

Cornwall Mgt. Ltd. v Kambolin
2016 NY Slip Op 31245(U)
February 1, 2016
Supreme Court, New York County
Docket Number: 653675/2013
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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CORNWALL MANAGEMENT LTD and
OLEG SOLOVIEV,

Plaintiffs,

DECISION AND
ORDER

-against-

Index No.
653675/2013

PETER KAMBOLIN, OLEG BATRATCHENKO,
ABRAHAM BENNUN, THOR UNITED CORP.
(a/k/a CONSOLIDATED OPTIMAL CORP.),
ATLANT CAPITAL HOLDINGS, LLC, THOR REAL
ESTATE MASTER FUND, LTD., and NORTH 3RD
DEVELOPMENT, LLC,

Defendants.

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HON. ANIL C. SINGH, J.:

Defendants Atlant Capital Holdings, LLC (“Atlant”) and Peter Kambolin (“Kambolin”) (collectively, the “Atlant defendants”), move for an order pursuant to CPLR 3124, compelling plaintiffs to produce documents responsive to Request Nos. 1-4, 21, 22, 24, 32, 50-52, 54 and 55 in the Atlant defendants First Request for the Production of Documents. Plaintiffs oppose the motion.

Plaintiffs commenced the instant action alleging that defendants are alter egos of one another, and that the individual defendants dominated the various corporate entities, and used those corporations to perpetrate a fraud.

On May 28, 2012, judgment was entered in Moscow against Thor United in favor of Cornwall, and on April 19, 2012, judgment was similarly entered in Moscow against Thor United in favor of Mr. Soloviev. On April 24, 2013, the Cornwall judgment was domesticated in the United States District Court for the Southern District of New York for \$2,026,289.21. On April 15, 2013, the judgment in favor of Mr. Soloviev was domesticated in the United States District Court for the Southern District of New York for \$1,421,336.78.

Plaintiffs allege several corporate inter-connections between the individual defendants, Mr. Bennun, Mr. Kambolin, and Mr. Batratchenko.

Plaintiffs' suit on judgment pursuant to the alter ego and veil piercing doctrines, seeks to hold Mr. Bennun and North 3rd Development, LLC liable for the judgments rendered in Russia against Thor United and related entities.

Defendants North 3rd Development, LLC and Abraham Bennun (collectively, the "N3D defendants") moved to compel plaintiffs to produce documents and interrogatory concerning Cornwall, the Thor loans, the Russian actions, and the Williamsburg property (which plaintiffs contend was to serve as the source for repayment of the Thor loans).

On May 8, 2015, this Court granted the N3D defendants motion to compel, and ordered plaintiffs to produce documents and respond to interrogatories by

June 26, 2015 (the “May 8 Order”). When plaintiffs failed to do so, the Atlant defendants wrote to the Court and asked that the Court direct plaintiffs to comply with the May 8 Order.

A status conference was held on July 23, 2015. At that time, the Court stated that the Atlant defendants did not have standing to enforce the May 8 Order, and granted the Atlant defendants permission to move to compel the information to the extent such documents and responses were sought in the Atlant defendants’ document requests.

The Atlant defendants assert that they are seeking to compel production of documents which parallel the requests that the N3D defendants sought to compel.

Discussion

The doctrine of law of the case precludes parties or their privies from relitigating an issue that has already been decided (Chanice v. Federal Exp. Corp., 118 A.D.3d 634, 635 [1st Dept., 2014]).

For example, in Kimmel v. State of New York, 261 A.D.2d 843 [4th Dept., 1999], plaintiffs contended that prior orders in the case, none appealed by defendants, constituted law of the case and precluded defendants from relitigating the issues of document discovery and the location of depositions. The Fourth Department held that the prior orders constituted the law of the case concerning

the proper scope of discovery (Kimmel, 261 A.D.2d 844). (see also, for example, Andrea v. du Pont de Nemours & Co., 289 A.D.2d 1039 [4th Dept., 2001]; Leventritt v. Eckstein, 206 A.D.2d 313 [1st Dept., 1994]; and Holloway v. Cha Cha Laundry, 97 A.D.2d 385 [1st Dept., 1983]).

Here, the Atlant defendants are seeking the production of very same documents that this Court found material and necessary, and required to be produced in the May 8 Order. Accordingly, the Court finds that the doctrine of the law of the case requires production of the information sought by the Atlant defendants.

Accordingly, it is

ORDERED that defendants Atlant Capital Holdings, LLC's and Peter Kambolin's motion to compel is granted; and it is further

ORDERED that plaintiffs shall produce to defendants on or before March 2, 2016, documents responsive to Request Nos. 1-4, 21, 22, 24, 32, 50-52, 54 and 55 in the Atlant defendants First Request for the Production of Documents.

The foregoing constitutes the decision and order of the court.

Date: 2/1/16
New York, New York


Anil C. Singh