

U-Trend New York Inv. L.P. v US Suite LLC
2016 NY Slip Op 30968(U)
May 25, 2016
Supreme Court, New York County
Docket Number: 652082/2014
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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U-TREND NEW YORK INVESTMENT L.P.,
individually and Derivatively on Behalf
of Nominal Defendant Hospitality Suite
International, S.A. and its
wholly-owned subsidiary US Suite Corp.,

Plaintiff,
-against-

Index No.
652082/2014

US SUITE LLC, AURA INVESTMENTS LTD.
and 440 WEST 41ST LLC,

Defendants,
and

HOSPITALITY SUITE INTERNATIONAL, S.A.
and US SUITE CORP.,

Nominal Defendants.

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Hon. C.E. Ramos, J.S.C.

The defendants 440 West 41st LLC (440) and Aura Investments Ltd., (Aura) move for re-argument of this Court's decision dated April 16, 2016. The plaintiff U-Trend New York International, L.P., cross-moves for an undertaking pursuant to CPLR 5519 (a) (2).

The claims and cross-claims being asserted in this action and in separate somewhat parallel proceedings in the State of Israel, relate to a parcel of commercial real estate in New York County. The parties promoted and contributed to the financing, ownership and management of the subject property.

Pursuant to a settlement, the property was sold and the net

proceeds placed in escrow. This Court entered an order dated February 23, 2015 that provided that this Court would adjudicate the parties' rights and entitlements with respect to the net sale proceeds of the subject property and that this Court would maintain jurisdiction to adjudicate any disputes relating to that distribution of the proceeds (NYSCF Doc. No. 476-77). The position now asserted by 440 that the process set forth in that order (which was subsequently followed) was somehow improper, was waived when 440 (and all other parties) failed to appeal that order.

Subsequently, and in order to adjudicate the distribution of the sale proceeds, this Court directed the parties to submit statements of claims setting forth their positions regarding the distribution of the sales proceeds according to the applicable agreements, notwithstanding their assertion of claims, counterclaims and cross-claims in their respective pleadings. Although only the plaintiff did so, this Court nevertheless considered all parties positions as they were set forth in the plaintiff's subsequent motion for distribution and summary judgement and the opposition thereof. (Motion Seq. No. 018 and 026).

At the urging of counsel for 440 on this motion, this Court re-examined the affidavit of its principal, Ben Suky, in order to determine if 440's entitlement to any of the sale proceeds had been overlooked. This Court has found none. In addition, at the

urging of counsel for Aura, this Court has reviewed the court transcript of December 22, 2015 with regard to staying certain portions of the distribution of the proceeds. This Court concluded in its prior decision and does so now, that all the questions regarding distribution pursuant to the so-called "waterfall" as is set forth in the Operating Agreement have been resolved. There are no other issues to be decided with regard to the distribution, and thus the distribution need not be delayed any further.

This Court has also reviewed, in detail, the basis for this Court's calculation of the interest portion of the award at issue, and has yet again determined that our calculations were supported by the preponderance of the credible evidence submitted on the prior motion. The only other claimant, Aura, argued that its mathematical calculations showed inconsistencies. In fact, the mathematical calculations urged by Aura's counsel are mere speculation, with no basis in the record, against which this Court has relied on financial statements already certified as correct by the principals of both Aura and 440.

In any event, in light of the parallel proceedings in Israel, in addition to the unadjudicated claims, cross-claims and counter-claims, this Court is confident that the litigation between these parties is far from over.

Accordingly, this Court grants re-argument to the extent herein and upon reargument adheres to its prior determination.

In the event the defendants desire that a portion of the distribution be stayed pending a determination of the cross-claims and counterclaims, they may move for the appropriate relief, if so advised.

The cross motion for an undertaking was denied on the record.

Settle order on notice, which order shall provide for a five day stay pending an application before the Appellate Division.

Dated: May 25, 2016

A handwritten signature in black ink, appearing to be 'C. Ramos', is written over a horizontal line.

J.S.C.

CHARLES E. RAMOS