

Matter of Arad 2 LLC v Hamo
2022 NY Slip Op 31588(U)
May 12, 2022
Supreme Court, New York County
Docket Number: Index No. 656951/2020
Judge: Robert R. Reed
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 NEW YORK: COMMERCIAL DIVISION PART 43

-----X

IN THE MATTER OF THE APPLICATION OF ARAD 2
LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
AS A MEMBER OF 4053-4057 BX, LLC, AND ARAD
LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
AS A MEMBER OF 4001 BX, LLC AND DAVID ARAD,

INDEX NO. 656951/2020

MOTION DATE 04/30/2021

MOTION SEQ. NO. 002

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

GADI HAMO, MOUNT SINAI PROPERTIES, INC. (A/K/A
MT. SINAI PROPERTIES, INC.), 4053-4057 BX, LLC, 4001
BX, LLC,

Defendant.

-----X

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 126

were read on this motion to

STRIKE PLEADINGS

This case involves a dispute between cousins who own and operate two limited liability companies. Plaintiff David Arad (“Arad”) commenced this action individually and derivatively against defendant Gadi Ben-Hamo (“Ben-Hamo”), to dissolve 4053-4057 BX LLC and 4001 BX LLC for Ben-Hamo’s alleged fraud, conversion, and breach of fiduciary duties. In a 243-paragraph complaint, Arad makes several allegations against Ben-Hamo and his attorneys directly, referencing conduct that Arad characterizes as “criminal,” “fraudulent” and knowingly unethical. Defendants move for an order pursuant to CPLR 3024(b), striking certain paragraphs of the plaintiffs’ complaint due to their scandalous and prejudicial nature. For the foregoing reasons, defendants’ motion is granted.

CPLR 3024 (b) permits a party to seek an order striking objectionable matter from a pleading. To determine whether an allegation should be stricken, the court assesses whether the inclusion of the information is relevant and necessary to establish the elements of a legal claim (*Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007]; *Pisula v Roman Cath. Archdiocese of New York*, 201 AD3d 88, 96–97 [2nd Dept 2021] [“The relevance and propriety of allegations must be viewed in the context of the general facts necessary for giving the court and the parties notice of the transactions or occurrences at issue, for addressing the material elements of the asserted causes of action or defenses and for meeting any particularity requirements that might be additionally required under CPLR 3015 or 3016 or other authority”]).

Matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or its material elements (*id.*, citing *New York City Health & Hosps. Corp. v St. Barnabas Community Health Plan*, 22 AD3d 391 [1st Dept 2005]), but allegations may be stricken if the matter is (1) unnecessary for the complaint's sufficiency, (2) prejudicial, or (3) irrelevant (*Schachter v Massachusetts Protective Ass'n*, 30 AD2d 540 [2nd Dept 1968]).

Here, the language at issue involves plaintiffs' recitations of events surrounding a Bronx case styled, *Gadi Ben Hamo, et. al. v. David Arad, et. al.* bearing index 802107/2021E. In that action, Ben-Hamo requested a restraining order from the court prohibiting Arad from taking specific action with respect to 4001 BX LLC. Ultimately, the matter was disposed of by stipulation, and a management agreement for 4001 BX LLC was agreed upon by all parties.

In the amended complaint, Arad characterizes Ben Hamo's handling of the Bronx litigation as “fraud” and asserts that defendants committed a crime in the commission of or in the filing of the Bronx action (see NYCEF doc. no. 32 para. 7, 30). Arad's amended complaint also claims that Ben Hamo's attorneys made material misrepresentations to the Bronx court and

submitted knowingly fraudulent and falsified documents in support of the Bronx litigation (see NYCEF doc. no. 32 para. 29). These statements are prejudicial and unnecessary.

Arad's subjective labeling of Ben Hamo and his attorney's conduct in the Bronx litigation is irrelevant to whether Arad can establish that Ben Hamo committed fraud and breached his fiduciary duties with respect to the operation of 4053 BX LLC in this action.

The court recognizes that the conduct underlying the amended complaint's allegations may later be relevant and admissible at trial. Nevertheless, this court finds it unnecessary, for the sufficiency of the pleading, to characterize the conduct of the parties involved in the Bronx litigation as "criminal," "fraudulent," and "unethical." To allow those allegations to remain in the pleadings would cause undue prejudice (*JC Mfg., Inc. v NPI Elec. Inc.*, 178 AD2d 505, 506 [2nd Dept 1991]; *Pisula* 201 AD3d at 97 ["The discussion of particular pieces of evidence... need not be included in an otherwise sufficient complaint as a precondition to their pretrial discoverability or their admissibility at trial. (T)here is a distinction between what is relevant to factual averments in a pleading to give proper notice of transactions and occurrences and to address the material elements of the causes of action, versus what evidence may be relevant and admissible at the trial of the action to prove them."]).


Accordingly, it is hereby

ORDERED that defendants' motion to strike prejudicial content from the Amended Verified Complaint is granted, and it is further

ORDERED that heading "VI." and paragraphs 2, 3, 5, 6, 7, 8, 20, 29, 30, 94, 95, 96, 97, 108, 112, 113, 115, of the complaint are stricken.

This constitutes the decision and order of the court.

05/12/2022
DATE


ROBERT R. REED, 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