

Goren Bros. L.P. v Winter

2024 NY Slip Op 34839(U)

July 30, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 601642/2021

Judge: James Hudson

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**Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision**

P R E S E N T:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 4/22/24
SUBMIT DATE: 6/12/24
Mot. Seq. #: **003 - MotD**

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GOREN BROTHERS LIMITED PARTNERSHIP;
GOREN COUSINS 1, LLC, MAG MULTI CORP.;
JAMES GOREN, BROOKE KROEGER, ANDREA
Y. GOREN, MITCHELL BREDEFELD, as
executors of the Estate of Alexander M. Goren; and
GOREN BROTHERS, a general partnership,

RUSS & RUSS, P.C.
Attorneys for the Plaintiffs
543 Broadway
Massapequa, NY 11758

Plaintiffs,

DELBELLO, DONNELLAN,
WEINGARTEN, WISE and
WIEDERKEHR, LLP
Attorneys for Defendant Robin Winter
individually and as Trustee of the Howard
N. Blitman Revocable Trust, and Pond
View Partners, LLC
One North Lexington Avenue
White Plains, NY 10601

-against-

ROBIN WINTER; POND VIEW PARTNERS,
LLC; BEAVER BROOK BEACON, LLC; and
Robin Winter as Trustee of the HOWARD N.
BLITMAN REVOCABLE TRUST,

IRA LEVINE, ESQ.
Attorney for Counterclaim and Crossclaim
Defendants Peter Lewis and Philip
Sassower and Non-Party Gary Peresiper
543 Broadway
Massapequa, NY 11758

Defendants,

-and-

PETER LEWIS and PHILIP SASSOWER,

Additional Defendants
on the Counterclaim and Crossclaim.

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Robin Winter, individually and as trustee of the Howard N. Blitman Revocable Trust, and Pond View Partners, LLC request an order pursuant to **CPLR 2221 (d)** granting reargument of the March 21st, 2024 decision and order, and upon reargument, granting the moving defendants' prior motion for an order pursuant to **CPLR 3124 1)** compelling non-party Gary Peresiper to answer questions that his attorney directed him not to answer at his

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July 20th, 2023 deposition; 2) precluding and otherwise enjoining Mr. Peresiper from refusing to answer, and for Ira Levine, Esq., or Jay Russ, Esq. from directing or otherwise impeding Mr. Peresiper from answering; and 3) compelling Mr. Peresiper to answer questions at a further deposition; or, alternatively, making a determination that the March 21st, 2024 Decision and Order, by limiting its consideration to this action, is inapplicable to the parties with respect to the Saratoga Action.

This is a breach of contract action which seeks to recover monies used to finance several residential real estate development projects. The plaintiffs and defendants share membership in the named LLCs. The plaintiffs financed several projects in exchange for membership interest. On January 3rd, 2021, principal developer Howard N. Blitman died. On February 23rd, 2021, Alexander Goren died. Mr. Goren held fifty (50%) percent interest in the plaintiff lender. The interests of Mr. Blitman and Mr. Goren are represented by their respective trustee and executors. There is a prior pending related action before Justice Andrews, entitled *Blitman Saratoga, LLC; Alex Goren and James Goren d/b/a Goren Brothers, a general partnership; Goren Brothers, LP and Goren Cousins 1, LLC v. Howard Blitman, Robin Winter and Gary Peresiper*, Index no. 611885/2020 (“Saratoga Action”).

A motion for leave to reargue allows the Court, in its discretion to examine the prior determination and ascertain whether it overlooked or misapprehended controlling matters of fact or law (*A.R. Connelly, Inc. v. New York City Charter High Sch. for Architecture, Eng'g & Constr, Industr.*, 206 AD3d 787, 788-789, 170 NYS3d 571 [2d Dept 2022]).

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The Court grants the request for reargument of the March 21st, 2024 Decision and Order (“Order”).

Reargument is not designed to provide an unsuccessful party with successive opportunities to present the arguments previously posited (*Pryor v. Commercial Land Title Insurance Company*, 17 AD3d 44, 793 NYS2d 452 [2d Dept 2005]).

The Court will, as stated in the prior order, limit its consideration to the instant action. Mr. Peresiper is not a party at bar.

A motion to compel a non-party witness is not available except upon a showing of special circumstances; that the information sought is material and necessary and cannot be discovered from other sources or otherwise is necessary to prepare for trial (**CPLR 3101 [a] [4]**). That determination is subject to a test of usefulness and reason. The information sought must be “sufficiently related to the issues of litigation to make the effort to obtain it in preparation for trial reasonable [**3 Weinstein-Korn-Miller, N.Y. Civ. Prac.**, para 6101.07, p. 31-13]” (*Allen v. Crowell-Collier*, 21 NY2d 403, 407, 288 NYS2d 449, 235 NE2d 430 [1968]). More than mere relevance or materiality is required to justify disclosure from a non-party witness (*Lanzello v. Lakritz*, 287 AD2d 601, 731 NYS2d 763 [2d Dept 2001]; see *Harrington v. New York City Transit Authority*, 223 AD3d 787, 204 NYS3d 143 [2d Dept 2024]). If the party seeking disclosure fails to establish the relevance of the information sought, the disclosure must be denied (see *Van Epps v. County of Albany*, 184 Misc2d 159, 706 NYS2d 855 [Sup Ct Albany County 2000]).

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Counsel for the movants repeats its argument that the testimony sought from Mr. Peresiper regarding the source and payment of his attorneys' fees is not personal and confidential. Counsel alleges that the Court overlooked that issue in its prior order.

The Court, in its prior order, stated:

In the case at bar, the amount and source of payment of Mr. Peresiper's legal fees are not at issue and although they are not privileged *per se*, **they are of a confidential and private nature.** The plaintiffs have not demonstrated that the requested disclosure is material and necessary to outweigh the importance of protecting the privacy of Mr. Peresiper (*Yoshida v. Hsueh-Chih Chin*, 111 AD3d 704, 974 NYS2d 580 [2d Dept 2013]; *Monica v. Milevoi*, 252 AD2d 260, 263, 685 NYS2d 231 [1st Dept 1990]). The Court has carefully considered and denies the balance of the movants' arguments.

Counsel repeats his argument contending that whether the plaintiffs are paying Mr. Peresiper's legal fees in the case at bar is of critical importance. He states that ascertaining the identity of the payor goes to bias, motives, and credibility, among other issues. Counsel asserts that "the information is not personal and confidential and goes to the core of the entirety of Peresiper's testimony in both actions" (NYSCEF Doc. No. 131, para. 5). Counsel once again does not address the fact that Mr. Peresiper is not a party to the action.

Counsel in reargument has not demonstrated that the information sought is material, relevant and necessary to the instant matter, so as to overcome Mr. Peresiper's entitlement to privacy.

Accordingly, it is

ORDERED, that the motion (seq. no. 003) by defendants Robin Winter, individually and as trustee of the Howard N. Blitman Revocable Trust and Pond View

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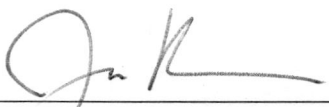
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Partners, LLC, which requests, pursuant to **CPLR 2221 (d) (2)**, reargument of the March 21st, 2024 decision and order is granted; and it is further

ORDERED, that, upon consideration, the Court adheres to its earlier decision.

This memorandum also constitutes the Order of the Court.

Dated: July 30th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court