

Ali v National ATM Servs., LLC
2019 NY Slip Op 31223(U)
May 2, 2019
Supreme Court, New York County
Docket Number: 653672/2011
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION

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HAMID ALI, HAMID SALEH ALI, INDIVIDUALLY, AND AS A
 MEMBER OF NATIONAL ATM SERVICES, LLC, SUING IN THE
 NAME OF NATIONAL ATM SERVICES, LLC,

Plaintiff,

- v -

NATIONAL ATM SERVICES, LLC, NATIONAL ATM COMPANY,
 INC., NATIONAL ATM SERVICES, INC., HAMAD ALI, ABDO
 ALMONTASER, MEDINA CARDSWIPE CORP., FIRST
 NATIONAL ATM CORP., FARES ALI

Defendant.

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INDEX NO. 653672/2011

MOTION DATE _____

MOTION SEQ. NO. 003, 004

DECISION AND ORDER

HON. SALIANN SCARPULLA:

In this action, *inter alia*, to recover damages for fraud, defendants Hamad Ali (“Hamad”), National ATM Services, Inc. (“NAS Inc.”), National ATM Company, Inc. (“NAC”), and First National ATM Corp. (“FNA”)(collectively referred to as “Hamad defendants”) move to vacate the default order dated August 15, 2018 and to restore motion sequence 003, or move to reargue motion sequence 003, and move for an order seeking sanctions and fees. Plaintiff Hamid Saleh Ali (“Hamid”) cross moves for an order sanctioning movants for making a frivolous motion.

Hamid, individually and as a member of National ATM Services, LLC (“NAS LLC”) commenced this action in March 2012. According to the allegations of the complaint, Hamad and Abdo Almontaser (“Almontaser”) were business partners with Hamid, all owning NAS LLC together. Hamad and Almontaser allegedly misappropriated NAS LLC’s inventory of ATM machines and also transferred all of NAS

LLC's assets into their own private bank accounts, while Hamid was away on vacation and without his knowledge or consent. In the complaint Hamid asserted causes of action for fraudulent conveyance, conversion, accounting, corporate waste, breach of fiduciary duty, constructive trust, fraud, forgery, and a permanent injunction enjoining defendants from operating NAS LLC's business.

In April 2018, the Hamad defendants moved for summary judgment dismissing the complaint and for sanctions against Hamid. In an order dated August 15, 2018, I denied the Hamad defendants' motion due to their failure to appear at oral argument of the motion. The Hamad defendants now move to vacate that order and restore the motion, or reargue the motion, and seek an order awarding sanctions and fees. Hamid cross moves for an order sanctioning movants for making a frivolous motion.

In support of summary judgment, Hamad argues that he and Hamid had settled all of their claims against one another in a private mediation in late 2013. Hamad refers to Hamid's examination before trial testimony in this action, in which he allegedly admitted that he settled his claims with Hamid.

Further, according to Hamad, on September 28, 2013, they appeared before Sheik Hussein Obiad Al Riyashi and agreed to mediate their claims. On that date, they executed a settlement agreement requiring Hamad to pay \$120,000 to Hamid and allowing Hamid to collect \$148,000 from a non-party to this action. On November 2, 2013, Hamid appeared before the president of the Yemeni American Association and agreed to withdraw all of his claims. Subsequently, on November 25, 2013, Hamid

accepted \$10,000 as a first payment of Hamad's settlement obligation and on December 17, 2013, Hamid executed a release discharging Hamad from this instant action.

In opposition to the summary judgment motion, Hamid first argues that the settlement agreement referenced by Hamad was not approved by the court and was therefore, invalid. Hamad further argues that, in any event, the settlement agreement submitted by Hamid only related to a resolution of a dispute involving two investment properties, 2152 Westchester Avenue and 934 East 165th Street, and did not include NAS LLC. Hamid maintains that he never agreed to withdraw the claims asserted against Hamad relating to NAS LLC.

Based on the arguments advanced and the evidence submitted, the August 15, 2018 order is vacated, and the Hamad defendants' motion for summary judgment is restored. Upon review of the restored summary judgment motion, I find that triable issues of fact exist such to preclude the grant of summary judgment, including the intent and extent of the parties' settlement. Hamad's request for sanctions and fees is denied. Hamid's cross motion for sanctions is also denied.

In accordance with the foregoing, it is hereby

ORDERED that defendants Hamad Ali, National ATM Services, Inc., National ATM Company, Inc., and First National ATM Corp.'s motion to vacate the August 15, 2018 order and restore motion sequence 003, or reargue motion sequence 003, and award sanctions and fees is granted to the extent that the order dated August 15, 2018 is hereby

vacated and the underlying motion sequence 003 seeking summary judgment dismissing the complaint is restored and the motion is otherwise denied; and it is further

ORDERED that plaintiff Hamid Saleh Ali’s cross motion for an order sanctioning movants for making a frivolous motion is denied; and it is further

ORDERED that, upon restoration, the underlying motion sequence 003 seeking summary judgment dismissing the complaint is denied; and it is further


ORDERED that this case is referred to the Alternative Dispute Resolution Program of the Commercial Division. An alternative dispute resolution (“ADR”) proceeding shall be conducted in this case in accordance with the Rules of the Program. Counsel for all parties shall familiarize themselves with the Rules (which are accessible at www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml); and it is further

ORDERED that within five (5) business days of the date of this order, counsel shall contact the ADR coordinator (212-256-7986). Counsel shall comply with all ADR rules, and failure to do so may result in the imposition of sanctions; and it is further

ORDERED that in the event the ADR process fails to resolve this case, the parties shall appear for a pretrial conference on September 4, 2019 at 2:15 p.m.

This constitutes the decision and order of this court.

5/ 2 /2019
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE