

Rabbinical Ctr. of Europe v Chinuch
2018 NY Slip Op 33425(U)
December 18, 2018
Supreme Court, Kings County
Docket Number: 513073/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 11

KINGS COUNTY CLERK
FILED

2018 DEC 24 AM 9:59

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RABBINICAL CENTRE OF EUROPE,

Plaintiffs,

Decision and order

- against -

Index No. 513073/18

MERKAZ MOSDOS CHINUCH AND ELYOKIM WOLFF

Defendants,

December 18, 2018

-----X
PRESENT: HON. LEON RUCHELSMAN

The defendants Merkaz Mosdos Chinuch and Elyokim Wolff have moved seeking to dismiss the complaint filed by the plaintiff on the grounds it fails to state a cause of action and on documentary evidence. The plaintiff has opposed the motion and has cross-moved seeking sanctions. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

There is no dispute the plaintiff transferred to the defendant sums in the amount of \$854,000 on December 27, 2007. The defendant asserts the transfer was a gift while the plaintiff asserts the transfer was a loan which has not substantially been paid. This lawsuit was commenced by the plaintiff alleging essentially that defendants have not returned most of the funds loaned. This motion has been filed and the defendants have moved seeking to dismiss the complaint on various grounds. The chiefly argue the transfer of funds was not a loan thus the complaint must be dismissed. They further contend the plaintiff is not even a proper party since the plaintiff did not actually transfer the

funds. Lastly, defendant Wolff seeks to dismiss the complaint on the grounds he did not receive any funds in his personal capacity.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the plaintiff can succeed upon any reasonable view of those facts (Dauids v. State, 159 AD3d 987, 74 NYS3d 288 [2d Dept., 2018]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Dunleavy v. Hilton Hall Apartments Co., LLC, 14 AD3d 479, 789 NYS2d 164 [2d Dept., 2005]). Moreover, to succeed on a motion to dismiss based upon documentary evidence such evidence must utterly refute the plaintiff's allegations (Gould v. Decolator, 121 AD3d 845, 994 NYS2d 368 [2d Dept., 2014]). Thus, a contract, which is "unambiguous, authentic and undeniable" is documentary evidence which can support a motion to dismiss (Attias v. Costeria, 120 AD3d 1281, 993 NYS2d 59 [2d Dept., 2014]).

In this case the defendant has introduced a receipt wherein such receipt indicates the money given to the defendant was a gift and not a loan. That evidence specifically contradicts the allegations contained in the complaint. However, the plaintiff has sufficiently presented evidence substantiating the allegations of the complaint (Hicksville Dry Cleaners, Inc., v. Stanley Fastening

Systems L.P., 37 AD3d 218, 830 NYS2d 530 [1st Dept., 2007])). Specifically, defendant Rabbi Wolff acknowledged the money was given as a loan. On July 17, 2008 Rabbi Wolff noted that "I hereby undertake to repay at the earliest opportunity the debt in the sum of eight hundred and fifty-four thousand dollars that I received from you as a loan..." (see, Document submitted within Plaintiff's Notice of Cross-Motion, Exhibit 'A'). Thus, the receipt standing alone does not resolve all factual issues and does not conclusively dispose of the plaintiff's claims (see, Fontanetta v. Doe, 73 AD3d 78, 898 NYS2d 569 [2d Dept., 2010])). The defendant argues that document and any other statements or texts by Rabbi Wolff that purport to concede the agreement was a loan were only made because of pressure by the plaintiff. The defendant will have an opportunity to assert those defenses, however, at this juncture, before any discovery has taken place the defendant has not unequivocally demonstrated dismissal of the complaint.

Furthermore, there is no merit to the argument the plaintiff lacks standing to initiate this lawsuit. The plaintiff has asserted that one of its donors agreed to wire the funds directly to defendant rather than engage in the burdensome task of receiving a wire from the donor and then wire the funds a second time to the defendant. This is particularly true since the defendant does not dispute that the funds were received from the plaintiff. Therefore, Merkaz

Mosdos Chinuch's motion seeking to dismiss the complaint is denied without prejudice.

Concerning Rabbi Wolff there is no evidence he personally obtained any funds from the plaintiff in a personal capacity. Therefore, the motion of Rabbi Wolff seeking to dismiss the complaint is granted.

The cross-motion seeking sanctions is denied.

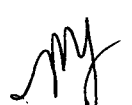
So ordered.

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DATED: December 18, 2018
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC


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