

Aizikovich v Torok

2023 NY Slip Op 30494(U)

February 15, 2023

Supreme Court, Kings County

Docket Number: Index No. 521318/19

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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SHMUEL AIZIKOVICH & OHR CHODOSH ELECTRICAL
CONTRACTING INC.,

Plaintiffs

Decision and order

- against -

Index No. 521318/19

JOZEF TOROK, TFK ELECTRIC CORP., HUN
MAINTENANCE INC., & KAMILA RHOLOVA TOROK,
Defendants,

February 15, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4

The defendants have moved seeking to compel the disclosure of the plaintiff's corporate and personal tax returns. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

As recorded in a prior order the Amended Complaint essentially alleges the defendant Torok misappropriated money from the plaintiff, falsified records and caused the plaintiff to be responsible for goods purchased by Torok. The defendant counterclaimed and asserted the plaintiff was paid by the defendants for work the defendants never performed, essentially siphoning funds from the defendants. The defendants asserted counterclaims for breach of contract, fraud, conversion and unjust enrichment. The defendants now seek the corporate and personal tax returns of the plaintiff. The plaintiff has refused to disclose those tax returns necessitating this motion.

Conclusions of Law

It is well settled that "tax returns generally are not discoverable in the absence of a strong showing that the information is indispensable to a claim or defense and cannot be obtained from other sources" (see, Nill v. Gaco Western LLC, 203 AD3d 1173, 758 NYS2d 135 [2d Dept., 2003]). Thus, "the party seeking to compel production of a tax return must identify the particular information the return will contain and its relevance, explain why other possible sources of the information sought are inaccessible or likely to be unproductive and limit examination of the return to relevant material through redaction of extraneous information" (see, Nanbor Realty Copr., v. Pater Realty Company, 242 AD2d 208, 661 NYS2d 216 [1st Dept., 1997]).

In this case the defendant's basis seeking the tax returns is to verify the plaintiff's contention that an oral partnership existed between the parties. In Shabbasson v. Max E. Greenberg, Trager, Toplitz and Herbst, 284 AD2d 230, 726 NYS2d 552 [1st Dept., 2001] the court permitted the disclosure of Schedule K-1's of the partnership tax returns to establish claims a partner did not receive his fair share of partnership profits. Likewise, the Schedule K-1's, to the extent they exist in this case will establish the existence of a partnership. Thus, the portion of the request seeking the Schedule K-1's only for purposing of establishing the existence of a partnership is granted.

The defendants also seek the tax returns on the grounds they allege the plaintiff committed fraud against the defendant Torok. Specifically, the defendant asserts that "the tax returns are the only source that can verify and support Defendants' counterclaim, as they will be able to verify whether Torok ever received the 50% of net profits he was entitled to" (see, Affirmation in Support, ¶37 [NYSCEF Doc. No. 102]). However, as noted, the production of Schedule K-1's, if any, surely provide the necessary information in this regard that cannot be obtained from other sources.

Lastly, the defendants argue they require the production of full and complete tax returns so they can verify whether the information provided in other financial documents submitted is accurate. The defendants assert that "plaintiffs' tax returns will show the amount of monies Plaintiffs diverted from Defendants. Defendants will be able to see from the tax returns the amount of monies Plaintiffs actually took from the partnership and from Defendants" (see, Affirmation in Support, ¶41 [NYSCEF Doc. No. 102]). However, there is no basis upon which to assert that the tax returns will contain a list of jobs for which the plaintiff worked and the defendants can then sift through the list and ascertain whether any funds owed them has been withheld. The tax returns will not contain such specific and readily comparable information. Thus, the tax returns will not "show the amount of monies plaintiffs diverted from

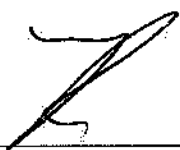
defendants" (id). Therefore, there is no basis to disclose such information.

Consequently, based on the foregoing, the motion seeking the tax returns of the plaintiff is granted only to the extent that partnership Schedule K-1's shall be furnished. No other information of any tax return is discoverable.

So ordered.

ENTER:

DATED: February 15, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC