

Haaris v Hameedi

2022 NY Slip Op 31339(U)

April 25, 2022

Supreme Court, New York County

Docket Number: Index No. 159135/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ABSAR HAARIS,

Plaintiff,

- v -

ASIM HAMEEDI, ARIF HAMEEDI, UNIPIKE REAL
ESTATE LLC, HAARHAM REALTY LLC,

Defendant.

INDEX NO. 159135/2020

MOTION DATE 03/29/2022,
03/15/2022

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 66, 67, 68, 69, 70, 71, 72

were read on this motion to/for DISMISS.

Upon the foregoing documents, Asim Hameedi’s motions to compel discovery (Motion 002) and to dismiss the cross-claims of Arif Hameedi (Motion 003) are granted.

Absar Haaris and Asim Hameedi are doctors who shared a medical practice until 2015. Dr. Haaris, Dr. Hameedi, and Dr. Hameedi’s brother, Arif Hameedi, a licensed contractor, formed Unipike Real Estate LLC (**Unipike**). Each owned a one-third interest. Unipike is alleged to have been formed to purchase and develop a parcel of commercial real estate at 213-18 Union Turnpike in Queens (the **Property**) as a medical complex. Unipike purchased the Property in June 2007 and construction of the medical complex was completed in 2015.

Dr. Haaris sued Dr. Hameedi and his brother alleging (i) causes of action for breach of contract, breach of fiduciary duty, conversion, and unjust enrichment, (ii) seeking a declaratory judgment as to his interest in Unipike and another limited liability company (collectively, the LLCs) which he formed solely with Dr. Hameedi, and (iii) that he has been denied access to the books and records of the LLCs and demanding a formal accounting. Among other things, Dr. Haaris alleges that, after he ceased practicing medicine with Dr. Hameedi, he was shut out of the management and operation of the properties owned by the LLCs and never received his share of the profits from the rents received at the properties.

Arif Hameedi filed an Answer asserting counterclaims against Dr. Haaris and cross-claims against Dr. Hameedi seeking an accounting of Unipike, a declaratory judgment dissolving Unipike, and the appointment of a receiver to windup Unipike's affairs.

Dr. Hameedi now brings the instant motions against his brother to compel production of documents relating to Unipike and to dismiss Arif Hameedi's cross-claims.

On a motion to dismiss, the pleading is afforded a liberal construction, the facts as alleged are accepted as true, and the court must determine whether the facts as alleged fit any cognizable legal theory, according the plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). When a motion is made pursuant to CPLR § 3211(a)(7), a court “may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint” and “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]).

Arif Hameedi's claim for an accounting of Unipike's books and records must be dismissed because he fails to allege in either his Answer or Affidavit in support of the motion that he made a demand for an accounting which was rejected by the parties (*Kaufman v Cohen*, 307 AD2d 113, 123-24 [1st Dept 2003]).

Additionally, Arif Hameedi's claim seeking dissolution of Unipike and the appointment of a receiver must be dismissed because, even accepting Arif Hameedi's allegations as true, there is no indication that the alleged purpose of Unipike purchasing and collecting rent from the Property to be paid to the members can not be achieved, nor that continuing Unipike is financially unfeasible (*Kassab v Kasab*, 137 AD3d 1135, 1137 [2d Dept 2016]; *Barone v Sowers*, 128 AD3d 484, 485 [1st Dept 2015]; *Matter of 1545 Ocean Ave., LLC*, 72 AD3d 121, 131 [2d Dept 2010]). Regardless of whether Dr. Hameedi actually pays rent for his personal use of commercial space at the medical complex, Arif Hameedi admits that there are other tenants and rental income at the Property (e.g., Verizon and Dr. Hameedi's wife), that could be paid to the members of Unipike. Because Arif Hameedi has failed to state a claim for dissolution of Unipike, his request for the appointment of a receiver is dismissed as moot (*Doyle v Icon, LLC*, 103 AD3d 440, 441 [1st Dept 2013]).

Finally, although Arif Hameedi has alleged that he does not have a full copy of the operating agreement or the articles of organization for Unipike, there is no reason he should not formally respond to Dr. Hameedi's demands, including documentation about his involvement with the Verizon lease, and information about capital contributions alleged to have been made by him.

Accordingly, it is

ORDERED that Dr. Hameedi’s motions to compel discovery (Motion 002) and to dismiss Arif Hameedi’s cross-claims (Motion 003) are granted; and it is further

ORDERED that the parties provide a deposition schedule (names and dates), to be completed before May 10, 2022, forthwith; and it is further

ORDERED that the parties appear for a status conference on May 13, 2022.

4/25/2022

DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE