

City of New York v Vaknin

2014 NY Slip Op 31499(U)

June 10, 2014

Sup Ct, NY County

Docket Number: 450773/2013

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
THE CITY OF NEW YORK,

Petitioner,

-against-

ALON VAKNIN,

Respondent,
-----X

Index No. 450773/2013

DECISION/ORDER

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	4

Petitioner the City Of New York (the “City”) commenced the instant proceeding pursuant to CPLR §§ 5225, 5227 and N.Y.C. Admin Code § 11-2510(a) seeking a judgment against respondent Alon Vaknin (“Vaknin”) for allegedly unpaid hotel tax assessments. For the reasons set forth below, the petition is granted.

The relevant facts are as follows. Respondent Vaknin is the managing member and officer of Signature Property’s N.Y., LLC (“Signature”), a hotel company that allegedly specializes in short-term stay apartment suits in New York City. In 2004, Signature registered as a hotel operator with the New York City Department of Finance (“DOF”) and began filing hotel tax returns, which it continued to file through 2010. During this time, Signature was the subject

of two hotel tax audits by DOF that yielded assessments of unpaid hotel taxes for the years 2004 through 2010. Signature allegedly failed to pay any of the amounts assessed under these audits and on or about December 21, 2012, DOF issued tax warrants for the unpaid taxes. Specifically, DOF issued tax warrants against Signature totaling \$655,354.29. These tax warrants were subsequently duly docketed with the County Clerk for the County of New York and have yet to be satisfied.

In a turn-over proceeding, such as this, the court, “will apply summary judgment analysis and, absent a factual issue requiring a trial, the matter will be summarily determined on the papers presented.” *Matter of Centerpointe Corporate Park Partnership 350 v. MONY*, 96 A.D.3d 1401, 1402 (1st Dept 2012). Thus, where the petitioner makes a prima facie showing of entitlement to judgment, the burden shifts to the respondent to raise a triable issue of fact in opposition. *See id.*; *see also Matter of TNT Petroleum, Inc. v. Sea Petroleum, Inc.*, 72 A.D.3d 694 (2nd Dept 2010).

In the instant proceeding, petitioner has established its prima facie entitlement to judgment as matter law against respondent for the unpaid tax assessments and respondent has failed to raise an issue of fact. Under New York City Administrative Code § 11-2502, a tax is imposed for every “occupancy of each room in a hotel in the city of New York.” The occupant of a hotel room pays the hotel tax as part of his or her room bill to the hotel’s “operator,” which is defined as “[a]ny person operating a hotel in the city of New York.” N.Y.C. Admin. Code §§ 11-2501(2) and 11-2502(f). The tax is “paid by the occupant to the operator as trustee for and on account of the city, and the operator shall be liable for the collection . . . and for the payment of the tax.” *Id.* at § 11-2502(f)(1). Further, the hotel “operator or room remarketer and *any officer*

of any corporate operator” is personally liable for the tax. *Id.* at § 11-2502(f)(2) (emphasis added). Thus, when a corporate hotel operator fails to pay the hotel tax, the City, through its Corporation Counsel, may file an action against the operator or any of its officers. *Id.* at § 11-2510(a).

Here, petitioner has established its prima facie right judgment against respondent under N.Y.C. Admin. Code § 11-2502 on the ground that respondent is an officer of Signature. As an initial matter, the petition and annexed exhibits demonstrate that Signature is a corporate hotel “operator” as defined above and currently owes a total amount of \$655,354.29 in unpaid hotel tax, penalties and interest. Further, the petition sets forth that respondent is the owner and officer of Signature.

In response, respondent has failed to raise an issue of fact. In his answer, respondent offers only “general denials” and fails to dispute any essential fact giving rise to his liability under N.Y.C. Admin. Code § 11-2502. As an initial matter, respondent presents no evidence to dispute that Signature is a corporate hotel “operator” under § 11-2502 or to challenge the amount of tax assessments due thereunder. Moreover, respondent admits that he “owns and is the sole officer of Signature.” Additionally, while respondent’s answer contains six affirmative defenses, they are nothing more than bare legal conclusions bereft of any legal or factual support. Thus, they are insufficient to raise an issue of fact.

To the extent that respondent attempted to file an amended answer after petitioner submitted its reply papers, such answer was not considered by this court as it was procedurally improper. In any event, the court notes that even if it had considered such amended answer, it still would not have changed the court’s final determination.

