

Pachter v 3046 W. 22 St Props. LLC
2020 NY Slip Op 30809(U)
March 5, 2020
Supreme Court, Kings County
Docket Number: 511622/19
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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ADIV PACHTER in his representative capacity
as Executor of the ESTATE OF JUDITH
LINDENBERG, deceased,

Plaintiff, Decision and order

- against -

Index No. 511622/19

3046 WEST 22 ST PROPERTIES LLC, D-WIN
PROPERTIES LLC, HOMES BEAUTIFUL RE LLC,
and PARK 50 WEST PROPERTIES LLC,

Defendants, March 5, 2020

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PRESENT: HON. LEON RUCHELSMAN

The parties agreed to deem the caption amended to reflect the decision of the court dated February 4, 2020 which granted a request to replace Adiv Pachter with Rena Pachter as the representative of the estate of Judith Lindenberg. Thus, the plaintiff has moved pursuant to CPLR §3212 seeking summary judgement that the Estate is entitled to an accounting. The defendants oppose the motion and have cross-moved seeking to add an affirmative defense. That motion is opposed. Papers were submitted by the parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

Background

The Estate is a fifty percent member in each of the four defendant entities that manage real estate in Kings County. The remaining fifty percent ownership belongs to David and Esther

Winiarsky respectively. The Estate initiated this lawsuit seeking an accounting to determine the value of each entity. According to the Verified Complaint a Surrogate's Proceeding was instituted in Queens County and the executor sought similar information from the Esther and David Winiarsky without any success and filed this lawsuit seeking the same relief. The plaintiff now moves seeking summary judgement arguing there is no question of fact the Estate is entitled to an accounting.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

It is well settled that "the right to an accounting is premised upon the existence of a confidential or fiduciary relationship and a breach of the duty imposed by that relationship respecting property in which the party seeking the accounting has an interest" (see, Palazzo v. Palazzo, 121 AD2d 261, 503 NYS2d 381 [2d Dept., 1986]). The defendants offer four reasons why the motion for summary judgement should be denied. First, the plaintiff is seeking the same relief in Surrogate's Court. Second, the

plaintiff failed to demonstrate it has no remedy at law. Third, the defendants already provided an accounting in Surrogate's Court making the accounting here superfluous. Fourth, a demand for an accounting has never been made before.


First, it must be emphasized that the plaintiff clearly maintains a fiduciary relationship with the subject properties for which an accounting is sought. Further, The objections of the defendants do not raise any specific question of fact whether the plaintiff is entitled to an accounting. The mere fact the principles of the defendant corporations may have already delivered certain accounting documents in another proceeding does not mean questions of fact have been raised whether the plaintiff is entitled to the documents sought here. Indeed, if such information has already been provided there is surely no burden to provide them again. Moreover, where a fiduciary relationship has been established there is no requirement demonstrating there is no adequate remedy at law (see, Mullin v. WL Ross & Co., LLC, 173 AD3d 520, 105 NYS3d 382 [1st Dept., 2019]). In addition, as noted, to the extent such information was provided that does not raise any question of fact the plaintiff is not entitled to the accounting. Lastly, it is true that the plaintiff has never requested the information previously. However, that does not raise any question of fact. Rather, that truism merely militates against appointing a referee to oversee the expeditious production of the documents.

Therefore, based on the foregoing the motion seeking summary judgement is granted. The defendants shall have sixty days from the date of this order to provide all the accountings requested in the complaint.

So ordered.

ENTER:

DATED: March 5, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

KINGS COUNTY CLERK
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