

Antebi v Guindi

2023 NY Slip Op 34521(U)

December 21, 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.,

December 21, 2023

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4 & #5

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated June 27, 2023 which granted summary judgement dismissing the complaint. The plaintiff has cross-moved seeking sanctions. The motions have essentially 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 prior orders, 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 alleged 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. 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 moved seeking summary judgement arguing there were no questions of fact the plaintiff waived his right to seek any of the funds that are the subject of this lawsuit. The plaintiff opposed the motion arguing the parties have not completed discovery and that upon the completion of such discovery the summary judgement motion may then be filed. The court granted the motion seeking summary judgement concluding there were no questions of fact the plaintiff waived his right to seek the interest. The court also denied the request to engage in any further discovery.

The plaintiff has now moved seeking to reargue that determination on the grounds the court had granted an order staying the defendant's motion seeking summary judgement and that consequently opposition concerning the motion was never submitted. The plaintiff moves seeking the opportunity to adequately oppose the summary judgement and also to argue the court erred in granting summary judgement.

The plaintiff's request seeking reargument to oppose the summary judgement motion is granted. Upon reargument the court will now review its earlier determination.

Conclusions of Law

The plaintiff, Morris Antebi was present at a meeting in Panama and pursuant to the transcript of that meeting waived the right to recover any interest to which he was entitled. Thus, according to the transcript he indicated that interest is forbidden under Jewish law and is referred to as haram. Specifically, the plaintiff stated that "I don't want to have something haram in my pocket" (see, Transcript January 14 2014, page 4 [NYSCEF Doc. No. 48]). He acknowledged that a legal "loophole" might enable him to accept the interest but insisted that "if the partnership decided not to give me any penny, I will accept that also, and this is my position" and reiterated that "I don't want to have anything haram in my pocket" (*id.*). He did concede that he would accept a gift in lieu of interest, "something reasonable" and indicated he would need to consult a rabbi about that and that "this is really my position" (*id.*, at page 5).

Mr. Antebi confirmed that understanding when he appeared for a deposition on June 13, 2022. At his deposition he testified that at the 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]). However, he qualified his earlier assertions and testified that his testimony at the meeting meant that if it were possible for him to

accept the interest in a ritually permissible way then he meant he would have wanted the interest. Indeed, Mr. Antebi testified at his deposition that in the Spring of 2014 he learned he could accept the interest and then asked for the interest. He further testified that he documented the request in a "few emails" at the end of 2015 and the beginning of 2016 (see, Deposition of Morris Antebi, pages 240,241 [NYSCEF Doc. No. 39]). However, there is no question of fact that at the meeting Mr. Antebi clearly waived his right to receive interest. He never qualified his refusal upon Jewish law and he never conditioned his waiver of the interest upon alternative facts that may develop. The fact that he mistakenly believed he was not permitted to accept any interest does not mean he was equivocal about his waiver. Moreover, his desire for a reasonable gift instead of interest, which he admitted further required the consultation with a rabbi, was a vague request that was never accepted by the defendants and is not binding in any event. To be sure, the plaintiff only intended to waive the interest if it was ritually impermissible, however, he believed it was impermissible and unequivocally communicated that to the defendants. There is no indication in the Panama meeting transcript that the plaintiff conditioned his waiver upon further ritual analysis or upon further factual clarification. In any event Mr. Antebi states in his affidavit that "after the Panama meeting, I consulted a Rabbi on the potential issue of the loan

agreement between myself and the Company, i.e., what is allowed and what is forbidden under Jewish law" (see, Affidavit of Morris Antebi, ¶57 [NYSCEF Doc. No. 103]). Mr. Antebi asserts the rabbi issued an opinion permitting Mr. Antebi to accept the interest in this case. Thus, Mr. Antebi continues that "in March 2014, just after I received that opinion, I conveyed it to both Raymond and Zeki..." (see, *id.*, at ¶60). However, the rabbinic opinion is undated. Moreover, it relies upon materials called Yorucha Ribbit Fundamentals which in all likelihood were not in existence in March 2014. Those materials seem to have been published after 2014 (see, Affirmation in Opposition, ¶38 [NYSCEF Doc. No. 122]). Thus, there is no support for the assertion that there was an immediate reversal to which the defendants would have been aware regarding the waiver of any interest.

Moreover, an email sent by the defendant to the plaintiff the day after the Panama meeting does not raise any questions of fact whether the waiver was conditional. The email, written by defendant Raymond Guindi to the plaintiff expresses dismay at Mr. Antebi's behavior at the Panama meeting and highlights the losses Guindi has incurred. The email includes the interest payment as a means to highlight Guindi's financial predicament not as an admission the interest was in fact owed. Moreover, the email was not written in response to a request for interest.


Therefore, there are no questions of fact the plaintiff waived his right to receive any interest and that the defendants relied upon that waiver. Furthermore, as noted in the prior decision Mr. Antebi never requested any interest payments even when he was sent information and emails concerning his contribution in late 2014 and early 2015.

Therefore, there are no questions of fact the plaintiff clearly waived his right to seek interest and did nothing to cancel that waiver within a reasonable time frame that would have put the defendants on notice. Thus, upon reargument the motion seeking summary judgement is granted. The motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: December 21, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC