

Antebi v Guindi

2023 NY Slip Op 32174(U)

June 27, 2023

Supreme Court, Kings County

Docket Number: Index No. 524776/2019

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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MORRIS ANTEBI,

Plaintiffs, Decision and order

- against -

Index No. 524776/2019

RAYMOND GUINDI & ROYAL CHOICE DEVELOPMENT
INC.,

June 27, 2023

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2 & #3

The defendants have moved pursuant to CPLR §3212 seeking summary judgement dismissing the complaint. The plaintiff has cross-moved seeking to compel certain discovery and to stay the motion seeking summary judgement. The motions have been opposed respectively. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on June 21, 2007 the plaintiff entered into an agreement with defendants wherein the plaintiff loaned the defendants \$750,000 to be used in the construction of a real estate project in Kings County. Pursuant to the terms of the agreement the money was to be paid back within two years. Further, the agreement provided the company would pay the plaintiff an additional \$200,000 and that if the full amount was not repaid within two years then interest would accrue at a rate of 15% per year. There is no dispute that although the payments were not made within two years they were made by 2014. Further, the defendants allege the plaintiff orally agreed to waive the right to seek any

of the interest due and in fact had not requested the interest for six years. Moreover, the defendants assert they relied upon that waiver to continue the operations of the business. The plaintiff instituted the current lawsuit seeking the interest payments he alleges are due as well as the \$200,000 compensation he claims he is owed. The defendants have now moved seeking summary judgement arguing there are no questions of fact the plaintiff waived his right to seek any of the funds that are the subject of this lawsuit. The plaintiff opposes the motion, essentially, arguing the parties have not completed discovery and that upon the completion of such discovery the summary judgement motion may then be filed.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

The plaintiff Morris Antebi appeared for a deposition and confirmed that at a meeting in 2014 he stated that he would not be

seeking any payments beyond the original \$750,000 deposited upon his belief that such interest payments were contrary to Jewish law (see, Deposition of Morris Antebi, pages 223-227 [NYSCEF Doc. No. 39]). Indeed, a transcript of the meeting demonstrates that Mr. Antebi appeared to waive the right to recover the interest (see, Transcript January 14 2014, page 4 [NYSCEF Doc. No. 48]). Moreover, the defendant, Mr. Guindi states that "the Company and I relied heavily on Antebi's waiver. After all, Antebi repeatedly declared "this is really my position." Antebi's waiver was the impetus that drove the Company's subsequent course of action (see, Affidavit of Raymond Guindi, ¶31 [NYSCEF Doc. No. 32]).

However, Mr. Antebi further testified that about two or three months after the meeting he believed the acceptance of interest was in compliance with Jewish law, as he understood it, and informed the parties of this. Mr. Antebi testified he sent emails seeking the interest and informed Mr. Guindi personally about the change concerning seeking the interest (see, Deposition of Morris Antebi, page 240 [NYSCEF Doc. No. 39]). However, there are no emails supporting the swift change of position. Furthermore, even if Mr. Antebi verbally informed Mr. Guindi of his changed position shortly after the meeting his actions contradict any such changes and the defendants reasonably relied upon his earlier waiver of the interest. Thus, later in the fall of 2014 the plaintiff was repaid his contribution and emails were sent to him confirming the

full payment of his contribution and he never made any mention of the outstanding interest he claims he sought. In addition, in early 2015 Mr. Antebi was sent emails and checks concerning distributions pursuant to the sale of apartment units and he never made any demand seeking interest.

Thus, there are no questions of fact the plaintiff waived his right to seek interest and did nothing to cancel that waiver within a reasonable time frame that would have put the company on notice to adjust its positions.

The plaintiff opposes the motion seeking summary judgement on the grounds Mr. Guindi must be appear for an additional deposition. Specifically, the plaintiff seeks to question Mr. Guindi regarding an email sent between the parties whether the commercial portion of the property should have been sold (see, Demand, dated November 2, 2022 [NYSCEF Doc. No. 86]). However, the contents of that email do not in any way raise any questions of fact regarding the only relevant issue in this motion, namely whether the plaintiff's waiver seeking interest was ever revoked. Admittedly, the information sought by the plaintiff will fail to raise any questions in this regard. In fact, the request for the additional deposition does not even delineate why additional questions about whether the property should have been sold are even required. Thus, notwithstanding the heavy burden necessary to demonstrate an additional deposition is warranted, the request surely fails to


lead to any evidence that could raise any questions of fact.

Consequently, there are no questions of fact the plaintiff fully waived his right to recover any of the interest payments. Therefore, the motion seeking summary judgement is granted. The cross-motion seeking discovery is denied.

So ordered.

ENTER:

DATED: June 27, 2023
Brooklyn N.Y.



Hon. Leon Buchelsman
JSC