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| Famous Family LLC v 1050 Pacific, LLC |
| 2020 NY Slip Op 31171(U) |
| April 24, 2020 |
| Supreme Court, Kings County |
| Docket Number: 516911/2018 |
| Judge: Leon Ruchelsman |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 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-

April 24, 2020

Index #516911/2018

1050 PACIFIC, LLC,

Defendant,

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to compel the production of certain documents from the plaintiff and to consolidate this matter with a related action entitled F&R Goldfish et al., v. Fuleiter, et al., Index Number 521162/2018. The plaintiff opposes both motions. Papers were submitted by the parties and arguments held. After reviewing all the parties this court now makes the following determination.

As recorded in prior orders 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. This lawsuit is a derivative action alleging the defendants essentially acted in ways which ruined the company. Further, the complaint in this action alleges that Royal Development Inc., as lessor leased the premises to NYC Fish and that NYC Fish owes over \$400,000 in rent, \$245,000 in property taxes and \$40,000 in other charges (see, Verified Amended Complaint, ¶¶24-30). Thus, F&R Goldfish, which is managed by defendant Maxim Kutsyk instituted an action against Vladimir Furleiter and Royal Development Inc., and other entities he engaged with named Royal Baltic Inc. and New York Fish Inc. which are entities owned by the defendants in this action alleging various claims. It is clear that claims of the second action stem from the very same agreement that is the subject of claims in this action.

Conclusions of Law

It is well settled that where two actions involve the same parties and present common questions of law and fact then consolidation is proper (Rhoe v. Reid, 166 AD3d 919, 88 NYS3d 564 [2d Dept., 2018]). There is no dispute the two lawsuits concern the same parties and likewise concern the same essential events. Thus, the first action alleges claims against various defendants while the other action alleges claims by the same defendants herein against Furleiter and entities he owned

including the plaintiff in this action. While there are ancillary issues which are specific to only one action, nevertheless, the overall tenor of both lawsuits really concern the same issues, namely the agreement entered into between the parties and judicial economy and efficiency demand they be heard in one lawsuit. Moreover, the other lawsuit does not involve an earlier time frame, rather the other lawsuit might have started before some of the issues raised in this lawsuit, however, they concern the same general time frame. To the extent these cases will ever appear before a jury the two cases cannot be consolidated for trial since that would result in parties that are both plaintiffs and defendants, a judicial impossibility. Therefore, the matters are consolidated for joint trial only. The clerk is directed to consolidate this action with F&R Goldfish et al., v. Fuleiter, et al., Index Number 521162/2018 for purposes of joint trial only.

Concerning the motions regarding various discovery issues, the depositions of all parties shall take place in Kings County at a location mutually agreed upon by all parties.

Further, to the extent not already provided the plaintiff must provide discovery of all items requested in the motion, specifically, items numbers: 2,21,22,24,25,26,29,39,42 and 47. They are all relevant to the issues in the lawsuit and must

be provided within thirty days. The failure to completely provide all information contained in these requests may result in plaintiff's inability to pursue these matters at trial.

Concerning item number 14, the tax returns of Mr. Furleiter, it is well settled that tax returns of individuals may be produced during discovery if the information is necessary to the litigation and cannot be obtained from any other source (Sachs v. Adeli, 26 AD3d 52, 804 NYS2d 731 [1st Dept., 2005]). The relevance of the tax returns is more pertinent since the matter in which Mr. Furleiter is a party has been joined with this matter. However, to insure the privacy concerns of Mr. Furleiter are protected the tax returns sought shall be submitted to the court in camera and the court will then make a determination whether the defendants are entitled to them or a redacted version of them. The tax returns shall be submitted to the court within thirty days of receipt of this order.

So ordered.

ENTER:

Dated: April 24, 2020
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC