

458 E. 25th St. Invs. LLC v Sinay

2024 NY Slip Op 32800(U)

August 1, 2024

Supreme Court, Kings County

Docket Number: Index No. 514161/2023

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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458 EAST 25th STREET INVESTORS LLC, SHLOIME
GOLDSTEIN a/k/a SHLOMO ELIEZER GOLDSTEIN,
individually and on behalf of FLATBUSH
HOLDINGS 17 LLC AND FLATBUSH HOLDINGS 18 LLC,

Plaintiffs Decision and order

- against -

Index No. 514161/2023

SHLOMO SINAY a/k/a SHLOMO ABRAHAM SINAI,
E25 LLC, AJ E25 LLC, "JOHN DOE" and "JANE DOE"
1-10, the names being fictitious as their true
names are unknown and are intended to be the
owners, officers, directors, shareholders and/or
members of defendants E25 LLC, AJ E25 LLC, whose
names are currently unknown to Plaintiffs but will
be discovered during the course of discovery in
this action,

Defendants,

August 1, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3

The plaintiffs have moved seeking to hold various non parties in contempt for the failure to provide discovery. The defendants E25 LLC and AJ E25 LLC have moved seeking to stay the continuation of the lawsuit and to compel the plaintiffs to pursue all claims in arbitration and to wait for the conclusion of those arbitration proceedings. The plaintiffs have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the verified complaint the plaintiff Goldstein and defendant Sinay are members of Plaintiffs Flatbush Holdings 17 LLC and Flatbush Holdings 18 LLC. These entities were established to acquire and develop property located at 458 East

25th Street in Kings County. The amended complaint alleges the defendant Sinay borrowed funds from investors including non-party Abraham Joseph, and pledged his interests in the entities as collateral for the loans in violation of the membership agreements of the entities. The verified complaint further alleges the defendant diverted income due to the entities in efforts to pay off these loans in violation of the membership agreements and the mortgage obtained. Specifically, the verified complaint alleges the defendant Sinay transferred four condominium units to defendant E25 LLC and three condominium units to defendant AJ E25 LLC. Both of these entities were owned by non-party Joseph who has since passed away.

Although the plaintiff and the defendant agreed to proceed in arbitration this action was commenced to preserve the plaintiff's rights following the improper transfers alleged.

This lawsuit asserts causes of action seeking to quiet title to the transferred units and to impose a constructive trust upon those units. Further, the verified complaint seeks an injunction prohibiting the further transfer of any of the condominium units to preserve any eventual arbitration decision.

The defendant entities have now moved seeking to stay any further progression of this case and to compel the plaintiff to continue to adjudicate all claims in arbitration. Indeed, they seek a preliminary injunction staying this action. As noted, the

plaintiffs oppose the motion.

Conclusions of Law

It is well settled that like any contract term, an agreement to arbitrate must generally be agreed upon by both parties (Salvano v. Merrill Lynch, Pierce, Fenner & Smith, 85 NY2d 173, 623 NYS2d 790 [1985]). Indeed, "a party will not be compelled to arbitrate and, thereby, to surrender the right to resort to the courts, absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes'" (see, Waldron v. Goddess, 61 NY2d 181, 473 NYS2d 136 [1984]). Further, an agreement to proceed before a Beth Din is treated as an agreement to arbitrate (Spilman v. Spilman, 273 AD2d 316, 710 NYS2d 86 [2d Dept., 2000]).

In this case while there is no indication the plaintiff agreed to arbitrate any claims with either Joseph or his entities, the arbitration panel has determined that Joseph may join the defendant Sinay in arbitration. Further, the arbitration panel has decided that the execution of an arbitration agreement by Joseph's representatives is all that is required for Joseph's claims to be heard at the pending arbitration. Joseph argues the plaintiff should not have ever commenced an action in court when an arbitration concerning the same claims was ongoing. It is curious that Sinay never so

argued, however, the arbitration panel has recently ruled that the parties should not be litigating these matters in court (see, Arbitration Decision, June 18, 2024 [NYSCEF Doc. No. 86]).

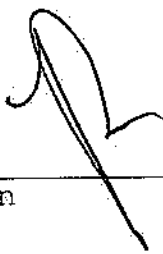
The plaintiff argues the arbitration panel's recent decision is unenforceable since "Goldstein never surrendered or waived his right to resort to the courts against Wertman's Clients [the moving entities here] or the subpoenaed non-parties" (Affirmation in Opposition, ¶37 [NYSCEF Doc. No. 91]). The plaintiff further argues that the arbitration's instruction to resolve all disputes connected to this lawsuit only in arbitration is against public policy. However, the arbitration panel has concluded that claims against the Joseph entities cannot be separated from claims against Sinai. Moreover, as noted, the parties agreed to submit to arbitration to "render a ruling concerning the matters of dispute between us" (see, Arbitration Agreement [NYSCEF Doc. No. 82]). The arbitration's conclusion that Joseph is inextricably connected to the dispute between the parties is entirely reasonable. Thus, according to the plaintiff, claims between Goldstein and Sinai may be heard in arbitration, however, claims between Goldstein and Sinai and Joseph which directly implicate the transfer of units which concern Goldstein are beyond the arbitration's reach. Furthermore, it is surely consistent with public policy to prohibit forum shopping and compel litigants that have chosen arbitration to remain in arbitration. To the

extent a formal arbitration agreement was never entered into between the plaintiff and Joseph, that matter must be raised by the arbitration panel. Further, to the extent a party may seek reliefs not available in arbitration, again, arbitration panels routinely permit parties to obtain relief unavailable in arbitration. The recent arbitration ruling insisting the parties cease all litigation in court undermines those arguments. Thus, the court defers all these issues to be argued before the arbitration panel. Thus, until these issues are resolved in arbitration the order to show cause seeking to stay this action is granted. The requests for discovery or any contempt is denied at this time.

So ordered.

ENTER:

DATED: August 1, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC