

Alsaidi v Alsaede

2023 NY Slip Op 31914(U)

May 31, 2023

Supreme Court, Kings County

Docket Number: Index No. 512191/2020

Judge: Leon Ruchelsman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

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

Plaintiff, Decision and order

-against-

Index No. 512191/2020

ALI ALSAEDA, CAPITAL A MANAGEMENT INC,
ABDO ALSAEDA, AHMED NASSER, and ABDO M. NASSER
Defendants,

and

May 31, 2023

MOUNTAIN OF SABER, LLC.

Nominal Defendant,

-----x
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #18 & #19

The defendant Ali Alsaede has moved seeking to compel responses to a notice to admit served or to deem the notices as admitted. The plaintiff oppose 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 orders, property located at 797-815 Stanley Avenue in Kings County was owned by Abdo Alsaede. In 2005 Abdo Alsaede transferred his ownership in the property to an entity called Mountain of Saber LLC. According to the operating agreement, Abdo retained a one third interest in the corporation, and the remaining ownership is as follows: the plaintiff Kamal Alsaedi owns a third, and brothers Ahmed and Abdo Nasser owns the final third. The defendant Ali Alsaede is the son of Abdo Alsaede 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 then including failing to collect rents, [pomisappropriating funds and awarding themselves unearned fees. The complaint alleges causes of action for breach of contract, fraud, unjust enrichment and breach of a fiduciary duty.

On February 11, 2023 the defendants served a notice to admit upon the plaintiff seeking any documents demonstrating the plaintiff paid any money or any consideration for the property located at 797-815 Stanley Avenue or any of the ownership certificates of Mountain of Sabre LLC and that the plaintiff did not sign a prior court document in the presence of a notary.

On February 23, 2023 an amended notice to admit was served which asked the plaintiff to admit to the authenticity of a deed to real property owned by the plaintiff as well as the translation of that deed and a picture of certain real property. The plaintiff objected to the notices to admit and has opposed the within motion seeking their admission. Further, the plaintiff has filed a cross-motion seeking discovery from the defendants. That motion is also opposed.

Conclusions of Law

It is well settled that a notice to admit is a proper device to resolve matters of fact, about which there is no

disagreement, in order to expedite matters for trial (32nd Avenue LLC v. Angelo Holding Corp., 134 AD3d 696, 20 NYS3d 420 [2d Dept., 2015]). However, a notice to admit may not be utilized for ultimate contested questions of fact (Burrell v. West, 163 AD3d 660, 81 NYS3d 433 [2d Dept., 2018]). This court has already held that issues of consideration are proper and will require resolution in the course of litigation. Thus, in an order dated August 25, 2022 the court denied the plaintiff's motion seeking to dismiss a claim of lack of consideration. The court explained that "Abdo fully admits that he transferred the one third interest to the plaintiff without any consideration at all upon the promise of future consideration. Whether that promise renders any consideration inadequate or whether a gift was really intended in any event are matters that will be resolved through discovery" (see, Order dated August 25, 2022 [NYSCEF Doc. No. 277]). Next, in another order also dated August 25, 2022 the court considered the plaintiff's motion seeking a declaratory judgment he is an owner of the property. The court explained that "the chief basis objecting to any ownership is the lack of any evidence of any contribution or consideration. While that matter may be raised to the trier of fact as a defense, it defies common sense the defendants would include the plaintiff as an owner within the operating agreement and provide him with contributions reflected in tax documents, for numerous years, if

he was not an owner, notwithstanding the lack of any concrete evidence demonstrating consideration. The totality of the operating agreement and the tax documents raise significant questions whether the plaintiff is a one third member of the corporation and that question can only be resolved by a jury" (see, Order dated August 25, 2022 [NYSCEF Doc. No. 330]). Again, in a decision dated January 25, 2023 dealing with the failure to provide discovery the court explained that responses regarding consideration were proper and "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" (see, Order dated January 25, 2023 [NYSCEF Doc. No. 427]).

The defendants have now attempted to resolve the consideration issue via notices to admit. These notices to admit seek to undermine the plaintiff's ability to argue he obtained the one third interest with valid consideration. That is an improper use of a notice to admit.

Therefore, based on the foregoing, the motion seeking to compel the defendant to respond to the notices to admit or to deem the notices 'admitted' is denied.


Turning to the plaintiff's motion seeking discovery, first, the plaintiff failed to obtain prior court approval (see, Orders dated January 18, 2022 [NYSCEF Doc. No. 193] and April 27, 2022 [NYSCEF Doc. No. 231] and cannot be entertained. In any event,

the defendant responded to the plaintiff's discovery demand and objected to the over broad, vague and burdensome nature of the demands. Thus, the parties are required to resolve the matter in good faith prior to seeking permission to filing any motion. There is no evidence of any such good faith efforts. Consequently, the cross-motion of the plaintiff seeking discovery is denied.

So ordered.

ENTER:

DATED: May 31, 2023
Brooklyn NY



Hon. Leon Ruchelsman
JSC