

| |
|--|
| Ali v BJ Org. of N.Y., Inc. |
| 2021 NY Slip Op 30914(U) |
| March 22, 2021 |
| Supreme Court, Kings County |
| Docket Number: 507394/15 |
| Judge: Leon Ruchelsman |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : COMMERCIAL PART 8

-----x

ALI MOHAMED ALI,
Plaintiff, Decision and order

- against - Index No. 507394/15

BJ ORGANIZATION OF NEW YORK, INC, YASIN M.
MOHAMED a/k/a YASIN MOHAMED ALI and AHMED
N. MOHAMED a/k/a AHMED MOHAMED ALI,
Defendants, March 22, 2021

-----x

ABDO MOHAMED ALI a/k/a KENNY ELI,
Third Party Plaintiff

- against -

ALI MOHAMED ALI, YASIN MOHAMED ALI and AHMED
NAGI MOHAMED,
Third Party Defendants,

-----x

PRESENT: HON. LEON RUCHELSMAN

Hal Rose Esq. the attorney for the first receiver has moved seeking attorney's fees. The second appointed receiver Margaret Stricker Porres has moved seeking to be discharged as receiver and for fees earned. In addition Stacie Feldman Esq. the attorney for Ms. Porres also seeks fees. All the motions have been opposed by some of the parties. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded previously, this lawsuit concerns the ownership of the defendant BJ Organization of New York Inc, and the management of such corporation.

Douglas Rosenberg was appointed receiver on December 10,

2015 and was relieved October 2018. Mr. Rosenberg has been accused of improprieties and indeed a lawsuit was filed against him and Abdo Mohamed Ali, also known as Kenny by Ahmed Mohamed individually and derivatively on behalf of BJ Organization by the second receiver Ms. Porres (*AHMED N. MOHAMED a/k/a AHMED MOHAMED ALL, Individually and derivatively on behalf of BJ ORGANIZATION OF NEW YORK, INC., by Margaret Streicher Porres, its Temporary Receiver against DOUGLAS ROSENBERG, Individually and in his Official Capacity as Temporary Receiver of BJ Organization of New York Inc., and ABDO MOHAMED ALI a/k/a KENNY ELI, Index Number 510663/2019*). Although Mr. Rose is not a defendant in that lawsuit the complaint there contains allegations against Mr. Rose. Specifically, the complaint alleges the receiver Mr. Rosenberg allowed Kenny to remain in possession without paying rent in contravention of the receiver order and permitted Kenny to engage in construction in contravention of the receiver order. Further, Mr. Rosenberg hired Mr. Rose to commence summary proceedings against tenants who were not paying rent. The complaint asserts that Kenny hired an attorney James Thomas Esq. to represent all the defendants in these summary proceedings. Paragraph 54 of the complaint alleges that "Douglas and his counsel Hal Rose, Esq. seeing same counsel, James Thomas, Esq. appearing for all the tenants and Abdo in court for and/or in support of the tenants should have informed Douglas and his

counsel about Abdo's plans, strategy and collusion" (id). This paragraph is unclear since it fails to explain why Mr. Thomas had any duty to disclose litigation strategy to the receiver. However, the next paragraph of the complaint asserts that "as a result of the unholy alliance between Douglas, Hal Rose, Esq. his counsel and Abdo, Douglas failed to collect outstanding rents owed by tenants at the property" (id). This allegation, which must be accepted as true, surely accuses Mr. Rose of wrongdoing as well. Furthermore, the complaint states that a stipulation in one of the summary proceedings concluded that Ali Mohamed Ali had been paid rent yet Mr. Ali resided in Yemen at the time and no such rental payments were made to him there, questioning the accuracy of the stipulation. The complaint states that "Douglas and his counsel knew or by exercise of due care should have known that Ali Mohamed Ali who was residing in Yemen did not receive the alleged sums of money or any money at all from the tenants" (Verified Complaint, §61). Moreover, the complaint in that action alleges that "Douglas and his counsel used the various actions against the tenants as cash cow in continuously billing BJ for legal fees regarding those endless proceedings" (Verified Complaint, §69).

It is curious the other lawsuit accuses Rosenberg of breaching his duties as a receiver by colluding with and extending concessions to Kenny yet Rosenberg filed a contempt

motion against Kenny due to Kenny's alleged violation of various court orders. The contempt motion Rosenberg filed surely undermines the allegations of the other lawsuit, however, notwithstanding the allegations must be explored. Those allegations necessarily extend to Rosenberg's counsel as well. Therefore, for the same reasons no conclusions can be reached about Mr. Rosenberg's discharge and fees, likewise, no such conclusion can be reached about his counsel either. Therefore, the motion seeking counsel fees cannot be granted at this time and must await the determination of the lawsuit filed against Mr. Rosenberg. To secure funds for Mr. Rose in the event payment is warranted the current receiver must maintain \$50,000 in escrow designated for Mr. Rose. Further, to insure no further fees accrue Mr. Rose need not appear or submit any papers regarding any motion or conference pertaining to this index number.

Ms. Porres was appointed as substituted receiver on January 17, 2019 and was replaced on August 12, 2020. She now seeks an order approving her commissions and final account and her counsel likewise seeks fees. Pursuant to the orders appointing the receivers, Ms. Porres was the receiver for two properties, one in Brooklyn that comprises thirty eight residential units and seven commercial units and a Staten Island property which is a single family home. Further, pursuant to court orders Ms. Porres hired a management company to assist in


the running of the Brooklyn property. There is opposition to both the receiver's fees and the fees of the receiver's attorney. Essentially, the opposition contends the receiver did not earn the fee sought, was duplicative of fees already awarded to the management company and likewise the fees of counsel are not appropriately earned. These requests are fact specific and cannot be resolved without a hearing and testimony explaining why a receiver, a management company and counsel were all necessary, all essentially performing the same functions. This is particularly true since there are allegations the receiver did not adequately perform her stated role and a summary determination in these matters would be premature.

Thus, the motions seeking fees cannot be decided at this time. A hearing will be conducted when the court is able to conduct such hearing. Again, to secure funds for the receiver and counsel in the event payment is warranted the current receiver must maintain \$50,000 in escrow designated for Ms. Porres and her counsel. Further, to insure no further fees accrue Ms. Feldman need not appear or submit any papers regarding any motion or conference pertaining to this index number.

So ordered.

ENTER:

Dated: March 22, 2021
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC