

**10-18 Church Ave. Holdings, Inc. v Rand**

2016 NY Slip Op 31600(U)

August 19, 2016

Supreme Court, Kings County

Docket Number: 508100/2014

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 19<sup>th</sup> day of August, 2016.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

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10-18 CHURCH AVENUE HOLDINGS, INC.,

Plaintiff,

- against -

MARNIN RAND, ALON RAND, TAMMAR SILBER RAND,  
HOME ADVANTAGE PLUS, LLC, and MAG FINANCIAL,

Defendants.

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DECISION AND ORDER

Index No. 508100/14

Mot. Seq. #5

The following e-filed papers read herein:

NYSCEF #:

Order to Show Cause, Affirmation, Memorandum of Law,  
Exhibits Annexed \_\_\_\_\_

69-75, 76

Affirmation in Opposition and Exhibit Annexed \_\_\_\_\_

80-81

In this action to collect on a loan, defendant Alon Rand (Alon) moves for leave to renew his motion and, in effect, the motion of his co-defendants, Marnin Rand and Tammar Silber Rand (collectively with Alon, the Rands), which, sought an order, pursuant to, inter alia, CPLR 3211 (a) (8), dismissing the complaint against him for lack of personal jurisdiction (the prior motions), and, upon granting such leave, for an order dismissing the complaint as against him. By short-form order, dated June 10, 2015 (the first prior order), the Court denied the prior motions without prejudice to the Rands' right to move for summary judgment under CPLR 3212. As the Court noted in the first prior order, the record on the prior motions revealed questions of fact pertaining to the extent of business transacted

by the Rands within the State of New York regarding the two alleged agreements: (1) an agreement to borrow money, secured by a mortgage on the plaintiff's property, from Broadway National Bank (hereafter, the BNB loan) with the proceeds to be used, in part, to benefit the Rands; and (2) an agreement by the Rands and the Rand-controlled entities, which are also the defendants herein, to repay the plaintiff that portion of the BNB loan that was disbursed for their benefit.

Alon thereafter moved for leave to reargue and renew the prior motions. By decision and order, dated Dec. 14, 2015 (hereafter, the second prior order), the Court denied Alon leave to reargue but granted him leave to renew. Upon renewal, the Court concluded that the first prior order properly denied the prior motions without prejudice to the Rands' right to move for summary judgment under CPLR 3212.

Alon now moves once again for, inter alia, leave to renew the prior motions based on newly discovered evidence in the form of a May 11, 2004 instruction signed by Samuel Boussi, the plaintiff's principal, and co-signed by one Bryan Lindsey, Esq., who is denominated in the instruction as the attorney for the borrower-plaintiff. The instruction reads, in relevant part, that:

“Borrower [- plaintiff] requests that the net proceeds of the [BNB] loan [in question] . . . be made payable to my attorney Bryan Lindsey Attorney Trust Account.”

\* 3]

According to Alon, this instruction conclusively refutes Mr. Boussi's affidavit, dated May 5, 2015, which was submitted in opposition to Alon's initial motion for leave to reargue and renew. There, Mr. Boussi averred that:

"Mr. Lindsay was the (Rand) Defendants' lawyer, not mine, but they told me that he was going to close the (BNB) loan. He was acting not under my instructions, but under the instructions of the (Rand) Defendants."

The Court grants Alon leave to renew, based on his counsel's representation, unrefuted by the plaintiff, that he was not provided with a copy of the instruction in discovery until after the Court issued its second prior order. Upon renewal, however, the Court adheres to its original determination as reflected in the first and second prior orders. The instruction merely reaffirms the existence of a credibility issue -- as was previously noted in the second prior order -- as for whose benefit Mr. Lindsay appeared at the closing for the BNB loan. In this regard, the plaintiff correctly points out in its opposition papers:

"the fact that Mr. Lindsay closed the BNB Loan for Plaintiff as *nominal borrower* does not in any way detract from Plaintiff's argument that Mr. Lindsay's *true purpose* in attending the closing was to collect all of the net proceeds of the BNB Loan, \$407,000, *on behalf of the Defendants*."

(Heller Aff., ¶ 7 [emphasis added]).

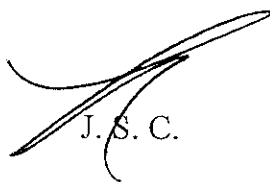
Even if, as Alon contends, Mr. Lindsay was the plaintiff's *nominal* attorney, that contention is not inconsistent with the plaintiff's position that Mr. Lindsey, at the same time, could also have acted as the Rands' agent. "[A]n agent may have . . . multiple principals with respect to the same transaction or matter" (Restatement [Third] of Agency § 3.14,

Comment "a" [2006]). More fundamentally, Alon has offered nothing to rebut the plaintiff's contention that the key reason why Mr. Lindsey attended the subject closing was to collect the net proceeds of the BNB loan for Alon and the other Rands. Accordingly, the original determination stands, and discovery in this matter shall continue.

Alon's ancillary request for discovery sanctions against the plaintiff is denied in the Court's discretion (*see* CPLR 3126; *Mahopac Ophthalmology, P.C. v Tarasevich*, 21 AD3d 351, 352 [2d Dept 2005]).

This constitutes the Decision and Order of the Court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL