

Alsaedi v Alsaede

2023 NY Slip Op 30278(U)

January 25, 2023

Supreme Court, Kings County

Docket Number: Index No. 512191/20

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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KAMAL ALSAIDI individually and derivatively
on behalf of MOUNTAIN OF SABER, LLC,

Plaintiffs, Decision and order

- against -

Index No. 512191/20

ALI ALSAEDA, CAPITAL A MANAGEMENT NY INC.,
ABDO ALSAEDA, AHMED NASSER & ABDO M.
NASSER

Defendants,

January 25, 2023

Motion Sequence
Numbers 15, 16 & 17

MOUNTAIN OF SABER, LLC.

Nominal Defendant

-----X

PRESENT: HON. LEON RUCHELSMAN

The defendant Ali Alsaede has moved seeking a default judgement due to the plaintiff's failure to answer counterclaims filed. Abdo Alsaede has also moved seeking to strike the plaintiff's amended complaint for the failure to provide discovery and the plaintiff has filed a motion seeking to compel discovery responses. The motions have been opposed respectively. Papers were submitted the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior orders, property located at 797-815 Stanley Avenue in Kings County was owned by Abdo Alsaede. In 2005 an entity, Mountain of Saber LLC, became the owner of the property. That entity is equally owned as follows: the plaintiff Kamal Alsaedi owns a third, Abdo Alsaede owns a third and Ahmed

Nasser owns the final third. The defendant Ali Alsaede is the son of Abdo and the cousin of the plaintiff. Thus, the plaintiff is a one third minority owner of Mountain of Saber LLC. The defendants have managed and maintained the properties since 2005. The plaintiff has alleged the defendants have engaged in various improprieties since including failing to collect rents, misappropriating funds and awarding themselves unearned fees. The above noted motions have now been filed.

It is well settled that the trial court maintains broad discretion concerning the discovery process and any sanction for any violation (Bouri v. Jackson, 177 AD3d 947, 113 NYS3d 232 [2d Dept., 2019]). The severe sanction of striking a pleading is appropriate where it can be demonstrated that the failure to comply with discovery was the result of wilful and contumacious conduct (Rosenblatt v. Franklin Hospital Medical Center, 165 AD3d 862, 85 NYS3d 488 [2d Dept., 2018]).

Concerning the motion seeking a default for the failure to respond to counterclaims the plaintiff asserts that the court concluded the third counterclaim did not assert any claim (Affirmation in Reply, ¶¶89, 90 [NYSCEF Doc. No. 382]). However, the prior decision specifically stated that "there is no basis to dismiss the third counterclaim" (see, Decision and Order dated August 25, 2022, page 6 [NYSCEF Doc. No. 279]). The decision further noted there is also no basis to dismiss the fourth

counterclaim. Indeed, that portion of the decision concluded that "the motion seeking to dismiss the third and fourth counterclaims is denied" (id). Thus, it is difficult to understand plaintiff's reluctance to timely file an answer to those counterclaims. The plaintiff's response that the merits of the counterclaims were addressed and refuted in motion practice is belied by the fact the court expressly denied the request to dismiss those counterclaims. In any event the plaintiff has indeed filed a belated answer thus curing any default. Consequently, the motion seeking a default is denied.

Concerning Abdo Alsaede's motion, the plaintiff asserts venue in this case is based upon the residence of Ahmed Nasser who resides in Kings County (see, Affirmation in Opposition, ¶9 [NYSCEF Doc. No. 397]). Abdo Alsaede has not provided any information challenging the residence of Ahmed Nasser. Thus, any information sought to verify the residence of the plaintiff does not advance any relevant issue in this case. Therefore, this portion of the motion seeking sanctions is denied.

Turning to the demand seeking information regarding any consideration paid by the plaintiff, the plaintiff adequately responded to the request. Whether that response is sufficient to establish consideration is a question that will be explored by the parties and is beyond the scope of this motion. In any event, again, there is no basis to impose any sanction upon the

plaintiff for the responses offered. Further, additional demands served seeking information regarding the plaintiff's finances two years before the alleged transfer of cash almost thirty years ago are improper. They have no relevance to this lawsuit at all. The plaintiff has insisted that he provided cash to the defendants in exchange for ownership interests. The truth of that assertion will be tested in discovery and if necessary a trial. There is no further discovery that needs to be furnished in this regard. Consequently, Abdo Alsaede's motion is denied.

Lastly, the plaintiff has moved alleging the defendant Abdo Alsaede has failed to comply with discovery. The defendant Abdo Alsaede has provided an affidavit wherein he asserts that after conducting a diligent search of all his files there are no further documents to provide (Jackson v. City of New York, 185 AD2d 768, 586 NYS2d 952 [1st Dept., 1992]). In Jahan v. Vacarro, 2019 WL 4239406 [Supreme Court Queens County 2019] the court held that a Jackson affidavit that contained conclusory claims that all available records were provided lacked credibility since the affidavit did not contain information whether anyone who worked under the affiant maintained any relevant documents. Thus, an affidavit that lacks objective credibility may be questioned.

In this case there is no basis to question the integrity or credibility of Abdo Alsaede or to assert he has somehow failed to disclose documents. Moreover, upon the plaintiff's service of no

more than 25 interrogatories the defendant will duly respond within thirty days of receipt. In any event, the plaintiff's motion is denied.


Thus, all motions filed are hereby denied.

To further streamline the continuation of the case, no party or their agents may file any motion or order to show cause in this case without prior written approval from the court.

So ordered.

ENTER:

DATED: January 25, 2023
Brooklyn NY



Hon. Leon Ruchelsman
JSC