

Reich v 559 St. Johns Pl, LLC
2022 NY Slip Op 32923(U)
August 17, 2022
Supreme Court, Kings County
Docket Number: Index No. 506861/19
Judge: Lawrence Knipel
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At an IAS Term, Part COMM-6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of August, 2022.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X
ALEXANDER REICH,

Plaintiff,

-against-

Index No. 506861/19

559 ST. JOHNS PL, LLC; LATANYA A. PIERCE;
LENOX PACIFIC LLC; THE CITY OF NEW YORK;
NEW YORK CITY DEPARTMENT OF TAXATION AND
FINANCE; NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT; et. al.,

Motion Sequence 4

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

112 - 116

Opposition Affidavits (Affirmations) Annexed _____

118 - 122

Reply Affidavits (Affirmations) _____

125

In this commercial mortgage foreclosure action, defendant 559 ST. JOHNS PL LLC (hereinafter "559 St. Johns") moves for an order compelling plaintiff to respond to its Demand for Discovery and Inspection dated March 31, 2021, or, in the alternative, an order striking plaintiff's complaint pursuant to CPLR 3126.

According to the complaint, on August 21, 2008, Nechadim Corp., (hereinafter "NEC") loaned 559 St. Johns the principal amount of \$450,000.00 (hereinafter the "Loan")

(NYSCEF Doc No. 1, ¶ 12). Plaintiff Alexander Reich (plaintiff) is the owner of NEC (*id.*). To evidence its indebtedness under the Loan, 559 St. Johns executed a note in the amount of \$450,000.00 in favor of NEC which was secured by a mortgage encumbering the property located at 1308 Caton Avenue in Brooklyn, New York (hereinafter “Mortgaged Premises”) (*id.* at ¶¶ 14-15). The complaint further alleges that 559 St. Johns failed to comply with the terms and conditions of the Note and Mortgage by defaulting in the payment of the interest and principal when due (*id.* at ¶ 34).

In its answer, 559 St. Johns asserts several counterclaims including causes of action for fraud and violation of the Federal Racketeering Influenced and Corrupt Organizations Act (see NYSCEF Doc No. 11, Counterclaims ¶¶ 1, 3). 559 St. Johns alleges, in sum and substance, that plaintiff and NEC fraudulently induced the Loan by advancing less funds than the agreed upon amount, obtaining large sums of money from the defendant “under-the-table” as a condition of the Loan, forcing defendant to pay plaintiff broker’s and attorney’s fees as well as all closing costs, including ones mandated by law to be paid by the lender (*see id.* at Counterclaims ¶ 1). 559 St. Johns seeks, via its counterclaims, that the Mortgage be rescinded and that plaintiff be made to pay defendant damages (*id.*).

On August 23, 2021, 559 St. Johns filed the instant motion seeking to compel plaintiff to respond to its Demand for Discovery and Inspection dated March 31, 2021. 559 St. John’s demand seeks the following:

“(1) True and accurate copies of any and all mortgage agreements entered into between plaintiff Alexander Reich (and/or his corporation Nechadim Corp), and any individual(s) or entity, be it individual or corporate entity, from January 1 2007 to December 31 2010, wherein Alexander Reich and/or Nechadim Corp was the mortgagee in said agreement., whether

recorded or not. To be clear, we are requesting copies of any and all mortgages made in favor of Alexander Reich and/or his corporation Nechadim Corp, from January 2007 to December 31, 2010, whether recorded or not.

(2) True and accurate copies of the bank statements of any and all bank accounts maintained, in the United States, by plaintiff Alexander Reich, in his personal name and/or under the name his corporation, Nechadim Corp, for the period January 1, 2008 to December 31, 2008. To be clear, we are requesting copies of any and all bank statements of Alexander Reich and/or his corporation Nechadim Corp, from January 1, 2008 to December 31, 2008, as maintained in the United States of America” (NYSCEF Doc No. 114).

In opposition to 559 St. Johns’ motion, plaintiff states that he has responded to defendant’s request notwithstanding the “absurd scope of the discovery requested” (NYSCEF Doc No. 118, ¶ 4). Plaintiff argues that defendant seeks items that are irrelevant to a mortgage foreclosure action such as all mortgage agreements made by plaintiff and his company during a specified period of time as well as all of plaintiff’s bank statements from over a decade ago. Plaintiff nevertheless represents that he has produced all of the records that he could locate.

In reply, 559 St. Johns contends that plaintiff has failed to adequately respond to its demands. In this regard, 559 St. Johns claims that plaintiff has only produced 14 mortgages but that 559 St. Johns located, through ACRIS, six additional mortgages that plaintiff made but which were not disclosed. Further, since ACRIS only covers New York City and not the entire state, the search for mortgages given by plaintiff is incomplete and that said information can only be provided by plaintiff. 559 St. Johns asserts that this information is relevant because its counterclaims alleges that plaintiff and his corporation, NEC, violated the licensing provisions of Banking Law § 590, which requires licensure for

making mortgage loans unless the provider does not originate more than three residential mortgage loans in a calendar year, nor more than five in a two-year period. In addition, 559 St. Johns argues that plaintiff's banking records are relevant because one of its counterclaims alleges that plaintiff and NEC forced borrowers, including 559 St. Johns, to pay an under-the-table cash payment of 10% of the loan amount prior to giving loans to borrowers and also requested that these under-the-table cash payments be made in small increments to avoid detection. 559 St. Johns points out that plaintiff has failed to provide any documents responsive to this request purportedly due to the passage of time. However, this excuse is unavailing because plaintiff failed to timely make this objection and plaintiff has been aware of this counterclaim since 2015, when 559 St. Johns first asserted this defense and counterclaim to plaintiff's initial foreclosure action regarding the same Mortgage. Based on the foregoing, 559 St. Johns argues that plaintiff has violated the discovery rules and his complaint should be stricken.

Discussion

CPLR § 3101(1) provides for "full disclosure of all matters material and necessary for the prosecution and defense of an action...." The words "material and necessary" are to be interpreted liberally to require disclosure of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity (*see Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [Ct App 1968]). "The test is one of usefulness and reason" (*id.*).

"[T]he scope of permissible discovery is not entirely unlimited and the trial court is invested with broad discretion to supervise discovery and to determine what is 'material

and necessary' as that phrase is used in CPLR 3101(a)" (*Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Gomez v State of New York*, 106 AD3d 870, 872 [2d Dept 2013] [internal quotation marks and citations omitted]).

Although courts are normally reluctant to grant disclosure of financial records due to their private and confidential nature, where the moving party makes a strong showing of necessity and demonstrates that the information is not available from other sources, the request is granted (*see Dore v Allstate Indem. Co.*, 264 AD2d 804 [2d Dept 1999]; *see also David Leinoff, Inc. v 208 West 29th St. Assocs.*, 243 AD2d 418, 419 [1st Dept 1997]).

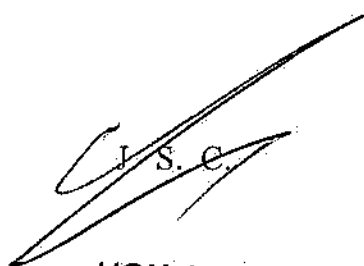
Here, 559 St. Johns has adequately demonstrated that the subject discovery is relevant to establishing its counterclaims and that the information sought by way of plaintiff's bank records is not available from other sources. In addition, 559 St. Johns' demand is narrowly tailored to one year. However, it is not inconceivable that plaintiff is not in possession of his bank records from 2008, which is 14 years ago. As such, plaintiff shall provide an affidavit stating the name(s) of his banking institution(s) during the 2008 year and 559 St. Johns is directed to subpoena the financial institutions for the relevant records. As for 559 St. Johns' request for copies of all mortgages made in favor of plaintiff or NEC from January 2007 through December 31, 2010, whether recorded or not, plaintiff shall provide an affidavit listing all such mortgages made in favor of plaintiff or NEC from January 2007 through December 31, 2010 and a statement that plaintiff has provided all

copies of mortgages within that timeframe in his possession. Plaintiff shall provide the foregoing affidavit within 30 days of notice of entry of this decision.

Accordingly, 559 St. Johns' motion to compel is granted solely to the extent stated herein, but is otherwise denied.

This constitutes the decision and order of the court.

ENTER,

A handwritten signature in black ink, appearing to be 'L. S. C.', is written over the printed name of the judge.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE