

**Ashkenazy v Gindi**

2022 NY Slip Op 32262(U)

July 11, 2022

Supreme Court, New York County

Docket Number: Index No. 656277/2020

Judge: Andrea Masley

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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 48

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BEN ASHKENAZY, ASHKENAZY ACQUISITION CORPORATION, CROSS COUNTY MALL MANAGING MEMBER CORP., 1991 BROADWAY OWNER LLC, LULU GIGI REALTY LLC, 625 NMA AAC MEMBER LLC, DK CONNECTIONS LLC, HORACE PLAZA MANAGING MEMBER LLC, and ASHKENAZY CANADA GP CORP.,

Plaintiffs,

- v -

RAYMOND GINDI, EDDIE GINDI, ISAAC GINDI, ASG EQUITIES LLC, CCC PARTNERS, 1991 BROADWAY BLUE LLC, WEBRO 2067 LLC, IRAYMOND 2067 LLC, STAR OF DAVID 2067 LLC, RANDALL CO. 2067 LLC, 625 BLUE MEMBER LLC, BEVCON BLUE FEE LLC, GV HORACE PARTNERS, 696 STE. CATHERINE BLUE PARTNERS, ISAAC RAYMOND ASSOCIATES LLC, G-CROSS BRONX PLAZA PARTNERS, 625 MADISON BLUE LLC, GCVS FLATBUSH PARTNERS, 145 GREENE BLUE LLC, BRAVERN BLUE LLC, G III 69TH ST. PARTNERS L.P., THE ASHKENAZY FAMILY N.Y. TRUST-DATED 11/16/05, 2013 ICONIC TRUST LLC, CROSS BRONX PLAZA MANAGING MEMBER CORP., BA 625 MAD MANAGING MEMBER CORP., BA BRAVERN MANAGER LLC, 69TH STREET HOLDINGS GP LLC, SAN FRAN ICONIC MEMBER LLC, and BEN AND DEBRA FAMILY 2015 LLC

Defendants.

INDEX NO. 656277/2020  
MOTION DATE N/A  
MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

-----X  
HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

Defendants move pursuant to CPLR 3104(d) for an order revising the Special Master's disclosure orders made on February 3, 2022, insofar as such orders deny or limit the Gindis' Requests for Production (RFPs) 48-50, 53-59, and 63 and revising the Special Master's orders to compel discovery as to these requests in their entirety.

The issue is whether plaintiffs' alleged limit on their defamation claims to seven buildings called the "Capital Call Properties" also restricts defendants' defamation discovery. In their complaint with regard to defamation, plaintiffs allege:

62. Beginning as early as May 2020, Defendants made and disseminated completely false claims that Mr. Ashkenazy, AAC and the other Plaintiffs "stole" millions of dollars rightfully due the Gindi Entities in connection with their investment in the Capital Call Properties. Each of these claims was and is absolutely false: Plaintiffs have managed the Capital Call Properties in complete accordance with their contractual and fiduciary duties, and have not deprived Defendants of any monies due them. Indeed, in many instances, Plaintiffs have injected capital, foregone interest payments or otherwise supported the Capital Call Properties when the Gindi Entities failed to do so. In fact, the reverse is true: Defendants owe Plaintiffs many millions of dollars, not the other way around.

63. Nevertheless, on multiple occasions, members of the Gindi Family have disseminated lies about Mr. Ashkenazy and his businesses, including, without limitation, the following: (a) Defendant Eddie Gindi accused Mr. Ashkenazy and Plaintiffs of "stealing" to Eddie Gindi's son-in-law, Zourie Dweck, as well as to Alex Adjmi, the president of A&H Acquisition Corporation and another well-known real estate investor; (b) Defendant Isaac Gindi accused Mr. Ashkenazy and Plaintiffs of "stealing" to a business associate Eli Gindi (no relation to the Gindis herein) at a fundraiser, and also to Isaac Gindi's son, Sonny Gindi, who then shared the false statements with community members; and (c) Defendant Raymond Gindi accused Mr. Ashkenazy and Plaintiffs of "stealing" to his business associate Eli Gindi (no relation to the Gindis herein), to Raymond Gindi's brother-in-law, Jojo Chehebar, and to Joseph Cayre, yet another well-known real estate investor.

64. Tellingly, in just the span of a short thirty days between July and August 2020, the Gindis' lies changed dramatically, as they doubled the amount that they claim is due them.

65. The Gindis, on behalf of themselves and the other Defendants, disseminated these false statements with the intent and knowledge that they would be further disseminated; worse, they disseminated these lies to members of the real estate community – where Mr. Ashkenazy often does business – in a malicious and intentional attempt to reduce Mr. Ashkenazy's standing (and the standing of his business interests, including Plaintiffs) among potential investors and counterparties, as well as colleagues and friends.

FIFTEENTH CAUSE OF ACTION Defamation (By Plaintiffs Against All Defendants)

180. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 179.

181. As detailed above, beginning at least in May 2020, acting on behalf of themselves and the Gindi Entities, Defendants Raymond Gindi, Eddie Gindi, and Isaac Gindi published or caused to be published multiple false statements of fact about Plaintiffs that are defamatory.

182. The false and defamatory statements about Plaintiffs included statements that Plaintiffs “stole millions of dollars” from Defendants.

183. Acting on behalf of themselves and the entity Defendants, Defendants Raymond Gindi, Eddie Gindi, and Isaac Gindi caused these false statements to be repeated to third parties

(NYSEF 1, Complaint.) Defendants assert truth as a defense.<sup>1</sup> (NYSCEF 7, Answer ¶¶13, 189.)

On the face of the complaint, plaintiffs’ defamation is clearly not limited to the “Capital Call Properties.” The alleged defamatory statements are against Ashkenazy, not the buildings. Indeed, plaintiffs’ prior discovery activity is inconsistent with its current position limiting its defamation claim to the “Capital Call Properties.” For example, plaintiff’s Request for Production 13, in support of their defamation claim, is not limited to the “Capital Call Properties.” rather, plaintiffs requested:

“All documents and communications with any person, including without limitation, Zourie Dweck, Alex Adjmi, Eli Gindi, Samuel “Sonny” Gindi, Jojo Chehebar, and Joseph Cayre, concerning or containing statements, allegations, claims, or assertions that Plaintiffs (i) owe money to Defendants; (ii) have stolen or misappropriated money from Defendants; (iii) have committed fraud; (iv) have engaged in unlawful conduct; (v) are untrustworthy; and (vi) any other statements regarding Plaintiffs’ honesty, ethics, trustworthiness, dependability, and/or professional or business abilities.” (NYSCEF 158, Plaintiff’s Request for Production.)<sup>2</sup>

<sup>1</sup> Defendants’ SLAPP counterclaim was dismissed. (NYSCEF 183, July 10, 2022 Decision and Order.)

<sup>2</sup> Judge Maas struck the first category within plaintiffs’ RFP 13 allowing 2 to 6 (NYSCEF 158.) Importantly, plaintiffs’ discovery request on defamation was not limited by Judge Maas to the Capital Call Properties.

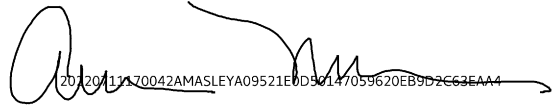
The court rejects plaintiffs' limitation of its defamation claim to the "Capital Call Properties."

Nevertheless, discovery is not boundless. The parties agreed to the appointment of Hon. Frank Maas (ret.) as a Special Discovery Master to supervise discovery. (NYSCEF 134, August 11, 2021 Order.) He heard from the parties and set some limits with regard to books and records discovery. (NYSCEF 162, Tr. 60:4-9; 78:5-11; 65:19-25; 66:1-3; 83:10-13; 85:5-8; 87:12-13; 73:22-74:2.) Defendants challenge Judge Maas's February decision to the extent that it also limits defendants' defamation discovery to the "Capital Call Properties" and seven other properties that are named in the counterclaims. As to defamation discovery, Judge Maas observed that Ashkenazy "brought this [discovery] upon [him]self by bringing the defamation claim." (NYSCEF 162, Tr. 93:16-17; See also NYSCEF 162, Tr. 50:12-16.) In doing the discovery calculus for plaintiffs' defamation claim, Judge Maas must necessarily take into consideration the books and records discovery already ordered, but it does not necessarily limit defamation discovery. However, the parties did not give Judge Maas, their chosen Special Discovery Master, an opportunity to perform this final calculation. Rather, it appears to the court that all were focused on books and records. Of course, defamation discovery overlaps with books and records discovery, but it is not necessarily identical. Having clarified the scope of plaintiffs' defamation claim here, the Special Discovery Master shall have an opportunity to review defendants' defamation document requests.

Accordingly, it is

ORDERED that the court strikes the deadline in its July 10, 2022 decision (NYSCEF 183, Decision and Order) for filing the PC; and it is further

ORDERED that defendants' motion is granted to the extent that the parties shall return to the Special Discovery Master for a discovery conference and consideration of defendants' request consistent with this decision.



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7/11/2022

DATE

ANDREA MASLEY, 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