

Hudson 418 Riv. Rd., LLC v Safiya Consultants Inc.
2018 NY Slip Op 33312(U)
December 10, 2018
Supreme Court, Kings County
Docket Number: 510351/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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HUDSON 418 RIVER ROAD, LLC,

Plaintiff,

Decision and order

- against -

Index No. 510351/18

SAFIYA CONSULTANTS INC., ABIED CONSTRUCTION
INC., BROOKLYN BROADWAY MASJID & ISLAMIC
CENTER, S.M. G HOSSAIN, MOHAMMAD ULLAH,
BIJOY CONSTRUCTION CORP., MD A ALI, ASHRAF
ALI PE PC., MICAH KWASNIK, ALI H. DAFALLA,
IMAM ABDEL HAFID DIEMIL, MOHAMMAD AHMED,
GULZAR HOSSEIN, HARBOR VIEW ABSTRACT INC.,

Defendants,

MS # 324

December 10, 2018

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking discovery concerning books and records and financials pursuant to discovery demands that have been served. The defendants oppose the motion and have cross-moved seeking to dismiss the complaint for the failure to state any cause of action. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

As recorded in a prior order, property located at 986 Gates Avenue in Kings County was owned by Kobas and Solih Realty LLC. On March 13, 2014 the owner entered into a contract to sell half the ownership interest to defendant Brooklyn Broadway Masjid and Islamic Center [hereinafter 'the Masjid']. It is alleged the Masjid did not pay the agreed upon price and that due to the naivete of Mr. Amin Kobas, the principal of the owner, the sale

was effectuated in any event. Further, it is alleged the Masjid assumed management of the entire building.

This lawsuit was filed alleging various causes of action including rescinding the closing, breach of contract and violations of the partnership law, fraud and other allegations. The defendants have moved seeking to dismiss the lawsuit on the grounds the summons and complaint was never served, other service issues and on the grounds the plaintiff lacks standing to pursue the lawsuit. The plaintiff disputes those arguments.

Conclusions of Law

It is well settled that "[a] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (see, e.g. AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005], Leon v. Martinez, 84 NY2d 83, 614 NYS2d 972, [1994], Hayes v. Wilson, 25 AD3d 586, 807 NYS2d 567 [2d Dept., 2006], Marchionni v. Drexler, 22 AD3d 814, 803 NYS2d 196 [2d Dept., 2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR 3211 motion to dismiss

(see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005])..

There is a dispute whether service of the summons was effectuated on defendant's counsel. However, even if no such service took place there is strong evidence the issue of service has been waived. In any event, another service was subsequently done on October 25, 2018. That service was undoubtedly proper. As the court stated in Murphy v. Hoppenstein, 279 AD2d 410, 720 NYS2d 62 [1st Dept., 2001] "we reject defendant Altman's argument that an extension of the CPLR 306-b 120-day period to make service of the summons and complaint may be granted only if no service, as opposed to improper service, is made within the 120-day period (see, Gurevitch v Goodman, 269 AD2d 355; cf., Salamon v Charney, 269 AD2d 256). Such "extensions of time should be liberally granted whenever plaintiffs have been reasonably diligent in attempting service" (Mem of Off of Ct Admin #97-67R, 1997 NY Legis Ann, at 319), regardless of the expiration of the Statute of Limitations after filing and before service (see, Griffin v Our Lady of Mercy Med. Ctr., 276 AD2D 391)." Thus, since in this case diligence has been presented, the plaintiff's additional service effectuated service. Moreover, the summons served on that date was not a forgery and was proper in all respects. Thus, that basis upon which to dismiss the complaint is denied.

Turning to the issue of standing, the defendant argues the plaintiff did not really purchase half the property since the owner Kobas and Solih Realty LLC was not owned by Amin Kobas but was owned by Amin Kobas and Ibrahim Saleh equally. Thus, Amin Kobas had no independent authority to sell the property to the plaintiff. The plaintiff asserts the evidence purporting to demonstrate Saleh owns half of Kobas and Solih Realty LLC, namely a corporate resolution, is a forgery. While of course the allegation of forgery will have to be scrutinized and discovery will be necessary at this stage of the proceedings, taking all the allegations of the complaint as true the plaintiff has presented a valid cause of action. Therefore, without prejudice the motion seeking to dismiss the complaint is denied.

The court has denied the motion to dismiss and now turns to the discovery motion. It is well settled that the trial court maintains broad discretion concerning the appropriate sanction for a discovery violation (Espinal v. City of New York, 264 AD2d 806, 695 NYS2d 610 [2d Dept., 1999]). Generally, the failure of either party to provide sought after discovery and to follow the express order of the court demonstrates a "pattern of wilful default and neglect" concerning the outstanding discovery (Clarke v. United Parcel Service Inc., 300 AD2d 614, 752 NYS2d 395 [2d Dept., 2002]). Thus, each party is required to introduce a reasonable excuse why such discovery has yet been complied with

(Birch Hill Farm Inc., supra). The defendant has not presented any substantive reason why they have not complied with discovery. Therefore, the plaintiff's motion is granted. The defendant shall have thirty days from the date of this order to comply with all the discovery demands presented by the plaintiff.

So ordered.

ENTER:

DATED: December 10, 2018
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC


KINGS COUNTY CLERK
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