

**Leslie v Leslie**

2024 NY Slip Op 34877(U)

July 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 619776/2020

Judge: Jerry Garguilo

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SHORT FORM ORDER

INDEX No. 619776/2020

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART ~~40~~ - SUFFOLK COUNTY

**PRESENT:**

Hon. JERRY GARGUILO  
Justice of the Supreme Court

MOTION DATE 9/14/23 (001)  
MOTION DATE 3/13/24 (003)  
ADJ. DATE 3/25/24  
Mot. Seq. # 001 MD  
Mot. Seq. # 003 MotD

-----X  
DONALD LESLIE JR., as officer, director and as  
shareholder derivatively on behalf of Leslie-  
Johnson Corp. and Johnson Electrical  
Construction Corp.,

Plaintiff,

- against -

ANDREW LESLIE,

Defendant,

LESLIE-JOHNSON CORP. and JOHNSON  
ELECTRICAL CONSTRUCTION CORP.,

Nominal Defendants.  
-----X

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Upon the following papers read on the motions for a preliminary injunction and to compel: (1) Order to Show Cause and supporting papers by plaintiff, signed August 7, 2023; (2) Answering Affidavits and supporting papers by defendant, filed September 13, 2023; (3) Notice of Motion and supporting papers by plaintiff, filed February 23, 2024; and (4) Answering Affidavits and supporting papers by defendant, filed March 13, 2024, it is

**ORDERED** that these motions are consolidated for the purpose of this determination; and it is further

**ORDERED** that plaintiff's motion for a preliminary injunction enjoining defendant "from directly accessing the corporate books and records through any computer terminal designated as the

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Bookkeeper's Terminal, or via any terminal with the same permissions and access as a bookkeeper's terminal," is denied; and it is further

**ORDERED** that plaintiff's motion to compel defendant to produce certain documents, or for the imposition of sanctions, is granted to the extent of (1) ordering defendant, within 30 days of the date of this order, to produce (a) the requested non-matrimonial documents or (b) his affidavit stating under oath that he does not possess the requested non-matrimonial documents, the reason(s) he does not possess the non-matrimonial documents, the dates and places where a search was made to obtain hard copies of the non-matrimonial documents, the dates and places where a search was made to obtain electronic copies of the non-matrimonial documents, and the results of these searches; and (2) ordering an in camera inspection of the requested matrimonial records, and is otherwise denied.

This commercial action involves a dispute between two 50 percent owners of two corporations, Leslie-Johnson Corp. and Johnson Electrical Construction Corp. (collectively, the Companies). Plaintiff, Donald Leslie, Jr., commenced this derivative action on behalf of the Companies against defendant, Andrew Leslie, alleging that defendant has not paid back \$477,282.60 in loans from Leslie-Johnson Corp. and \$88,711.06 from Johnson Electrical Construction Corp. The complaint contains causes of action to recover on the loans, for an account stated, and for unjust enrichment. In his answer, defendant admitted that he owed money to the Companies, but claimed that "the exact amount is to be determined."

There are two applications from plaintiff before the Court. In the first, plaintiff seeks, via order to show cause, a preliminary injunction enjoining defendant "from directly accessing the corporate books and records through any computer terminal designated as the Bookkeeper's Terminal, or via any terminal with the same permissions and access as a bookkeeper's terminal." In support of his motion, plaintiff submits his affidavit and an email. Counsel has not submitted an attorney affirmation, memorandum of law, or otherwise provided any legal argument in support of the motion. In opposition, defendant submits, among other things, proposed stipulations.

The second motion from plaintiff seeks to compel defendant to produce certain documents that plaintiff demanded during discovery, or for the imposition of sanctions. Specifically, plaintiff demanded "[a]ll financial statements or other financial information relating to Andrew W. Leslie filed or otherwise conveyed to Valley National Bank or any subsidiary or related entity concerning the line of credit extended to" the Companies, "[c]opies of statements of the debt to Johnson Electric," a copy of minutes of a January 31, 2018 meeting, and certain documents allegedly filed by defendant in a matrimonial action pending in this Court, *Gina Leslie v Andrew Leslie*, index number 001008/2018, including affidavits of net worth and statements of net worth. Defendant did not produce any of the requested documents. Instead, he objected to the demand for matrimonial documents as privileged, improper, irrelevant, vague, and ambiguous. He objected to the requests for non-matrimonial documents as vague, ambiguous, improper, and irrelevant. He also stated that he has no knowledge of any minutes from the January 2018 meeting.

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Plaintiff's application for a preliminary injunction enjoining defendant "from directly accessing the corporate books and records through any computer terminal designated as the Bookkeeper's Terminal, or via any terminal with the same permissions and access as a bookkeeper's terminal," is denied in the absence of any legal argument from plaintiff in support thereof.

Discovery under article 31 of the CPLR is broad. It encompasses "all matter material and necessary in the prosecution or defense of an action" (CPLR 3101 [a]), which includes "any matter [that] may lead to the discovery of admissible proof . . . [and] any matter [that] bears upon a defense, even if the facts themselves are not admissible" (*Madigan v Berkeley Capital, LLC*, 205 AD3d 900, 904, 169 NYS3d 326, 331 [2d Dept 2022] [quotation marks, citations, and alterations omitted]). "[I]f there is any possibility that the information is sought in good faith for possible use as evidence-in-chief or for cross-examination or in rebuttal," the requested information is discoverable (*Strauss v Valkenburg*, 227 AD3d 1118, 1119, 212 NYS3d 198, 199 [2d Dept 2024] [quotation marks and citations omitted]).

Although the matrimonial documents sought by plaintiff are ordinarily confidential (Domestic Relations Law § 235), the Court will order an in camera inspection of them "to determine whether [defendant's] net worth statement and other matrimonial records [a]re relevant and material to the issues to be decided in this action, and if so, whether [plaintiff's] right to disclosure pursuant to CPLR 3101 outweigh[] the privacy protections of Domestic Relations Law § 235" (*Solomon v Meyer*, 103 AD3d 1025, 1026, 962 NYS2d 401, 402 [3d Dept 2013]; see also *Janecka v Casey*, 121 AD2d 28, 508 NYS2d 451 [1st Dept 1986]). If, as plaintiff alleges, defendant acknowledged his debt to the Companies "to minimize his exposure" in the matrimonial action, such acknowledgment would be relevant in this action. Plaintiff has also shown that the non-matrimonial documents are material and relevant, so they are discoverable. No in camera inspection is needed for them.

Defendant's contention that disclosure of the requested materials is improper because plaintiff's claims, or a portion thereof, are time-barred is unavailing. Defendant has not sought dismissal of the complaint or any portion thereof on that ground. And the complaint pleads that defendant took loans from the Companies from 2010 until 2017, so not all of plaintiff's claims in this action—which was commenced in 2020—would be time-barred (CPLR 213). Defendant's argument that "all proceedings in this Court" are premature until the Court determines if this dispute is arbitrable under a shareholders' agreement lacks merit. Because defendant never sought to stay this action and compel arbitration under CPLR 7503 and participated in this litigation for almost four years, he has waived the right to arbitration (*Tahari v 860 Fifth Ave. Corp.*, 214 AD3d 491, 186 NYS3d 144 [1st Dept 2023]; *Summit Restaurant Repairs & Sales, Inc. v New York City Department of Education*, 201 AD3d 612, 162 NYS3d 329 [1st Dept 2022]).

Thus, plaintiff's motion to compel is granted to the extent of (1) ordering defendant, within 30 days of the date of this order, to produce (a) the requested non-matrimonial documents or (b) his affidavit stating under oath that he does not possess the requested non-matrimonial documents, the reason(s) he does not possess the non-matrimonial documents, the dates and places where a search was made to obtain hard copies of the non-matrimonial documents, the dates and places where a search was

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made to obtain electronic copies of the non-matrimonial documents, and the results of these searches;  
and (2) ordering an in camera inspection of the requested matrimonial records, and is otherwise denied.

Dated: July 18, 2024

*Jerry Garguilo*  
**JERRY GARGUILO**  
JSC

         FINAL DISPOSITION      X   NON-FINAL DISPOSITION