

Vashovsky v Zablocki
2022 NY Slip Op 34170(U)
December 8, 2022
Supreme Court, Kings County
Docket Number: Index No. 507373/21
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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CHANA VASHOVSKY, individually and
derivatively on behalf of
HUDSON VALLEY NY HOLDINGS LLC,

Plaintiffs, Decision and Order

-against-

Index No. 507373/21

YOSEF ZABLOCKI and NATIONAL JEWISH
CONVENTION CENTER,

Defendants,

And

December 8, 2022

HUDSON VALLEY NY HOLDINGS LLC,

Nominal Defendant,

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YOSEF ZABLOCKI and NATIONAL JEWISH
CONVENTION CENTER,

Counterclaim Plaintiffs,

-against-

CHANA VASHOVSKY and EPHRAIM VASHOVSKY,

Counterclaim-Defendants,

-----x

PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §3024 seeking to strike plaintiff's allegations relating to the sixteenth cause of action and to dismiss that cause of action. The plaintiff has cross-moved seeking to compel discovery. The motions have been opposed respectively and after reviewing all the arguments this court now makes the following determination.

In a prior decision dated August 25, 2022 the court granted the defendant's motion to dismiss the sixteenth cause of action of the plaintiff's second amended complaint alleging the fraudulent transfer of assets. The court based that determination on the legal conclusion that claim was duplicative

of any breach of contract claims contained in the complaint. The plaintiff has served a third-party complaint and has included the sixteenth cause of action within the new complaint despite the fact such cause of action was dismissed. The plaintiff argues that the court never concluded the claim did not have merit, rather the "claim was only dismissed because it was duplicative of the Breach of Contract Action" (see, Memorandum of Law in Opposition, page 7 [NYSCEF Doc. No. 342]). However, when a cause of action is dismissed as duplicative it means no such cause of action exists (see, Dormitory Authority v. Samson Construction Company, 30 NY3d 704, 70 NYS3d 893 [2018]). It does not mean the allegations that support the cause of action still have some value because they assert facts relevant to the case as a whole. Indeed, the proper expedient seeking to dismiss a cause of action as duplicative is a motion to dismiss pursuant to CPLR §3211(7) highlighting that if duplicative the cause of action is dismissed. Indeed, the plaintiff curiously argues that "each of the Allegations deals with the diversion of funds and the improper collection of payments for stays at HVR...This Court explicitly found that those allegations support and relate to the 'duplicative' breach of contract claim so, therefore, the Motion must be denied" (*id* at page 7). Of course, the court did not hold that duplicative allegations "support" any breach of contract action. Rather, the court simply held the fraud claims

were duplicative of the breach of contract cause of action and dismissed the cause of action on that ground. Thus, the paragraphs that support that cause of action must be removed from any complaint. Therefore, the motion seeking to remove paragraphs 270-277 of the third amended complaint is granted.

Further, the court denied the request to dismiss the fraudulent inducement cause of action. Thus, the court will now examine the remaining paragraphs to determine whether they should likewise be removed. The first paragraph mentions fraud, however, it also mentions other causes of action as well and the fraud could reasonably be read to refer to the fraudulent inducement claim. Thus, except for the reference to 'wire fraud' which must be removed, the remainder of the paragraph is proper.

Turning to other paragraphs, the motion seeking to remove paragraph 5 is granted. The motion seeking to remove paragraph 7 is denied and except for the word 'fraudulent' contained in paragraph 8 the motion seeking to remove paragraph 8 is denied. Paragraphs 18-26 do not involve fraud at all but rather involve allegations of other improper conduct which can support breach of contract as well as breach of fiduciary duty claims and other claims. Therefore, the motion seeking to remove those paragraphs is denied. The motion seeking to remove paragraphs 64 and 67 is denied. The motion seeking to remove paragraphs 70-117 and 154 is denied. Other than assorted references to the words 'fraud'

or 'fraudulent' the facts alleged do not necessarily only deal with the duplicative fraudulent transfer of assets claim. Rather, the facts alleged support breach of contract as well as other causes of action.

Turning to the plaintiff's cross-motion seeking discovery, the plaintiff's seek the tax returns of defendant Zablocki and the tax returns for NJCC and Destinations, entities owned by Zablocki as well as bank statements and credit card statements from Zablocki and the two entities.

It is well settled that corporate tax returns and all corporate financial statements are properly the subject of discovery (see, Chaudhry v. Abadir, 261 AD2d 497, 692 NYS2d 399 [2d Dept., 1999]). It is further well settled that tax returns of individuals may be produced during discovery if the information is necessary to the litigation and cannot be obtained from any other source (Sachs v. Adeli, 26 AD3d 52, 804 NYS2d 731 [1st Dept., 2005]). The defendants have failed to present any reason why the tax returns should not be discoverable in this case (Pugliese v. Mondello, 57 AD3d 637, 871 NYS2d 174 [2d Dept., 2008]). Further, the defendant has not really presented any reason why the financial information sought should not be furnished to the plaintiff. The information is relevant, material and may support many of the plaintiff's allegations. Further, the plaintiff cannot obtain this information from any

other source.

Therefore, the defendant must furnish all information requested which is contained requests three through eight of the demand served on October 26, 2021 (see, NYSCEF Doc. No. 340) within thirty days of receipt of this order.

So ordered.

ENTER:

DATED: December 8, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC