

Alsaedi v Alsaede

2022 NY Slip Op 30131(U)

January 18, 2022

Supreme Court, Kings County

Docket Number: Index No. 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, January 18, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §2221 seeking to renew and reargue a decision and order dated October 5, 2021 denying a motion to dismiss. The plaintiff has cross-moved seeking sanctions. 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 recorded in a prior orders, 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 Alsaedi owns a third, Abdo Alsaede owns a third and Ahmed Nasser owns 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 including failing to collect rents, misappropriating funds and awarding themselves unearned fees.

The complaint alleges causes of action for breach of contract, fraud, unjust enrichment and breach of a fiduciary duty. The court sustained many of the causes of action.

The defendants now move seeking to renew that determination by presenting a resolution executed by Abdo Alsaede and Ahmed Nasser as well as by someone as the agent of the plaintiff terminating the plaintiff's interest in the corporation. The authority to act on behalf of the plaintiff was based upon a power of attorney executed by the plaintiff on August 24, 2007. Consequently, the defendants argue the plaintiff is thus no longer a member of Mountain of Saber and has no standing to continue the lawsuit and the lawsuit should therefore be dismissed. As noted, the plaintiff opposes that request.

Conclusions of Law

It is true that generally, a motion to renew must contain evidence that existed at the time the original motion was filed but was unknown to the moving party (Brooklyn Welding Corp., v. Chin, 236 AD2d 392, 653 NYS2d 631 [2d Dept., 1997]). However, that rule has been defined as 'flexible' and a party may file a motion to renew even if the evidence was known at the time of the original motion provided the party offers a reasonable explanation why the additional facts were not included within the original motion (Progressive Northeastern Insurance Company v.

Frenkel, 8 AD3d 390, 777 NYS2d 652 [2d Dept., 2004]).

The power of attorney submitted by the defendants lists sixteen distinct powers granted by the plaintiff. The plaintiff has submitted a power of attorney which appears to have the same date and same notary signature, however, that power of attorney only grants six powers, namely to engage in real estate transactions, chattel and goods transactions, banking transactions, business operating transactions, claims and litigation and records reports and statements. Further, the power of attorney presented by the plaintiff contains a handwritten address for the plaintiff while the power of attorney submitted by the defendants contain no such address. Further, the power of attorney submitted by the plaintiff merely contains an 'x' in each box checked off granting such powers. The power of attorney submitted by the defendants contains the initials 'KA' in each of the sixteen boxes checked off. It should be noted the power of attorney submitted by the defendants contains a seventeenth box (Box Q) containing the initials 'KA' which grants a power to "each of the above matters Identified by the following letters" and no such letters follow. Clearly, there are questions of fact as to the authentic power of attorney executed by the plaintiff and the defendants cannot possibly prevail dismissing the lawsuit upon a power of attorney of questionable authenticity. Further, there is no basis to


consider any of the prior rulings of the previous decision and the motion seeking reargument is denied.

Lastly, the motion seeking sanctions is denied. However, to prevent further motions of such dubious merit, the parties must obtain prior court approval prior to filing any further motions in this case.

So ordered.

ENTER:

DATED: January 18, 2022
Brooklyn NY



Hon. Leon Ruchelsman
JSC