberta F. Vaughan, individually and as president of Trinity Stewart Associates, Inc. and 287 Realty Corp., move for an order precluding plaintiff's expert, Stanley H. Fein, from testifying at trial, or, in the alternative, for an order requiring plaintiff to supplement his response to defendants' demand for expert disclosure pursuant to CPLR 3101(d).

In motion sequence no. 012, plaintiff, Spyridon Livathinos, moves for an order: (1) dismissing defendants Roberta F. Vaughan, Trinity Stewart Associates, Inc., and 287 Realty Corp.'s affirmative defense of duress; (2) dismissing the 14th affirmative defense and first counterclaim for breach of the partnership agreement put forth by defendant Roberta Vaughan insomuch as it relates to periods of time which precede January 26, 2003; and (3) estopping defendants Roberta Vaughan and Trinity Stewart Associates from admitting to the existence of an

alleged agreement that defendant James S. Vaughan is a 50% owner of Trinity Stewart Associates and 8 Warren Street Realty Corp.

In motion sequence no. 013, plaintiff moves for an order granting him summary judgment dismissing all of the counterclaims interposed by defendant James Vaughan.

In motion sequence no. 014, defendants, Roberta Vaughan and Trinity Stewart Associates, move for an order granting them partial summary judgment dismissing plaintiff's claims with regard to 8-10 Warren Street.

All motions are hereby consolidated for disposition.

Factual Background

Plaintiff commenced the instant action against his long-time business partner defendant Roberta F. Vaughan and Trinity Stewart Associates ("Trinity"), the corporate entity that holds title to a certain condominium property located at 8-10 Warren Street, alleging that he is contractually entitled to 50% of the profits earned from the sale and/or rental of all condominium units in the property. As discussed in greater detail, infra, the property consists of two adjoining buildings located at 8 Warren Street and 10 Warren Street, respectively, that were renovated and converted into fourteen luxury condominiums. The condominium project will be jointly referred to as the Warren Street project.

Plaintiff's claim with respect to the Warren Street property is based primarily on a hand-written, one-sentence document dated

April 12, 2004 (the "April 2004 note") apparently signed by him and Roberta Vaughan, in which she agreed with regard to the Warren Street property that she had "no problem with a 50% split as long as the split comes after the investment is all paid back" Goldberg Affirm., Ex. 1 [emphasis in original]).

Roberta Vaughan is Trinity's president and, according to the Amended Complaint, "its sole or majority shareholder of record" (Amend. Compl., ¶ 5). Trinity owns the Warren Street property. Roberta Vaughan is also the president and "sole or majority shareholder" of defendant 287 Realty Corp. ("287 Realty") (Id., ¶ 8). 287 Realty owns certain real property located at 287-293 Bond Street in Brooklyn (the "Bond Street property").

Plaintiff and Roberta Vaughan's working relationship began sometime in 1994 when she retained plaintiff to perform construction work on property she owned at 8 Warren Street (Id., ¶¶ 13-14). Plaintiff alleges that after successfully completing a number of projects for her she approached him to form a business partnership to purchase the Bond Street property (Id., ¶ 16). According to plaintiff, the idea was to form a "perfect partnership" using Roberta Vaughan's "extensive business and finance background" and plaintiff's "formidable construction skills" (Id., ¶ 17).

Plaintiff claims that on or about July 1, 1995 he and Roberta Vaughan orally agreed to form a partnership in which they

would each have an equal 50% ownership interest in all of the partnership's businesses, corporations, and assets (Id., ¶ 18). On or about October 6, 1995, plaintiff and Roberta Vaughan jointly purchased the Bond Street property in the name of 287 Realty, a New York state corporation formed and controlled exclusively by Roberta Vaughan.

The following summer plaintiff and Roberta Vaughan entered into a written partnership agreement dated July 22, 1996 entitled, "Partnership Agreement Between Spyridon Livathinos & Roberta F. Vaughan Dated as of July 1, 1995 (Revised 7/22/96)" (the "partnership agreement"). This partnership agreement expressly provided that the two "bought 287 Bond Street together" and that "[e]ach partner owns half" (Stark Affirm., Ex. 5, p. 1). It stated that, "[a]s his 50% contribution, [plaintiff] contributed cash, all of his business equipment ... and his personal commitment of time and expertise in the construction business," and that it was "agreed that each party contributed equally to the purchase of the building" (Id.).

Under the partnership agreement, all revenue generated by plaintiff from a certain Port Authority Contract EWR-608, and any other revenue generated from private construction contracts would be directed to Top Line General Contracting Corp., another New York state corporation formed and controlled by Roberta Vaughan (Id., p. 2).

The partnership agreement also addressed the then-ongoing renovation of 8 Warren Street, providing that plaintiff will "use his best efforts to help manage the rehabilitation of 8 Warren Street" and that plaintiff's "compensation, if any, will be up to" defendant Roberta Vaughan (Id., p. 3). The agreement also stated that plaintiff's "interest" in the Warren Street property "will be defined under a separate agreement" (Id.).

Plaintiff claims that by way of additional inducement to perform work on the 8 Warren Street property Roberta Vaughan orally promised him a small weekly salary, and a one-half ownership interest in 8 Warren Street Realty Corp and the real property located at 8 Warren Street (Amend. Compl., ¶ 26). Plaintiff also claims that Roberta Vaughan drafted and signed a handwritten note stating, "I owe Spiro [plaintiff] one loft at 8 Warren Street" and gave this writing to him to secure his commitment to the 8 Warren Street project (Id., ¶ 27).

From 1996 through 2000, Roberta Vaughan paid plaintiff a small weekly salary and allegedly continued to represent to him that he was an equal 50% owner of 8 Warren Street Realty Corp. and 8 Warren Street (Id., ¶ 31). According to his amended complaint, during that time, plaintiff also successfully completed and performed a substantial number of other construction contracts and contributed a portion of the profits from these contracts to the 8 Warren Street project (Id., ¶32).

In or about 1998, plaintiff alleges that he successfully rehabilitated and divided the Bond Street property, thus allowing a portion thereof to be rented out for a profit to a third party (Id., ¶ 33). Plaintiff also claims that while he was entitled to keep 50% of the profits flowing from the Port Authority and other private construction contracts that he performed, as well the rental income generated by the Bond Street property, he "willingly surrendered the same" to the 8 Warren Street project and for the "continued maintenance of 287-293 Bond Street in reliance upon his agreements with Roberta Vaughan that he was an equal owner of the businesses and real properties" (Id., ¶ 35).

Sometime in November 2000, Roberta Vaughan allegedly caused Trinity to purchase real property at 10 Warren Street, the building which abutted 8 Warren Street (Id., ¶ 36). Plaintiff claims that at that time Roberta Vaughan proposed to him that, in addition to his ongoing work at 8 Warren Street, he undertake to perform and supervise a gut renovation of four existing units at 10 Warren Street from industrial lofts to luxury residential condominiums, join the two buildings, and perform and supervise the construction of five additional floors to be placed upon the newly joined structure thus creating a total of fourteen luxury apartments (Id., ¶ 37).

Purportedly to induce him to undertake such a large and time-consuming project, plaintiff claims that Roberta Vaughan

again orally promised him a small weekly salary and a one-half ownership interest in the newly expanded project, including Trinity and the real property located at Warren Street (Id., ¶ 39). To secure his commitment, plaintiff alleges Roberta Vaughan drafted, signed, and gave him another handwritten note that now stated, "I owe Spiro [plaintiff] two lofts at 8-10 Warren Street" (Id., ¶ 40).

According to plaintiff, from 2000 to 2004, Roberta Vaughan complied with this agreement, paying him a weekly salary and continuing to represent that they were equal partners in Trinity and the real property located at 8-10 Warren Street. Sometime in 2004, plaintiff claims he requested that this agreement be formalized by a writing. In response, plaintiff claims Roberta Vaughan provided him with the April 2004 note, supra.

According to the amended complaint, from 2004 to 2008, plaintiff continued to perform and supervise the rehabilitation, conversion and construction of 8-10 Warren Street, pursuant the parties' understanding (Amend. Compl., ¶ 49). In or about January of 2007, allegedly at Roberta Vaughan's request, plaintiff mortgaged his personal residence and turned over to her and Trinity \$275,000 in signed checks from his home equity line of credit, which he allowed defendants to use at their discretion for necessary construction expenses incurred by the Warren Street

project (Id., ¶ 50). Neither Roberta Vaughan nor Trinity executed any writing acknowledging receipt of said funds.

Construction on the Warren Street property was completed in May 2008, and the parties obtained a Temporary Certificate of Occupancy from the New York City Department of Buildings for thirteen of the fourteen condominium apartments. Ten of the fourteen apartments were sold for approximately \$26,395,000, with each apartment selling at a price equal to or higher than the corresponding price listed in the condominium offering plan.

After selling these units, however, Roberta Vaughan and Trinity refused to turn over to plaintiff any of the proceeds of these sales, to which he claims to be entitled. Plaintiff claims that after some negotiations to "determine the value" of his share the Warren Street project faltered, Roberta Vaughan removed the remaining four apartments from market, and she unilaterally appropriated one of the unsold apartments for herself and her husband (Id., ¶¶ 54-57). She allegedly continues to reside there with co-defendant James Vaughan (Id., ¶ 57). Two of the remaining units are presently being rented to third parties for a rental amount of close to \$30,000 a month (Id., ¶ 58). Plaintiff claims these two rental apartments have a combined sale value of \$5,800,000 (Id., ¶ 59). The remaining fourth apartment, unit "1E," which plaintiff estimates is worth \$6,000,000, remains unoccupied (Id., ¶ 60). Construction on apartment 1E has not been

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completed to date, and no Certificate of Occupancy for it appears to have been issued (§ 61).

According to the amended complaint, the profit on the Warren Street property, less the cost of acquisition and conversion, is approximately \$23 million.

Roberta Vaughan "terminated" and banned plaintiff from both the Bond Street and Warren Street properties as of November 2008. With regard to the April 2004 note she signed promising plaintiff one half of the net profits from the Warren Street property, Roberta Vaughan contends that she signed it under duress because plaintiff threatened to reveal their affair to her husband.

The Amended Complaint

Plaintiff alleges the following causes of action against Roberta Vaughan and Trinity: a constructive trust (first and second causes of action); breach of contract (third, fourth and fifth causes of action); breach of fiduciary duty against (sixth cause of action); fraud (seventh cause of action); fraudulent inducement (eighth cause of action); and unjust enrichment (ninth cause of action).

Against Roberta Vaughan and 287 Realty, plaintiff asserts claims for: a constructive trust (tenth and eleventh causes of action); breach of contract (twelfth cause of action); breach of fiduciary duty (thirteenth cause of action); fraud (fourteenth cause of action); fraudulent inducement (fifteenth cause of

action); fraudulent conveyance (sixteenth cause of action); and unjust enrichment (seventeenth cause of action).

Against Roberta Vaughan, Trinity and 287 Realty, plaintiff asserts a claim sounding in corporate waste (eighteenth cause of action). The nineteenth cause of action is asserted against both Vaughan defendants and Trinity, and is denominated as Abuse of Process. Against these same three defendants, plaintiff also asserts a claim for fraudulent conveyance (twenty-first cause of action). Lastly, against defendant James Vaughan only, plaintiff interposes a claim for tortious interference with a contractual relationship.

In her answer, Roberta Vaughan and Trinity interpose the following counterclaims against plaintiff: breach of partnership agreement (first counterclaim); breach of contract with Trinity to properly complete construction work on the Warren Street property (second and third counterclaim); and negligence based on same conduct (fourth counterclaim).

Defendant James Vaughan interposes the following counterclaims and cross claims: for a declaration that he is half owner of Trinity and Warren Street property (first cause of action); for a constructive trust (second cause of action); for tortious interference with contract against plaintiff (third cause of action); money owed (fourth cause of action); and an accounting (fifth cause of action).

Discussion

Motion Sequence No. 12

Plaintiff argues that Roberta Vaughan should be precluded from arguing that she was forced to sign the April 2004 note under duress because even assuming that were true she failed to repudiate this document in the four years following its execution and, therefore, ratified this agreement. Plaintiff contends that not only did Roberta Vaughan fail to repudiate the April 2004 note in a timely manner, but that she affirmatively ratified it by working with attorneys Paul Fink, Esq., and then later James Cullen, Esq., to negotiate a fuller, more formal agreement between the parties. Although this subsequent "formal" agreement was never finalized or executed, Fink testified at his EBT that Roberta Vaughan "acknowledged that she made this agreement, that she wrote it down, and there would be a 50/50 split after all of the return of investments" (Fink EBT, Goldberg Affirm., Ex. 2, pp. 28-29). Similarly, Cullen testified that Roberta Vaughan retained him to, in essence, "put flesh on the bones of this agreement" and that "[n]o one raised any question about [the writing's] authenticity" (Cullen EBT, Id., Ex. 4, pp. 55-56). When asked whether Roberta Vaughan ever expressed an intention not to be bound by the April 2004 note, Cullen said no (Id., p. 56). When asked if she had ever taken "the position that she had only authored that statement under emotional distress and as a

result of threats and a sexual affair that she was having with" plaintiff, Cullen again said no (Id., p. 57).

In opposition, Roberta Vaughan contends that she executed the April 2004 note only because plaintiff threatened to expose their long-term affair to her husband, defendant James Vaughan (an affair plaintiff vehemently denies ever taking place); that it was never meant to be a permanent agreement but, at most, a "temporary receipt" until the parties' attorneys could work out a written contract; and that no such contract was ever worked out (R. Vaughan Aff., ¶¶ 3-5).

Roberta Vaughan also argues this document was never intended to be a contractual obligation because, as plaintiff acknowledged at his EBT, the document was a "temporary receipt" until a lawyer could "finish it" (Def. Memo of Law, p. 5). To this end, defendants point to the fact that the April 2004 note sets forth no obligations of plaintiff and is, thus, lacking in consideration. Indeed, defendants point out that it does not contain any material terms of a partnership agreement for the joint development of a multimillion dollar condominium project.

A contract is voidable on the grounds of duress when it is established that the party claiming duress was forced to agree to the contract by means of a wrongful threat of irreparable harm that precluded that party from exercising its own free will (805 Third Ave. Co. v M.W. Realty Assocs., 58 NY2d 447 [1st Dept

1983)). Repudiation of an agreement on the ground that it was "procured by duress requires a showing of both a wrongful threat and the effect of precluding the exercise of free will" (In Re Guttenplan, 222 AD3d 255, 256 [1st Dept 1995]). Moreover, critically, an agreement procured under duress "must be promptly disaffirmed or otherwise be deemed to have been ratified" (Id., citing Kranitz v Tober Org., 181 AD2d 441 [1st Dept 1992]; Bethlehem Steel Corp. v Solow, 63 AD2d 611 [1st Dept 1978])

Here, Roberta Vaughan cannot assert duress as an affirmative defense because she did not timely repudiate the parties' agreement. Indeed, she did not once allege duress in the over four years following the agreement's execution. Nor can she claim that she failed to do so because the wrongful threat was "continuing" because, in fact, plaintiff continuously and independently reaffirmed the substance and validity of the agreement with her lawyer and took active steps to cement the bargain in a more detailed and integrated writing. Importantly, Roberta Vaughan never once raised the issue of her purported duress with her attorney during this entire period, a period in which she had ample access to counsel.

In any event, a threat to do that which one legally has the right to do does not generally constitute duress (Gerstein v 532 Broad Hollow Road Co., 75 AD2d 292 [1st Dept 1980]). Defendants do not cite a single case that holds that a threat to reveal an

affair constitutes a wrongful threat of irreparable harm such that it precludes a party from exercising his or her free will. This Court has not found any cases that contemplate such a broad basis for rescinding an otherwise validly signed contract, particularly in light of the number of years during which Roberta Vaughan failed to take any steps to disaffirm the agreement.

Accordingly, that branch of plaintiff's motion seeking to dismiss this affirmative defense is granted and it is dismissed.

Next, plaintiff seeks to dismiss Roberta Vaughan's fourteenth affirmative defense and first counterclaim which concerns the 1996 partnership agreement for which plaintiff seeks an accounting inasmuch as this counterclaim alleges debts incurred by plaintiff prior to January 26, 2003.

Defendants argue that because plaintiff seeks an accounting with respect to the partnership agreement, 287 Realty and the Bond Street property, he "cannot have it both ways" and a "full partnership accounting should cover the period 'up to and as of the date of the decree'" (Def. Memo in Opp., p. 9). Although plaintiff is correct that defendants' claim may otherwise be untimely, here it is asserted as an affirmative defense. CPLR 203(d) "allow[s] a defendant to assert an otherwise untimely claim which arose out of the same transaction alleged in the complaint, but only as a shield for recoupment purposes" (DeMille v DeMille, 5 AD3d 428, 429 [2nd Dept 2004]).

Accordingly, this claim is permitted to continue as an affirmative defense only. That branch of plaintiff's motion to dismiss is granted to the extent of dismissing the first counterclaim, and is otherwise denied as to the fourteenth affirmative defense.

That branch of plaintiff's motion to "estop" Roberta Vaughan from alleging in her answer that her husband is a 50% shareholder of Trinity is also denied. The Court cannot compel Roberta Vaughan to deny allegations in James Vaughan's complaint. Unsurprisingly, plaintiff offers no authority for seeking such relief.

Motion Sequence No. 014

Turning to defendant Roberta Vaughan's motion for partial summary dismissal of plaintiff's Warren Street claims, she argues that the April 2004 note is not an enforceable contract because it did not create any obligations on the part of plaintiff and was a conditional offer, at most. Plaintiff, however, contends that he performed substantial work and contributed financially to the Warren Street condominium conversion in reliance on her agreement to split the profits of the Warren Street project with him.

On a motion for summary judgment, it is not the function of the Court to determine issues, but only to determine if there are, in fact, issues (Sosnoff v Carter, 165 AD2d 486 [1st Dept

1991])). In making such a determination, the Court is obligated to make all reasonable inferences in favor of the party opposing summary judgment. Applying these principles here, and in light of the sharply conflicting claims and testimony, this matter clearly involves triable issues of fact as to whether there was, indeed, a binding contract with respect to the Warren Street property. Defendants do not argue that such an agreement would be legally required to take the form of a writing, thus whether the April 2004 note contains a conditional term is not dispositive. In the end, whether the parties formed such an agreement is an issue reserved for the trier of fact and cannot be properly determined on this motion.

Accordingly, that branch of defendant's motion for summary judgment seeking dismissal of the third cause of action for breach of the agreement to split profits on the Warren Street property 50/50 is denied.

Defendant Roberta Vaughan also seeks to dismiss plaintiff's first and second causes of action for a constructive trust with respect to the Warren Street property. A claim for constructive trust requires a confidential or fiduciary relationship, a promise, and a transfer in reliance on that promise (Leidel v Annicelli, 114 AD3d 536 [1st Dept 2014]). Contrary to defendant's arguments, factual issues remain as to whether plaintiff and Roberta Vaughan were partners and, thus, fiduciaries, whether she

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promised him an ownership interest in the Warren Street property, and whether plaintiff transferred profits from his construction work and his home equity line of credit towards the project.

Accordingly, that branch of defendant's motion for summary judgment dismissing the first and second causes of action is denied.

The third cause of action is for breach of the April 2004 note and, as discussed, supra, factual issues exist that preclude summary judgment. Accordingly, that branch of defendant's motion for summary judgment dismissing the third cause of action is denied.

The fourth cause of action is for breach of contract based on the "two Loft memo." As noted, supra, plaintiff alleges that Roberta Vaughan gave him a handwritten signed note stating "I owe Spiro two lofts at 8-10 Warren Street" (Amend. Compl., ¶ 95). Defendants argue that any claim based on this note is barred by the statute of frauds or by the statute of limitations.

Insofar as the statute of frauds requires that agreements concerning real property be in writing, the two lofts memo is sufficient to satisfy the statute. Regarding the statute of limitations, defendants argue that the claim is untimely because a "reasonable time" period for performance must be inferred. Given that this purported agreement came into existence sometime

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in 2000, defendants reason that the time to sue for breach of this promise has run (Def. Reply Memo, Mtn. Seq. 014, p. 15-16). Applying the six year statute of limitations governing breach of contract claims, the claim would have been untimely had plaintiff alleged it in his initial complaint filed in May of 2008; the claim is certainly untimely in 2013, when plaintiff raised it for the first time in his amended complaint.

Moreover, the claim is undermined by plaintiff's own allegations in his amended complaint, wherein plaintiff claims that the agreement was given to him only as proof that defendant Roberta Vaughan "fully intended to honor their agreement" of "one-half ownership interest" in the Warren street project, and not as any independent agreement (Amend. Compl., ¶¶ 39-40).

Accordingly, that branch of defendants' motion for summary judgment dismissing the fourth cause of action is granted, and it is dismissed as time-barred by the six year statute of limitations.

Plaintiff's fifth cause of action for breach of oral agreement and ninth cause of action for unjust enrichment may proceed as alternative theories of recovery given the parties' conflicting testimony. Accordingly, that branch of defendants' motion for summary judgment dismissing the fifth and ninth causes of action is denied.

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Plaintiffs seventh and eighth causes of action are for fraud. The record demonstrates that they are entirely duplicative of the contract claims. Accordingly, that branch of defendants' motion for summary judgment dismissing the seventh and eighth causes of action is granted, and they are dismissed.

Likewise, the nineteenth cause of action for "abuse of process" fails to state any claim on which relief may be granted, and it is dismissed.

Defendants do not seek summary judgment dismissing the remaining claims, including claims regarding the Bond Street property.

Motion Sequence No. 013

Plaintiff seeks summary judgment dismissing defendant James Vaughan's counterclaims. James Vaughan asserts five counterclaims: (1) for a declaration that he is the beneficial owner of at least 50% of the Trinity stock; (2) for a constructive trust of the Trinity shares; (3) for tortious interference with contract based on plaintiff's claim that he entered into an agreement with defendant Roberta Vaughan whereby he would be entitled to 50% of the profits from the Warren Street property; (4) for money due and owing based on a \$9.2 million loan to defendant Roberta Vaughan and Trinity, of which \$6.59 million has not been repaid; and (5) for an accounting of any sums paid to plaintiff by Trinity.

As noted, supra, the record demonstrates sharply conflicting testimony and claims, and, at times, contradictory statements by the parties themselves. Such conflicting testimony is to be resolved by a trier of fact, not by a court as a matter of law (e.g., Gray Line New York Tours, Inc. v Big Apple Moving & Storage, Inc., __ AD3d __, 2014 WL 1057315 [1st Dept 2014]). Notably, plaintiff advances many of the same arguments on this motion as advanced by Roberta Vaughan on her motion for summary judgment. Thus, with the exception of the claim for tortious interference with contract, plaintiff's motion is denied.

The claim for tortious interference with contract is based entirely on the fact that plaintiff claims an interest in the Warren Street property. A claim by one party that he has an interest in proceeds of a project does not state a claim for tortious interference with contract by another who also claims an interest in the same endeavor. Accordingly, that branch of plaintiff's motion for summary judgment dismissing the third counterclaim is granted, and it is dismissed.

Motion Sequence No. 011

Defendant Roberta Vaughan seeks to preclude the testimony of plaintiff's expert, Stanley Fein, by arguing that Fein's expert disclosure statement does not set forth in sufficient detail the substance of his opinion. A review of the present statement demonstrates that it fails to provide "in reasonable detail ...

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the substance of the facts and opinions" Fein is expected to testify to at trial. Defendants are entitled to know the basis of Fein's stated conclusions (CPLR 3101[d]). The motion is granted and Fein is precluded from testifying unless within 45 days after service of a copy of this order with notice of entry plaintiff provides defendant with a supplemental expert disclosure statement setting forth the requested information.

Accordingly, it is

ORDERED that motion sequence no. 011 is granted and plaintiff's expert, Stanley Fein, is precluded from testifying unless within 45 days after service of a copy of this order with notice of entry plaintiff provides defendant with a supplemental expert disclosure statement setting forth the requested information; and it is further

ORDERED that the branch of motion sequence no. 012 is granted in part to the extent of dismissing the first counterclaim and the affirmative defense of duress, and is denied as to the fourteenth affirmative defense; and it is further

ORDERED that the branch of motion sequence no. 013 is granted in part to the extent of dismissing defendant James Vaughan's third counterclaim, and is denied as to the remaining counterclaims; and it is further

ORDERED that the branch of motion sequence no. 014 is granted in part to the extent of dismissing plaintiff's fourth,

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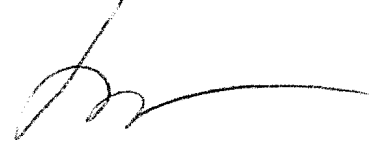
seventh, eighth, and nineteenth causes of action, and is denied as to the remaining causes of action; and it is further

ORDERED that plaintiff serve a copy of this order with notice of entry upon counsel for defendant and upon the Clerk of the Trial Support Office, and shall serve and file with said Clerk a note of issue and statement of readiness, and shall pay any appropriate fee therefor, and said Clerk is respectfully directed to place this matter on the Part 40 calendar for such trial.

This constitutes the decision and order of the Court.

Dated:

3/27/14


HON. JEFFREY K. OING, J.S.C.

FILED

MAR 31 2014

NEW YORK
COUNTY CLERKS OFFICE