

Jemal v Jemal

2025 NY Slip Op 33797(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 650433/2023

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SAMUEL STEVEN JEMAL,

Plaintiff,

- v -

ABRAHAM ALAN JEMAL, RUTH JEMAL, ABRAHAM
ALAN JEMAL 2012 FAMILY TRUST, RUTH JEMAL
LIVING TRUST, SAMUEL STEVEN JEMAL 2012 FAMILY
TRUST

Defendant.

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INDEX NO. 650433/2023

MOTION DATE 03/18/2025

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 185, 186, 187, 188, 189, 193, 194, 195, 196, 197

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents and for the reasons set forth below, Abraham Alan Jemal, Ruth Jemal, Abraham Alan Jemal 2012 Family Trust, and Ruth Jemal Living Trust (collectively, the **Defendants**)’s motion (Mtn. Seq. No. 007) to strike the second amended complaint (the SAC; NYSCEF Doc. No. 180) and dismiss the case is GRANTED.

The filed SAC in this case is both untimely and irreconcilably at odds with prior rulings of this Court.

As discussed in the Decision and Order of this Court in the case captioned *Samuel Steven Jemal v. Abraham Alan Jemal et al.* (NYSCEF Doc. No. 51 [Index No. 654702/2024]), dismissing this case is proper as the issues in the SAC are identical:

This is the latest in a series of lawsuits¹ brought by Samuel Steven Jamal (**Steven Jemal**) which seeks that all of the records of the Three-Way Partnerships and Six-Way Partnerships be made available to him online.² None of the other partners have this online access directly and he does not allege that they do. The partnership agreements at issue do not require it. As discussed below, the partnership agreements require that the partnerships maintain appropriate business records and that copies of such records be given to the partners upon request. Steven Jemal does not allege a single instance in which he made a request for a copy of a business record that he was not given. Not one. This is not the first time he sought this exact relief. Previously in a case captioned *Samuel Steven Jemal v. Abraham Alan Jemal et al.* (Index No. 650433/2023 [**Steven's Three-Way Action**]), he asked for this relief, and the court denied it (NYSCEF Doc. No. 183, at 37–38 [Index No. 650433/2023]).

In this case, he has also named a slew of defendants which are not the Three-Way Partnerships or Six-Way Partnerships without establishing his standing to sue them. Some of them are not properly named as defendants (*e.g.*, the Samuel Steven Jemal 2012 Family Trust).³ Putting those not so minor deficiencies aside, it is not clear what Steven Jemal alleges that these entities did or did not do which would give rise to liability to him. As such, the motion to dismiss is GRANTED.

THE RELEVANT FACTS AND CIRCUMSTANCES

Reference is made to a certain Partnership Agreement (the **Three-Way Partnership Agreement**; NYSCEF Doc. No. 20), dated May 30, 2002, by and among Joseph S. Jemal, Steven Jemal, and Abraham Alan Jemal (**Alan Jemal**). As relevant, Section 5 of the Three-Way Partnership Agreement provides the partnership (the **Three-Way Partnership**) must maintain appropriate business records and make copies to the partners available:

ARTICLE V

Accounting and Records

¹ See, *e.g.*, *Samuel Steven Jemal v. Abraham Alan Jemal et al.* (**Steven's Settled Action**; Index 651816-2020) pursuant to which Steven Jemal had demanded access to the books and record. This lawsuit was settled pursuant to a Settlement Agreement (NYSCEF Doc. No. 17), dated June 15, 2022, where the parties covenanted not to sue and executed general releases.

² The Three-Way Partnerships are entities in which Abraham Alan Jemal, Ruth Jemal, and Steven Jemal or related trusts each own a 1/3 interest, including 209 W. 125th Street Realty Associates LLC. The Six-Way Partnerships are entities in which Steven Jemal owns a 1/6 interest, including Simpson West Realty LLC. As discussed below, each of the Three-Way Partnerships are subject to a Three-Way Partnership Agreement (hereinafter defined). Each of the Six-Way Partnerships are subject to a Six-Way Partnership Agreement (hereinafter defined). For ease of convenience, discussed below is an example of a Three-Way Partnership Agreement and an example of a Six-Way Partnership Agreement.

³ This entity is actually called the "Samuel Steve Jemal 2012 Irrevocable Trust." Steven Jemal was a trustee of this entity but was removed by letter, dated April 14, 2020 (Index 654702-2024 NYSCEF Doc. No. 33) and replaced by David Jemal. David Jemal, as trustee on behalf of the trust, was not named as a defendant in this case.

5.1 The Company shall maintain the following records at its principal office, copies of which are to be promptly provided to each Member upon written request:

5.1.1 A current list of the full name and last known business address of each Member;

5.1.2 A copy of the Articles of Organization of the Company, and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

5.1.3 Copies of the Company's federal, state and local income tax returns and reports, if any, for the three (3) most recent fiscal years;

5.1.4 Copies of the Agreement, including all amendments thereto; and

5.1.5 Such other books and records concerning the affairs of the Company as are required by sound business practices.

5.2 The Company shall provide annual reports to the Members within a reasonable period after the close of each calendar year.

5.3 The Company shall provide all Members with those information returns required by the Internal Revenue Code and the laws of any state.

5.4 The Company shall maintain a record of the capital account of each Member in accordance with Article V.

(NYSCEF Doc. No. 20, §§ 5.1–5.4).

Reference is also made to a Partnership Agreement (the **Six-Way Partnership Agreement**; NYSCEF Doc. No. 21), dated January 1, 2015, by and among Cheney Family Limited Partnership, M. Cohen Family Limited Partnership, Jack Cohen, Ruth Jemal, Steven Jemal, Alan Jemal, Samuel Steve Jemal 2012 Family Trust, and Abraham Alan Jemal 2012 Family Trust. Section 5 of the Six-Way Partnership Agreement also provides that the partnership (the **Six-Way Partnership**) must maintain appropriate business records and make copies to the partners available (NYSCEF Doc. No. 21, §§ 5.1–5.4). Additionally, and unlike the Three-Way Partnership Agreement, the Six-Way Partnership Agreement also provides that the partners have the ability to review and audit the books and records of the Six-Way Partnership with at least 15 days prior written notice:

5.5 Any Member shall have the ability, at his or her sole cost and expense, to undertake a review and audit by the Member (or any of the Member's representatives, including the Member's accountants and attorneys) of the books and records of the Company (including cash receipts, journal and bank statements), such audit to be undertaken upon not less than fifteen (15) business days' prior written notice and during normal business hours, at the offices at which the Company's books and records are maintained. The Company shall provide each Member full and free access to the books and records of the Company. Furthermore, and upon request of any Member, the Company shall provide each Member with such information concerning the operations of the Company as such Member may reasonably request, including, but not limited to, copies of all existing leases and mortgages respecting the Property, with the requesting party to pay for all out of pocket expenses with respect to the Company's compliance with such request.

(NYSCEF Doc. No. 21, § 5.5).

Neither the Three-Way Partnership Agreement nor the Six-Way Partnership Agreement provide that the Partnerships must provide online access to the books and records of the partnership to its partners. And, Steven Jemal does not allege that any of the partners by virtue of their status as partners of either the Three-Way Partnerships or the Six-Way Partnerships have online access to the partnership records. What he alleges instead is that certain partnership employees are controlled by Alan Jemal (his brother) and Ruth Jemal (his mother) and that those employees have online access. He does not allege that he made a single request of those employees for copies of business documents that they did not give him. Not even one.⁴ In other words, Steven Jemal does not allege a breach of any provision of the Three-Way Partnership Agreement or the Six-Way Partnership Agreement or that by virtue of any alleged control over those employees his brother or his mother gets information differently than he can – *i.e.*, simply by asking for it.

Finally, and as discussed above, Steven Jemal does not allege any basis upon which he has standing to sue the defendants that are neither the Three-Way Partnerships nor the Six-Way Partnerships or anything that they did or did not do that violated any agreement that they are a party to or any other way that they violated New York law.

DISCUSSION

⁴ For completeness, the Court notes that ComJem – not a partnership entity – and not an entity that he has any interest in whatsoever (or that either Alan Jemal or Ruth Jemal) has access to certain but not all – of the property level accounts in which the partnerships own interests. As to this manager entity, and by virtue solely with respect to his interests in ComJem, Jack Cohen (who also is a partner in the partnerships) indicates, as to certain accounts, he has online access.

I. Dismissal is required pursuant to CPLR 3211(a)(1) and (7)

A party may move to dismiss one or more causes of action pursuant to CPLR 3211(a)(1) and (7). CPLR 3211(a)(1) requires dismissal where documentary evidence “conclusively establishes a defense to the claims as a matter of law” (*Gawrych v Astoria Fed. Sav. and Loan*, 148 AD3d 681, 682 [2d Dept 2017]). On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The court’s inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]).

In the Amended Complaint (the AC), Steven Jemal argues that pursuant to §§ 5.1-5.4 of the Six-Way Partnership Agreement, he “should be routinely entitled unconditionally and irrevocably to total direct unlimited 24/7 electronic access, including but not limited to unfiltered direct first party access, to the following categories of documents, which plaintiff maintains are ‘books and records concerning the affairs of the Company as are required by sound business practices’” (NYSCEF Doc. No. 15, ¶ 28). As discussed above, this simply is not what either partnership agreement provides. As discussed above, this is also not what any of the other partners have by virtue of their partnership interest and Steven Jemal does not allege that this is the case. What he alleges is that his brother and his mother, both of whom are partners, control certain partnership employees and that those employees have online access such that they get information when they request it. He does not allege that he does not get that information when he requests it or that they have ever refused a request to provide him with that which the partnership agreement requires him to be given.⁵ Thus, dismissal is appropriate pursuant to CPLR 3211(a)(1) and (7).

II. Dismissal is required pursuant to CPLR 3211(a)(5)

Pursuant to CPLR § 3211(a)(5), an action may be dismissed due to res judicata and collateral estoppel. The doctrine of res judicata bars future actions between the same parties on the same cause of action following the entry of a valid final judgment based on all claims arising out of the same transaction or series of transactions, even if based on different theories or seeking a different remedy (*Landau v LaRossa, Mitchell & Ross*, 11 NY3d 8, 12 [2008]). “[A] stipulation of

⁵ For clarity, the Court notes that to the extent that Steven Jemal lamented (*tr.* 9.30.2025) that Ruth Jemal and Alan Jemal and certain of the employees “act differently” to him than they do to each other and to Ruth Jemal and Alan Jemal, he did not articulate that they in any way have deprived him of any actual rights he has in the partnerships or that they breached any provision of the partnership agreements or that they otherwise breached their fiduciary duties to him or that any of the employees aided and abetted any breach of fiduciary duty and he did not articulate any facts which would form the basis for any such claim.

discontinuance with prejudice has the same preclusive effect as a judgment on the merits” (*Schwartzreich v E.P.C. Carting Co., Inc.*, 246 AD2d 439, 441 [1st Dept 1998]). The doctrine of collateral estoppel precludes a party from relitigating an issue clearly raised in a prior action or proceeding and decided against that party, whether or not the tribunals or causes of action are the same (*Martinez v New York City Transit Authority*, 203 AD3d 87, 91 [1st Dept 2022], citing *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). Collateral estoppel precludes the litigation of factual issues that were necessarily decided in a prior action against the same party (*Bauhouse Group I, Inc. v Kalikow*, 190 AD3d 401, 402 [1st Dept 2021]).

As discussed above, this is not the first time that Steven Jemal has argued that he is entitled to special online access to the books and records of the Three-Way Partnerships and the Six-Way Partnerships. As discussed above, Steven Jemal sought this very relief in the Steven’s Three-Way Action. The Court held Steven Jemal’s rights are set forth in the partnership agreements and otherwise under partnership law – neither of which require special online access that no other partner has by virtue of their interest as a partner. As discussed above, except for the additional provision permitting review and audit, the Six-Way Partnership Agreement is identical to the Three-Way Partnership Agreement. Thus, this issue was clearly litigated in the prior proceeding, Steven Jemal has had a full and fair opportunity to litigate this issue, and the same result is required in this lawsuit. For the avoidance of doubt, it is irrelevant that claims in Steven’s Settled Action only addressed claims up until June 15, 2022 because Steven Jemal does not allege a single event which occurred after that time period which violates the terms of the partnership agreements or partnership law. He again merely asserts that he has been deprived of online access to all of the books and records. As such, dismissal is required for this reason as well.

III. As to the Non-Three-Way Partnerships and Non-Six-Way Partnerships dismissal is required pursuant to CPLR 3211(a)(3) and (7)

As discussed above, Steven Jemal does not allege facts as to how he has capacity the Non-Three-Way Partnerships or the Non-Six-Way Partnerships or what is that they are alleged to have done or not done that violates the governing documents of those entities or applicable law. As such, dismissal is required pursuant to CPLR 3211(a)(3) and (7).

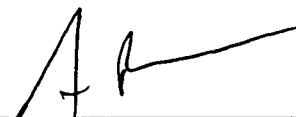
The Court has considered Steven Jemal’s remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the motion (Mtn. Seq. No. 001) to dismiss the Steven Jemal’s AC (NYSCEF Doc. No. 10) is granted.

(NYSCEF Doc. No. 51 [Index No. 654702/2024]).

Accordingly, it is hereby ORDERED that the Defendants' motion (Mtn. Seq. No. 007) to strike Steven Jemal's SAC (NYSCEF Doc. No. 180) and dismiss the case is granted.

<u>10/1/2025</u> DATE	 _____ ANDREW BORROK, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT