

Lurie v Lurie
2021 NY Slip Op 31377(U)
April 21, 2021
Supreme Court, Kings County
Docket Number: 515908/18
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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NEIL LURIE & LURIE MANAGEMENT CORP.,
Plaintiffs,

Decision and order

- against -

Index No. 515908/18

ABRAHAM LURIE, NEIL LURIE TRUST, SUSAN
LURIE TRUST and LEILA LURIE TRUST,
Defendants,

April 21, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendant Abraham Lurie has moved seeking to quash two subpoenas, one served upon Abraham Lurie's counsel Louis Venezia, who is also Abraham's son in law. The second subpoena has been served upon non-party Jeffrey Asher Esq. The plaintiff has filed a cross-motion seeking to compel discovery. Specifically, the plaintiff seeks information about various trusts formed in 2015 as well as an admission about the 1998 stock certificate. Further, the plaintiff seeks responses to various interrogatories served. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As previously noted the issue in this case is whether the 1998 stock certificate transferring ownership from Abraham to Neil is authentic. If such certificate is authentic then the trusts established in 2015 are a nullity. However, if it is determined the stock certificate is not authentic then the trusts were duly established. There can be no middle ground and there is no substantive point regarding the existence of the stock

certificate or the trusts upon which the parties can possibly agree. The ultimate presentation of the case before a jury is really a question of credibility. The jury will be required to reach a conclusion based upon the evidence presented, to be sure, but the crux of that determination will be one of credibility.

The plaintiff seeks to question Mr. Venezia about his involvement regarding a visit undertaken by Abraham and Susan Lurie, Mr. Venezia's wife, to Neil in 2012. Further, the plaintiff seeks to question Mr. Venezia about the formation and creation of the 2015 trusts. Mr. Venezia objects on the grounds that as counsel to defendant he cannot also be called as a witness. It is true the subject of the testimony does not involve Mr. Venezia's role as counsel *per se* and only involves his role as a family member. Thus, according to the plaintiff "Mr. Venezia will be deposed upon topics related only to his role as a fact witness prior to the commencement of this litigation, and not to his role as Defendants' counsel in this case" (see, Plaintiffs' Memorandum of Law in Opposition To Defendants' Motions to Quash Subpoenas Served on Non-Parties Louis Venezia And Jeffrey Asher and in Support Of Plaintiffs' Cross-Motion to Compel Discovery, page 13). However, the line between permissible avenues of inquiry and questions that could touch upon Mr. Venezia's role as counsel is too tenuous and too fraught with conflict. This is particularly true since it is unclear

when precisely Mr. Venezia began representing Lurie Management Corp. Abraham Lurie testified at his deposition that Mr. Venezia began representing LMC at the end of 2012 (see, Deposition of Abraham Lurie, page 75). Further, Susan Lurie testified that Mr. Venezia represented Abraham Lurie at the time of the second recording in 2013 (see, Deposition of Susan Lurie, page 70). This representation would cover the formation of the trusts and is therefore an improper line of inquiry.

In any event, even if such representation did not yet commence and questions would not be barred by any attorney client privileges the testimony is still not relevant. Indeed, all the testimony sought from Mr. Venezia has already been provided by Susan and Abraham. Susan Lurie submitted an affidavit dated August 30, 2020 wherein she admitted that she recorded a conversation with Neil on August 23, 2012. She submitted a supplemental affidavit dated December 22, 2020. In that recorded conversation Neil claimed their father had signed the stock certificate but that it was lost in the fire wherein Mr. Podlas the accountant perished. Clearly, Susan was aware of Neil's ownership claim since that meeting in 2012. Susan repeatedly stated in her affidavit she believed her brother was lying and that no such stock transfer ever took place. Abraham Lurie submitted an affidavit dated August 28, 2020 and stated that he never signed the stock certificate in 1998. He insisted that he

established the trusts in 2015 "before I knew that my son Neil Lurie was trying to steal the Property and claiming to be the sole owner of Lurie Management Corp." (see, Affidavit of Abraham Lurie, ¶ 33). Abraham further stated that 2018 was the "first time" he "was advised that Neil Lurie was claiming that I signed a stock certificate in 1998 giving him all of Lurie Management's shares but that the stock certificate burned in a fire" (see, Affidavit of Abraham Lurie, ¶ 38). Further, Abraham Lurie testified that when he visited Neil in 2012 with Susan no conversation about transferring any stock certificate to Neil was had (see, Deposition of Abraham Lurie, pages 132-133). Thus, while Susan asserted she was aware of Neil's claim in 2012, Abraham stated he was not aware of it until 2018. Consequently, the defendants themselves are not in agreement when they were aware of Neil's claims. To the extent this discrepancy impacts plaintiff's statute of limitations argument regarding the counterclaims it is not further advanced by asking Mr. Venezia when he first became aware Neil claimed ownership through the stock certificate since the parties themselves have already stated their opinions on the matter. Therefore, asking Mr. Venezia "about his knowledge of the 1998 LMC stock certificate" is not relevant since the answer will only further highlight the discrepancy among the defendants (see, Plaintiffs' Memorandum of Law in Opposition To Defendants' Motions to Quash Subpoenas

Served on Non-Parties Louis Venezia And Jeffrey Asher and in Support Of Plaintiffs' Cross-Motion to Compel Discovery, pages 13,14). There is nothing to be gained by inquiring when another family member, namely Mr. Venezia, became aware of Neil's ownership claims.

Likewise, plaintiff seeks a deposition of Mr. Venezia to inquire "about his role in the recordings of telephone conversations with Neil Lurie, Mr. Masciovecchio and others in early 2013" and "his role and knowledge in setting up the Trust Defendants and the purported second transfer of LMC's ownership by Abraham Lurie in 2015" (see, Plaintiffs' Memorandum of Law in Opposition To Defendants' Motions to Quash Subpoenas Served on Non-Parties Louis Venezia And Jeffrey Asher and in Support Of Plaintiffs' Cross-Motion to Compel Discovery, page 14). The plaintiff asserts the information related to recording the conversation with Neil is pertinent to the central claims of the case for three reasons. First, the recordings are not authenticated and Mr. Venezia might be able to provide information in this regard. Second, the precise time when the defendants were aware of Neil's claim is important, as noted, for arguments the counterclaims may not be asserted because of the statute of limitations. Third, although Mr. Venezia was not acting as an attorney it is unethical for an attorney to surreptitiously record conversations. However, as noted, the

central claim in the case is whether the transfer of the stock certificate in 1998 was an authentic transfer by Abraham Lurie. The recordings of conversations with Neil Lurie in 2013 are important to that claim but Mr. Venezia's role in the recordings, what he thought about the recordings, and if he even knew of their existence are simply not relevant in pursuit of the central claim. Indeed, Susan Lurie testified that except for her father she did not discuss the recordings with anyone (see, Deposition of Susan Lurie, page 68). She was asked if she discussed it with her husband, however, a privilege was asserted and no answer was provided. In any event, Susan Lurie provided all the authentication necessary concerning the recordings. She testified that it was her decision to call her brother, that it was her decision to record the conversation and that she did so because she did not trust him (see, Deposition of Susan Lurie, pages 66-67). She did testify that her husband, Mr. Venezia was on the call as well and argued with Neil about whether certain tax returns were filed. However, there is no basis to question Mr. Venezia about authentication since Susan provided such information. Moreover, as already explained, Susan and her father Abraham maintain two distinct dates when they became aware of Neil's claim. It is not relevant when Mr. Venezia, a non-party family member, also became aware of Neil's claim. Lastly, whether Mr. Venezia violated an ethical standard by participating

in the recorded conversation is beyond the purview of this lawsuit. That credibility issue is not relevant since in any event Mr. Venezia will not be called as a witness at trial.

Likewise, Mr. Venezia's role in the formation of the 2015 trusts do not advance plaintiff's claims at all. The plaintiff asserts the 1998 stock transfer was authentic therefore the 2015 trusts are void. The defendants assert the opposite, namely the 1998 stock transfer was a forgery and the 2015 trusts are valid. The plaintiff and the defendants have maintained the sincerity of their positions and have each accused the other of engaging in improper conduct and fraud. Of course both cannot be true and only one party will prevail at trial. The defendants have repeatedly and consistently insisted that Neil committed fraud. Likewise, Neil has accused the defendants of orchestrating the trusts as a way to wrest the company away from him knowing he really owned it. These positions are entrenched and only the jury will resolve this contentious case. Thus, plaintiff seeks to depose Mr. Venezia to discover "the extent of Mr. Venezia's involvement in and knowledge of the 2015 purported transfer of LMC's ownership to the Trust Defendants" (see, Plaintiffs' Memorandum of Law in Opposition To Defendants' Motions to Quash Subpoenas Served on Non-Parties Louis Venezia And Jeffrey Asher and in Support Of Plaintiffs' Cross-Motion to Compel Discovery, pages 2-3). Notwithstanding Mr. Venezia's possible role as

counsel at that time, which would bar his deposition, his beliefs about the trusts or his questionable role concerning the trusts have no bearing on this litigation. It is certainly true that any evidence in any form that the defendants believed Neil was the rightful owner of the company but tried to steal it from him by creating trusts would certainly be relevant and would undoubtedly resolve the case. Likewise, any admission from Neil the 1998 stock transfer is a forgery would surely be dispositive. However, no such 'smoking gun' testimony or affidavit exists. On the contrary, every party, the plaintiff and all defendants have unflinchingly maintained they have acted properly and the other side has acted maliciously. There is no further discovery of any party including Mr. Venezia that would suddenly reveal contrary opinions and it is mere speculation to think otherwise.

Therefore, the motion seeking to quash the subpoena served upon Mr. Venezia is granted in all respects. Likewise, there is no basis to conduct any in camera review of any documents since there is no basis to conclude Mr. Asher or Mr. Venezia committed any crime or any fraud. The credibility determinations that will resolve this case will not be furthered by a review of documents that do not contain any indications or expressions of crime or fraud. Consequently, the motion seeking to quash the subpoena served upon Mr. Asher is granted in all respects.

Concerning plaintiff's requests, as noted, the trust

documents are not discoverable since they do not further any claim in this case, namely whether the 1998 stock transfer was authentic. They likewise do not further the counterclaim in any way since the trusts rise or fall depending on the authenticity of the 1998 stock certificate transfer. They have no intrinsic discoverable value in themselves and are only ancillary to the main claim, namely whether Abraham transferred the stock certificate to Neil in 1998. Moreover, the request to deem admitted the assertion the stock certificate is authentic is denied. There is no dispute the defendants have consistently denied that contention and maintain it is a forgery. The defendant's failure to timely respond notwithstanding, the court cannot deem a matter admitted that is clearly not admitted. However, if the defendants wish they may conduct any forensic examinations upon the stock certificate or the commercial signature card within thirty days of receipt of this order. Similarly, there is no basis to conclude that Neil "admitted" that Steven Podlas did not fill out the stock certificate.

The request seeking any information whether Abraham gave other gifts to his children is proper. The existence of such gifts would support the plaintiff's claim that Abraham gave the company to Neil and other gifts to his other children. This avenue of inquiry is proper. Furthermore, the request seeking information concerning payments made by Abraham Lurie on LMC


accounts "as well as any payments made by them toward the Property's real estate taxes or any loans made by them to the companies" is proper if such evidence exists (see, Plaintiffs' Memorandum of Law in Opposition To Defendants' Motions to Quash Subpoenas Served on Non-Parties Louis Venezia And Jeffrey Asher and in Support Of Plaintiffs' Cross-Motion to Compel Discovery, pages 21-22). Likewise, the request seeking information about Abraham Lurie's role as a consultant of LMC is proper. The remainder of the plaintiff's requests are denied.

The motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: April 21, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC