

Alsaedi v Alsaede
2021 NY Slip Op 31122(U)
April 7, 2021
Supreme Court, Kings County
Docket Number: 512191/20
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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KAMAL ALSAIDI AND MOUNTAIN OF SABER, LLC,
Plaintiffs, Decision and order

- against - Index No. 512191/20

ALI ALSAEDA and CAPITAL A MANAGEMENT NY INC.,
Defendants, April 7, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to enjoin the defendants from managing the plaintiff entity Mountain of Saber LLC and to review the books and records of that entity. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

Property located at 797-815 Stanley Avenue in Kings County was owned by Abdo Alsaede. In 2005 an entity, Mountain of Saber LLC, became the owner of the property. That entity is equally owned as follows: the plaintiff Kamal Alsaidi owns a third, Abdo Alsaede owns a third and Ahmed Nasser Abdul Nasser own the final third. The defendant Ali Alsaede is the son of Abdo and the cousin of the plaintiff. Thus, the plaintiff is a one third minority owner of Mountain of Saber LLC. The defendants have managed and maintained the properties since 2005. The plaintiff has alleged the defendants have engaged in various improprieties since then including failing to collect rents, misappropriating funds and awarding themselves unearned fees. Further, the

plaintiff seeks to inspect the books and records of the corporation. The motion seeking the injunction and to allow the inspection of books and records is opposed.

Conclusions of Law

It is well settled that the right to inspect corporate books and records under the common law can only be asserted when a corporate shareholder is acting in good faith and has established that the inspection is for a proper purpose (Matter of Crane Co. v. Anaconda Co., 39 NY2d 14, 382 NYS2d 707 [1976]). "A hearing must be held on the issue of good faith where the corporation raises a substantial question of fact as to the shareholder's good faith and motives" (see, Troccoli v. L & B Contract Industries, Inc., 259 AD2d 754, 687 NYS2d 400 [2d Dept., 1999]). Of course, where no legitimate question of fact is presented challenging the good faith basis of the shareholder seeking the request, then a hearing or any discovery is not required (Goldstein v. Acropolis Gardens Realty Corp., 116 AD3d 776, 982 NYS2d 922 [2d Dept., 2014]). Older cases analyzing a shareholder's common law request for books and records did not require any demonstration of good faith (see, Raynor v. Yardarm Club Hotel Inc., 32 AD2d 788, 302 NYS2d 353 [2d Dept., 1969] noting that "in our opinion, even if we were to go so far as to assume that there is an issue of fact present as to petitioner's

good faith in instituting this proceeding, the burden would not be on him to demonstrate his good faith but on the appellant corporation to show his bad faith"). The modern trend imposes the burden upon the shareholder to demonstrate good faith (see, Matter of Marcato, 102 AD2d 826, 476 NYS2d 582 [2d Dept., 1984]). To the extent Matter of Dyer v. Indium Corporation of America, 2 AD3d 1195, 770 NYS2d 184 [3rd Dept., 2003] still adheres to the more relaxed standard, this court is not bound by that Third Department case.

The defendants do not assert the plaintiff is acting in bad faith seeking the books and records. Thus, in Dwyer v. DiNardo & Metschl P.C., 41 AD3d 1177, 838 NYS2d 745 [2d Dept., 2007] the court reviewed the procedures which must be followed when a shareholder makes a request for books and records. First, the shareholder must present a proper purpose and good faith basis for the request. The corporation must then present evidence of improper purpose or bad faith. Without any such showing a hearing, or any discovery, is not warranted. Indeed, Matter of Crane Co. v. Anaconda Co. (supra) specifically noted that once a proper request is made "at this point the Bona fides of the shareholder will be assumed" and the corporation must present evidence to the contrary.

Therefore, in this case the good faith of the plaintiff is apparent and is not disputed. Thus, the plaintiff shall be

entitled to see the rent rolls any mortgage information and all bank statements. That information must be provided within fifteen days of this order. The remaining relief seeking an injunction is denied at this time.

So ordered.

ENTER:

DATED: April 7, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC