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| Famous Family LLC v Kutsyk |
| 2019 NY Slip Op 32437(U) |
| July 29, 2019 |
| Supreme Court, Kings County |
| Docket Number: 516911/18 |
| 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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FAMOUS FAMILY LLC, suing individually and
derivatively as a shareholder of
NEW YORK CITY FISH, INC.,

Plaintiff, Decision and order

- against -

Index No. 516911/18

MAXIM KUTSYK, YEFIM KUTSYK,
PAVEL ROYTKOV, MIKHAIL DRALYUK
AND INNA KUPERSHMIDT,

Defendants, July 29, 2019

ms # 3

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3214 seeking to compel the defendants to respond to discovery. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the parties this court now makes the following determination.

New York City Fish Inc., [hereinafter 'NYC Fish'] was incorporated on October 30, 2012 and began operating as a fish processing and smoking facility at 738 Chester Street in Kings County. According to the complaint the shareholders of NYC Fish are the defendants Maxim Kutsyk, Mikhail Drayluk, Inna Kupershmidt and the plaintiff Famous Family LLC. Shortly thereafter the Food and Drug Administration conducted an inspection and upon observing various violations of the Food, Drug and Cosmetic Act commenced a proceeding in the Eastern District of New York. An injunction was issued on April 3, 2014.

and the facility remained closed until the end of 2016 when NYC Fish complied with the enumerated conditions.

The plaintiff has initiated this derivative action on behalf of New York City Fish Inc. The plaintiff has alleged breach of fiduciary duty, unjust enrichment, waste of corporate assets, negligence and misconduct among other allegations. The causes of action essentially allege the defendants are at fault for engaging in improper and illegal activities which caused the injunction and for neglecting the business and for unlawfully transferring and converting property.

The plaintiff served discovery demands on the defendants which the defendants did not comply with on the grounds the items sought need not be provided.

Conclusions of Law

The court has already twice determined that there are questions of fact whether any of the defendants other than Maxim Kutsyk are owners of NYC Fish. Further, the defendants have never provided any evidence that conclusively establishes that the plaintiff was not an owner of NYC Fish. It is well settled that corporate tax returns and all corporate financial statements are properly the subject of discovery (see, Chaudhry v. Abadir, 261 AD2d 497, 692 NYS2d 399 [2d Dept., 1999]). Therefore, the

plaintiff's motion seeking to compel production of all corporate tax and financial information in unredacted form is granted. Thus, the defendants must respond to request numbers 11, 13 through 17, 22, 23, 28 and 29.

Concerning requests 1 through 10 and 18 and 19, which are the personal tax returns and bank statements of the defendants, the plaintiff argues such information is "indispensable to the claims alleges against individual Defendants because the information would show if Defendant's received any compensation from NYCF and if they in fact even worked for the company" (Plaintiff's Memorandum of Law, page 6). However, the plaintiff has not demonstrated that such information could not be derived from the corporate tax, financial and bank statements. Thus, following the production of the corporate financial documents the court will conduct a court conference to determine if such personal tax documents are still necessary and will render a decision at that point.

Item number 12 seeks a list of all employees of NYC Fish. That request is proper.

Items 20, 21, 25, 26 concern requests regarding correspondences between Vladimir Furleiter the managing member of the plaintiff and the various defendants. However, those correspondences are in the possession of the plaintiff.

Consequently, that portion of the motion to compel is denied.

Thus, the defendants must provide the discovery as indicated within thirty days from receipt of this order. The parties may contact the court to schedule a court conference after the discovery is produced.

So ordered.

ENTER:



DATED: July 29, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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KINGS COUNTY CLERK
FILED