

Kaplan v Kaplan

2018 NY Slip Op 31376(U)

June 26, 2018

Supreme Court, New York County

Docket Number: 652316/2012

Judge: Andrea Masley

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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: COMMERCIAL PART 48

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ARKIN KAPLAN RICE LLP, STANLEY S. ARKIN,
and LISA C. SOLBAKKEN,

Plaintiffs,

Index No.: 652316/2012

-against-

Mot. Seq. No. 031

HOWARD J. KAPLAN, MICHELLE A. RICE, and
KAPLAN RICE LLP,

Defendants,

-and-

ARKIN KAPLAN RICE LLP, a dissolved firm,

Nominal Defendant.

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ANDREA MASLEY, J.S.C.:

In motion sequence number 031, Arkin Kaplan Rice LLP (AKR, plaintiff, nominal defendant and a dissolved firm), Stanley S. Arkin, and Lisa C. Slobakken (collectively A&S), move for an order authorizing A&S to pay its accountant for preparation of the 2014 tax return so that it could engage the same accountant to prepare tax returns for 2015, 2016 and 2017, if necessary. The parties dispute whether such a filing is required. A&S also move for an order authorizing the return of security deposits of \$10,363 to subtenants: AOF Management (\$2,750); Karv Communication (\$2,450), Secure Strategy Group (\$1,712.50); Crecera Finance Management (\$1,712.50) and Healy Development (\$1,738), as well as the release of \$496.69 of a client disbursement refund to AKR's main account.

On June 13, 2018, the court heard argument on the TRO and directed A&S to engage an accountant independent of the accountant who prepared the 2014 tax return

to assess whether tax returns were required and, if so, to file them.

A&S submitted an engagement letter from Friedman LLP, but Howard Kaplan, Michelle Rice and Kaplan & Rice (collectively K&R) object. They insist that Arkin, the winding down partner, failed to provide complete information to Friedman LLP. Specifically, they insist that as a one-partner partnership, the IRS obligation was satisfied with the filing of Arkin's personal taxes. Rice insists that Friedman LLP's conclusion that it will prepare 2015, 2016, 2017 and 2018 tax returns is mistaken as it is based on inadequate information. Implicit in that conclusion is that such preparation is necessary. K&R asks the court to order Arkin to disclose his personal tax returns, unredacted, to Friedman LLP and to order Friedman LLP to meet with K&R.

The motion is granted and A&S is authorized to engage Friedman LLP to determine whether 2015, 2016, 2017 and 2018 tax returns should be filed. A&S shall provide Friedman LLP with complete information including, but not limited to, Arkin's personal tax returns, which may be redacted except as to AKR matters,¹ a complete set of AKR tax returns for 2010, 2011, 2012, 2013 and 2014, including all K1s and schedules, the referee's report, and this court's decision confirming and modifying the referee's report. A&S shall inform K&R of all documents requested by Friedman LLP, if any, and all documents provided to Friedman LLP, if any. Friedman LLP may, but is not required to, communicate with A&S, as well as K&R, and their respective attorneys without interference by anyone. Friedman LLP shall initiate such calls, if any.

In the courtroom at argument on June 25, 2018, Rice agreed to execute a check

¹Should Friedman LLP find Arkin's redacted tax returns insufficient, it may request that it be produced without redaction. Arkin may request that Friedman LLP execute a confidentiality agreement before the unredacted of personal tax returns are delivered.

payable to Friedman LLP and K&R is directed to do so within 48 hours of service of this order with notice of entry.

Consistent with the referee's report, and this court's partial confirmation of it, K&R are not responsible for the payment of Citrin Cooperman LLP for preparation of AKR's 2014 tax return. Therefore, the motion is denied as to payment of the accountant. A&S is responsible for payment, not AKR nor K&R.

As to security deposits, at argument on the TRO, the court directed A&S to provide K&R with back-up explaining how the rent deposit amounts were calculated, showing that security was collected and deposited, showing that rent was paid in full, with one exception, and that there was no breach of the subleases or any other reason to keep the rent deposits. In court on June 25, 2018, A&S provided an Excel spreadsheet² maintained by Kris Collins, the bookkeeper, who collected rent checks payable to Ladenberg Thalmann & Co, Inc. from subtenants and delivered them to Ladenberg. She did not include these transactions in the general ledger that she maintained for the winding down partner as the checks were payable to Ladenberg and did not go into the AKR winding down account. While A&S refused to provide the documentary support for the chart, complaining that finding the copies of the rent checks would be too burdensome, the courts finds no reason to doubt Collin's record keeping. Collins testified before this court credibly. Accordingly, A&S is authorized to reimburse the security deports to the subtenants from the AKR account, except for Healy. Healy defaulted in December 2013 adding to the balance AKR owed to

²A&S's failure to provide this chart to K&R prior to June 25, 2018, is a violation of the court's prior June 13, 2018 order. A&S is directed to file the chart, as well as any other document submitted into the record, in NYSCEF.

Ladenberg. Ladenberg drew down on a letter of credit in the amount of \$884,351.47. It appears that Healy's outstanding balance was included in that amount. Therefore, \$1738 should remain in the AKR account as AKR covered Healy's unpaid balance.

Kaplan, Rice, and K&R do not object to the release of the \$496.69 client disbursement refund currently in escrow into AKR's main account; thus, that part of the motion is also granted.

Accordingly, it is hereby,

ORDERED that the motion of Arkin Kaplan Rice LLP, Stanley S. Arkin, and Lisa Solbakken is granted, in part, as to (1) the engagement of Friedman LLP and A&S shall provide the documents as directed above; (2) returning security deposits except Healy Development; (3) releasing the client disbursement refund into Arkin Kaplan Rice LLP's account; and it is further

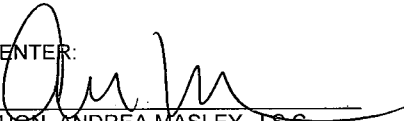
ORDERED that the motion is denied as to payment of Citron Cooperman LLP; and it is further

ORDERED that Kaplan Rice LLP execute a check payable to Friedman LLP within 48 hours of service of this order with notice of entry; and it is further

ORDERED that Arkin Kaplan Rice LLP file the Excel Spreadsheet, as referenced in this decision, and any other documents submitted into the record in NYSCEF; and it is further

ORDERED that Stanley S. Arkin and Lisa Solbakken shall provide a copy of this order to Friedman LLP.

Dated: 6/26/18 _____

ENTER: 
HON. ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY