

Vashovsky v Zablocki

2023 NY Slip Op 30760(U)

March 15, 2023

Supreme Court, Kings County

Docket Number: Index No. 507373/21

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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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

March 15, 2023

HUDSON VALLEY NY HOLDINGS LLC,

Nominal Defendant,

-----X
YOSEF ZABLOCKI and NATIONAL JEWISH
CONVENTION CENTER,

Counterclaim Plaintiffs,

-against-

CHANA VASHOVSKY and EPHRAIM VASHOVSKY,

Counterclaim-Defendants,

-----X
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #22

The plaintiff has moved pursuant to CPLR §3126 seeking to strike the defendant's answer for the failure to comply with discovery. The defendant opposes the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

The facts underlying this lawsuit have been recited in numerous prior decisions and need not be repeated herein.

On October 26, 2021 the plaintiff served a discovery demand. On December 8, 2022 this court issued an order requiring all discovery sought concerning requests 3-8 of the October 26, 2021

demand to be served within thirty days (see, Decision and Order dated December 8, 2022, pages 4,5 [NYSCEF Doc. No. 378]).

The motion filed asserts the defendant failed to provide the tax returns for Destinations613. However, the defendant indicated the tax returns themselves reveal that Destinations613 was listed as an entity in Schedule C of Mr. Zablocki's personal tax returns and that consequently there are no other tax returns for Desitnations613. While the truth of this excuse cannot be verified, if true, no discovery violation has taken place. Of course, a specific explanation to the plaintiff instead of a general statement that "you have all tax returns and bank statements" (see, Email sent by defendant's counsel on January 17, 2023 [NYSCEF Doc. No. 429]) would have been helpful and could have avoided further motion practice. The plaintiff and the defendant both decry the constant and costly filing of motions, yet, simple and explicit communication between counsel could surely avoid so much of the contentiousness and litigiousness of this action.

Next, the plaintiff asserts the defendant failed to produce copies of NJCC bank statements from May 2022 through December 2022 and Destinations613 bank statements from August 2022 through December 2022. The defendant argues that "the Chase records provided by Defendants, show that HVNY paid NJCC exorbitant sums of money, either illegally transferring money from HVNY to NJCC,

or repayment of any alleged capital contributions...Moreover, over a million dollars was improperly transferred from HVNY to NJCC, cancelling out any alleged loans or capital contributions made by Defendants" (see, Memorandum of Law, page 6 [NYSCEF Doc. No. 431]). Of course, since the appointment of a receiver in March 2022 there can be no serious allegations of improper transfers or unexplained payments from HVNY to NJCC. Indeed, once the receiver was appointed all financial matters related to the hotel were placed under his authority and his control. This does not undermine the allegations against the defendant that were leveled prior to the appointment of a receiver and to which all relevant bank statements have been provided. However, it is difficult to require the production of defendant's bank statements that cannot possibly show any improper relationship between HVNY and NJCC or Destinations613 as well. Thus, the plaintiff has not really expressed any basis for the continued insistence it is entitled to those bank statements. To be sure, the request for the bank statements was served before the appointment of a receiver.

In a prior motion the plaintiff asserted that "Plaintiff seeks information about the defendants' financial status since he began "running" HVNY. This material is not of a confidential and private nature, and it is relevant to the issues in the case. Defendants must be able to show how they were unable to equally

contribute to the purchase of HVR, but now Zablocki, allegedly, has \$6.8 million dollars to offer to purchase the hotel. Something does not add up" (see, Memorandum of Law, page 14 [NYSCEF Doc. No. 342]). The plaintiff's argument is surely true until a receiver was appointed. However, once a receiver was appointed the potency of that argument is undermined thereby. Even if the plaintiff could explain some basis upon which they seek the bank statements for NJCC or Destinations613 the failure to disclose those bank statements was not wilful or contumacious and it not a basis upon which to strike the defendant's answer or impose some other sanction.

It is true the court informed the defendant he must supply a Jackson affidavit, however, the failure to produce it at the plaintiff's insistence is not grounds for any sanction.

Therefore, based on the foregoing the motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: March 15, 2023
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

