

Flowers v 73rd Townhouse LLC
2015 NY Slip Op 32992(U)
March 30, 2015
Supreme Court, New York County
Docket Number: Index No. 651036/2010
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

J. CHRISTOPHER FLOWERS,

INDEX NO. 651036/2010

- v -

MOTION DATE 12/4/14

73rd TOWNHOUSE LLC, 73rd TOWNHOUSE MEMBER LLC, 73rd KR LLC, JAMES K. RINZLER, BENJAMIN S. RINZLER, BRADLEY T. RINZLER, THE ESTATE OF MILTON S. RINZLER, JAMES K. RINZLER, BENJAMIN S. RINZLER, BRADLEY T. RINZLER, ROBERTA K. RINZLER, AS EXECUTORS OF THE ESTATE OF MILTON S. RINZLER, MILTON S. RINZLER, THE RINZLER FAMILY LIMITED PARTNERSHIP, DOMINION PROPERTY GROUP, LLC, DOMINION MANAGEMENT COMPANY LLC, DOMINION FINANCIAL CORPORATION, DANIEL KINGSFORD, JUDITH KINGSFORD

MOTION SEQ. NO. 004

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

The following papers, numbered 1 to 3, were read on the plaintiff's motion to compel discovery.

Table with 2 columns: Document type and No(s). Rows include Notice of Motion/ Order to Show Cause, Answering Affirmation(s), and Replying Affirmation.

The plaintiff's motion to compel discovery is decided in accordance with the attached memorandum decision.

Dated: March 30, 2015

Handwritten signature of Nancy M. Bannon, JSC

HON. NANCY M. BANNON

- 1. Check one: CASE DISPOSED or NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. Check as appropriate: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - PART 42**

-----x
J. CHRISTOPHER FLOWERS,

Plaintiff

DECISION AND ORDER

-against-

INDEX NO.: 651036/2010

**73rd TOWNHOUSE LLC, 73rd TOWNHOUSE
MEMBER LLC, 73rd KR LLC, JAMES K. RINZLER,
BENJAMIN S. RINZLER, BRADLEY T. RINZLER, THE
ESTATE OF MILTON S. RINZLER, JAMES K. RINZLER,
BENJAMIN S. RINZLER, BRADLEY T. RINZLER,
ROBERTA K. RINZLER, AS EXECUTORS OF THE
ESTATE OF MILTON S. RINZLER, MILTON S. RINZLER,
THE RINZLER FAMILY LIMITED PARTNERSHIP,
DOMINION PROPERTY GROUP, LLC, DOMINION
MANAGEMENT COMPANY LLC, DOMINION FINANCIAL
CORPORATION, DANIEL KINGSFORD, JUDITH KINGSFORD,**

Defendants

-----x
NANCY M. BANNON, J.

In this action to recover damages for, *inter alia*, fraudulent conveyance, fraud, unjust enrichment, and civil conspiracy, the plaintiff moves pursuant to CPLR 3124 to compel the defendants to produce certain documents requested in the course of discovery. For the reasons set forth below, the motion is granted in part.

In a prior action by the plaintiff against defendant 73rd Townhouse LLC, this court (Solomon, J.) granted summary judgment in the plaintiff's favor on October 12, 2006, ordering specific performance by the defendant under the parties' contract of sale of certain real property. The court did not grant an abatement in the purchase price, as sought by the plaintiff. On May 13, 2008, the Appellate Division, First Department modified the order to the extent that the matter was remanded for a hearing on the issue of the amount of price abatement due to the plaintiff. The October 2006 order was otherwise affirmed. Thereafter, on March 24, 2009, the parties entered into a consent judgment, whereby the defendant agreed to pay \$500,000 to the plaintiff to settle the abatement claim.

The plaintiff commenced this action on July 20, 2010, alleging that, in early 2007, in an effort to circumvent the October 2006 order, 73rd Townhouse LLC's remaining assets were transferred to the defendants in this action without fair consideration, rendering defendant 73rd Townhouse LLC insolvent, or very near to. The plaintiff alleges that the defendants concealed such transfers and misrepresented defendant 73rd Townhouse LLC's ability to pay the sum agreed to in the 2009 consent judgment. The defendants acknowledge the 2007 transfers, but contend that they were valid distributions to the beneficial equity owners of defendant 73rd Townhouse LLC.

The plaintiff brings the instant motion seeking disclosure of, *inter alia*: (1) the financial records of 73rd Townhouse LLC, 73rd Townhouse Member LLC, and 73rd KR LLC (hereinafter the "73rd Townhouse entities"); (2) any documents showing "the movement of money or the existence of any capital contribution, loan, credit, debt or other liability" between the defendants relating to the renovation of the real property at issue in the prior action; (3) all federal tax returns for the 73rd Townhouse entities; (4) all federal or state tax returns for the individual defendants and the Rinzler Family Partnership insofar as they reflect income, loss, etc. relating to the renovation project; (5) copies of all checks and bank statements relating to the renovation from Milton S. Rinzler's attorney trust account; (6) documents evidencing any payment by defendants Daniel and Judith Kingsford to any other defendant relating to the renovation; and (7) all documents relating to the renovation project that the defendants provided to their accountants for the purposes of preparing their tax returns. In the event that any such documents do not exist, the plaintiff further seeks certification that they do not exist or never existed.

In support of his motion, the plaintiff notes that the defendants have not produced any type of balance sheet, general ledger, cash flow statement, or other basic financial records for the 73rd Townhouse entities. The plaintiff argues that such financial records should demonstrate the recipients of the proceeds of the sale of the real property, the reasons for such transfers, and whether 73rd Townhouse LLC was insolvent or undercapitalized. The plaintiff further argues that he must establish whether the 2007 transfers were loan payments or gifts, as he contends, or distributions returning capital or profit, as the defendants contend. To that end, the plaintiff seeks "[a]ll documents evidencing the movement of money or the existence of any capital contribution, loan, credit, debt, or other liability among [the defendants] relating to the 73rd Street townhouse renovation project," as well as income tax returns for certain defendants and copies of checks and bank statements from the attorney trust account. The plaintiff argues that because some of the fraudulent conveyances at issue passed through Milton S. Rinzler's attorney trust account, and because the account was used in the purchase of and for other matters relating to the real property, he is entitled to discovery of any checks and bank

statements from the account relating to the renovation project. The plaintiff seeks evidence of any payments by Daniel or Judith Kingsford to any other defendant relating to the renovation, in particular a copy of a July 2007 check from Daniel Kingsford, because the plaintiff contends that the check refutes the defendants' statute of limitations defense. The plaintiff argues that documents provided by the defendants to their accountants for the purposes of preparing their tax returns are necessary to prepare for the depositions of the defendants' accountants, who have already been subpoenaed.

In opposition, the defendants argue that they have fully complied with the plaintiff's requests. The defendants state that they have "produced a considerable volume of documents" and that the plaintiff already possesses "all documents concerning distributions and payments in 2007." The defendants argue that the plaintiff's requests in this motion improperly expand the scope of discovery to include matters predating the closing and categories of documents not previously requested. However, the defendants do not specify which requests or which components of the plaintiff's requests they have already complied with or consider to be new or overbroad.

CPLR 3101(a) provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." CPLR 3101(a); see Anonymous v High School for Environmental Studies, 32 AD3d 353, 358 (1st Dept. 2006). This language is to be "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." Oowski v AMEC Construction Management, Inc., 69 AD3d 99, 106 (1st Dept. 2009), quoting Allen v Crowell-Collier Publishing Co., 21 NY2d 403, 406-407 (1968). However, unlimited disclosure is not required. See Jet One Group, Inc. v Halcyon Jet Holdings, Inc., 111 AD3d 890 (2nd Dept. 2013). The appropriate test is one of "usefulness and reason." Allen v Crowell-Collier Publishing, supra at 406. "The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court." Montalvo v CVS Pharmacy, Inc., 102 AD3d 842, 843 (2nd Dept. 2013).

Here, the plaintiff has established that disclosure of basic financial records of the 73rd Townhouse entities is warranted. The plaintiff alleges that, after the October 2006 judgment and both parties had filed appeals in the prior action, the defendants fraudulently conveyed 73rd Townhouse LLC's assets in 2007 and subsequently misrepresented its financial solvency in 2008 after the Appellate Division, First Department's decision and in reaching a settlement of the price abatement claim in 2009. The plaintiff's second amended complaint asserts eight causes of action for fraudulent conveyance under, *inter alia*, Debtor and Creditor Law §§ 273, 274, and 275, which each require a showing of the defendants' solvency, reasonableness of

amount of capital, or ability to pay debts. Basic financial records of the 73rd Townhouse entities for the years 2007, 2008, and 2009 are, therefore, material and necessary to the plaintiff's case. Accordingly, the branch of the plaintiff's motion seeking documents constituting the basic financial records of the 73rd Townhouse entities is granted to the extent that the defendants are directed to provide such documentation for the years 2007, 2008, and 2009 within 45 days of the date of this order. To the extent that such documents do not exist or never existed, the defendants shall so certify, in accordance with the parties' September 11, 2013 stipulation.

The court notes that, regarding the plaintiff's request for an order directing the defendants to provide "[a]ll documents evidencing the movement of money or the existence of any capital contribution, loan, credit, debt, or other liability among [the defendants] relating to the 73rd Street townhouse renovation project," as well as documents evidencing payments by Daniel or Judith Kingsford relating to the renovation, the defendants have provided, *inter alia*, a transactional summary for the renovation project; a loan schedule; the 2007 tax returns for 73rd Townhouse Member LLC and 73rd KR LLC; the 2007 trial balance worksheet, general ledger, and adjusting journal entries for 73rd Townhouse Member LLC; the operating agreements for the 73rd Townhouse entities; a loan agreement; and copies of checks reflecting transfers in 2007, over the course of discovery in this case. Accordingly, to the extent that there is any outstanding documentation as to 2(a) and (b) of the parties' September 11, 2013 stipulation, i.e. those reflecting any loans or repayment of loans, contributions, or other payments involving any of the defendants in relation to the property, the defendants are directed to provide such documentation within 45 days of the date of this order. To the extent that such documents do not exist or never existed, the defendants shall so certify, in accordance with the parties' September 11, 2013 stipulation.

"It is well settled that tax returns are generally not discoverable in the absence of a strong showing that the information is indispensable to the claim and cannot be obtained from other sources." Altidor v State-Wide Insurance Co., 22 AD3d 435, 435 (2nd Dept. 2005) [internal quotation marks omitted]; see CDR Creances S.A.S. v Cohen, 77 AD3d 489 (1st Dept. 2010); Four Aces Jewelry Corp. v Smith, 256 AD2d 42 (1st Dept. 1998); Matthews Industrial Piping Co. v Mobil Oil Corp., 114 AD2d 772 (1st Dept. 1985). The moving party must demonstrate a "strong showing of overriding necessity" to overcome the confidentiality of such information." Editel, New York v Liberty Studios, Inc., 162 AD2d 345 (1st Dept. 1990).

Here, for the purpose of ascertaining any capital contributions or distributions, plaintiff seeks copies of all federal tax returns for the 73rd Townhouse entities and all federal or state tax returns for the individual defendants insofar as they relate to the renovation project. The plaintiff further seeks all documents provided by all the defendants to their accountants for the

purposes of preparing their federal or state tax returns, to the extent they relate to the renovation project. However, the plaintiff has not made the requisite showing of overriding necessity for the tax returns of the 73rd Townhouse entities and all individual defendants and the Rinzler Family Partnership, nor the unavailability of the information from other sources at this juncture. See CDR Creances S.A.S. v Cohen, 77 AD3d 489; Four Aces Jewelry Corp. v Smith, 256 AD2d 42. Similarly, the plaintiff has not shown an overriding necessity to overcome the confidentiality of documents provided to the defendants' accountants for the purposes of preparing their tax returns. See Editel, New York v Liberty Studios, Inc., 162 AD2d 345. Accordingly, the branches of the plaintiff's motion seeking to compel the production of tax returns and any documents provided to the defendants' accountants for the preparation of their tax returns are denied without prejudice.

The plaintiff's demand for "[a]ll checks or bank statements evidencing the movement of funds" through a certain bank account held by Milton Rinzler as an attorney trust account, which relate to the renovation is improper. The plaintiff cites no authority to suggest that copies of bank statements of an attorney's IOLA account are discoverable. The plaintiff, further, has failed to demonstrate that copies of any checks or bank statements from this account not already in his possession are material and necessary to the prosecution of this action. See CPLR 3101(a). Accordingly, the branch of the plaintiff's motion seeking to compel the production of checks or bank statements from Milton Rinzler's attorney trust account is denied.

The parties' remaining contentions are without merit.

Accordingly, it is

ORDERED that the branch of the plaintiff's motion to compel production of documents constituting the basic financial records of the 73rd Townhouse entities is granted to the extent that the defendants are directed to provide such documentation for the years 2007, 2008, and 2009 within 45 days of the date of this order and, to the extent that such documents do not exist or never existed, the defendants shall so certify, in accordance with the parties' September 11, 2013 stipulation, and it is further,

ORDERED that those branches of the plaintiff's motion to compel production of "[a]ll documents evidencing the movement of money or the existence of any capital contribution, loan, credit, debt, or other liability among [the defendants] relating to the 73rd Street townhouse renovation project" and "[a]ll documents evidencing any payment by Daniel or Judith Kingsford to any other Defendant relating to the 73rd Street townhouse renovation project" are granted to the extent that if any documentation as to 2(a) and (b) of the parties' September 11, 2013

stipulation is outstanding, the defendants are directed to provide such documentation within 45 days of the date of this order and, to the extent that such documents do not exist or never existed, the defendants shall so certify, in accordance with the parties' September 11, 2013 stipulation, and it is further,

ORDERED that the branches of the plaintiff's motion seeking to compel the production of tax returns and any documents provided to the defendants' accountants in connection with the preparation of their tax returns are denied without prejudice, and it is further,

ORDERED that the branch of the plaintiff's motion to compel production of all checks and bank statements relating to the renovation from Milton S. Rinzler's attorney trust account is denied, and it is further,

ORDERED that the parties shall appear for a compliance conference on June 11, 2015 at 9:30am, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: March 30, 2015


_____, JSC
HON. NANCY M. BANNON