

United Hay, LLC v Harounian
2019 NY Slip Op 33749(U)
December 19, 2019
Supreme Court, New York County
Docket Number: 657310/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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UNITED HAY, LLC		INDEX NO.	<u>657310/2017</u>
	Plaintiff,	MOTION DATE	<u>10/18/2019</u>
	- v -	MOTION SEQ. NO.	<u>005</u>
JACOB HAROUNIAN,			
	Defendant.		

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 218, 219, 220, 221, 222, 223 were read on this motion to CONSOLIDATE FOR JOINT TRIAL.

This is one of three cases before the Court involving alleged malfeasance in connection with the operation of a series of family-owned limited liability companies. Two of the three cases have been consolidated for joint trial. *Homapour v. 3M Properties, LLC*, Index No. 653795/2015 (Sup. Ct. N.Y. Cty) (“Homapour Action”) NYSCEF Dkt. No. 554 (Sept. 9, 2019) (consolidating case for joint trial with *Harounian v. Harounian*, Index No. 450616/2019 (Sup. Ct. N.Y. Cty) (“Harounian Action”).

The Court previously ruled that discovery in the three cases should be coordinated. Defendant in the instant case now seeks consolidation for *joint trial* with the other two cases pursuant to CPLR 602(a). For the reasons set forth below, Defendant’s motion is denied.

The Homapour and Houranian Actions

In the Homapour Action, filed in 2015, Mehrnaz Homapour (daughter of family patriarch Jacob Harounian, who founded the family business) asserts among things that her brother (Mark Harounian) misappropriated millions of dollars from the family-owned LLCs. The claims

against Mark include breach of fiduciary duty, fraud, and unjust enrichment. Mark has asserted cross-claims against his father, Jacob, including that Jacob “took sums from the Family LLCs in the form of cash without Mark’s awareness or approval.”

The Harounian Action was filed by Jacob three years later, in April 2018, in Supreme Court, Nassau County (Driscoll, J.). The Defendants included Mark, the Family LLCs, and two limited liability companies purportedly owned and controlled by Mark. Boiled down to its essentials, the allegations in the Harounian Action are quite similar to those made in the Homapour Action.

Amid rancorous charges and counter-charges about the rationale for Jacob filing a separate suit in Nassau County, there were dueling motions to consolidate the Harounian Action and the Homapour Action either in this Court or in Nassau County. By order dated April 23, 2019, Justice Driscoll ordered the transfer of the Harounian Action to New York County to “proceed jointly for purposes of discovery and trial” with the Homapour Action. As noted above, this Court consolidated the two cases for joint trial.

The United Hay Action

The instant case (the “United Hay Action”) was commenced in this Court by service of a Summons on December 11, 2017, followed by filing of a Complaint on February 16, 2018. It is narrower in scope than the earlier-filed Homapour Action and the later-filed Harounian Action, though there are some overlapping issues. Specifically, Plaintiff United Hay (one of the Family LLCs) asserts that Jacob Harounian (again, the patriarch of the family and founder of the business) improperly converted \$5 million from the United Hay bank account. Jacob asserts that he withdrew the \$5 million from United Hay’s bank account “to try to protect himself and his wife because Mark: (i) confessed to misappropriating approximately \$3 million from the Family

LLCs to pay his personal expenses; (ii) refused to provide a full accounting to show the extent of his wrongdoing; and (iii) continued to commingle funds among the Family LLCs including a deposit of \$2.7 million into [one family LLC] United Hay's account from [another family LLC] United Chelsea's account." (Pl. Memo in Support, Dkt. No. 214 at 4.) Moreover, as noted above, Mark has taken the position in the Homapour Action that Jacob improperly took cash from the Family LLCs, which overlaps in part with the allegation in the instant case with respect to United Hay.

Analysis

CPLR 602(a) provides that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, *may* order a joint trial on any or all matters in issue" (emphasis added). "There is a preference to join cases for discovery and trial in the interests of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that joint trial will prejudice a substantial right; deference is accorded to the motion court's discretion." *Lema v. 1148 Corp.*, 176 A.D.3d 653 (1st Dep't 2019); *see also In re New York City Asbestos Litigation*, 121 A.D.3d 230, 242 (1st Dep't 2014) ("great deference is to be accorded to the motion court's discretion in joining cases together"); *Ventures Int'l v. Uppstrom*, 166 A.D.2d 321, 321 (1st Dep't 1990) ("A motion to try the actions jointly is one directed to the sound discretion of the trial court.")

Defendant argues that a joint trial is necessary to avoid inconsistent determinations of common questions of fact and law, including how the Unite Hay transaction came about, the reasons and justifications for Jacob's withdrawal, the rationale for Mark's amendment of Family LLC tax returns, and the impact of Mark's malfeasance (*e.g.*, misappropriating funds from the Family LLCs, refusal to provide an accounting, improper commingling of funds from accounts

of other Family LLCs) on those reasons and justifications. Defendant argues that those issues go “to the heart of Jacob’s affirmative defense of set-off and/or equitable recoupment by which he seeks to set-off and/or reduce the amount of United Hay’s recovery based on Mark’s misconduct in operating United Hay and the other Family LLCs.”

While Defendant’s arguments are credible, on balance the Court does not find them persuasive. To begin with, it is not clear whether and to what extent Mark’s conduct with respect to other Family LLCs justified Defendant’s withdrawal of funds from the United Hay entity, in which he is not a member. Even assuming some evidence relating to Mark’s conduct is relevant to this case, it is likely that such evidence will be narrower in scope than will be relevant the Harounian and Homapour Actions in which such conduct is front and center. Although it is not required that there be a complete overlap of common issues of fact, in this case the Court believes that the potential downsides of a joint trial outweigh whatever efficiencies might be achieved by such a proceeding.

Moreover, a joint trial raises a substantial risk of confusion, inefficiency, and prejudice. Trial in the Harounian and Homapour Actions likely will be before the Court, as the parties have indicated that the Family LLC agreements generally have jury waiver provisions. By contrast, Plaintiff in this case has indicated that it will exercise its right to a trial by jury. That raises the prospect of a single trial in which the jury either will have to sit through the presentation of evidence that is not relevant to the United Hay case or the jurors’ service will be lengthened by having such evidence introduced outside their presence. Such parsing of evidence might also raise difficulties for the Court, whether in a bench or jury trial, which would have to consider evidentiary objections that might have different answers depending on which of the matters

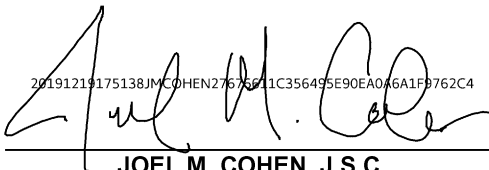
being tried is being considered. Although it is possible in some cases that having a combined jury and non-jury would not be inefficient or prejudicial, that is not the case here.

Defendant notes that having separate trials raises the prospect of inconsistent decisions on common issues of fact, which is a relevant consideration. *See Sokolow, Dunaud, Mercadier & Carreras LLP v. Lacher*, 299 A.D.2d 64, 73-74 (1st Dep't 2002). While the Court cannot discount the possibility of some inconsistency (subject to principles of collateral estoppel), it does not believe such possibility outweighs the substantial risk of prejudice and inconsistency of attempting to try these cases in a single proceeding. The instant case is focused on the narrow question whether Jacob was justified in withdrawing funds from United Hay, in which he is not a member. While he may seek to defend himself in part on the ground that Mark's malfeasance and commingling of funds in other LLCs justified his actions, the Court does not believe the overlap is sufficient to outweigh the substantial inefficiency and prejudice of trying the cases together.¹

In sum, in the exercise of the Court's discretion, it is

ORDERED that Defendant's motion to consolidate this case for a joint trial with the Harounian and Homapour Actions is **denied**.

This constitutes the decision and order of the Court.

<p><u>12/19/2019</u> DATE</p>	 <small>20191219175138JMC0HEN276756711C356495E90EA046A1F8762C4</small> JOEL M. COHEN, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT

¹ Plaintiff takes the position that such evidence would not support a viable defense to its claim of Conversion.