

Gottlieb v Northriver Trading Co. LLC

2005 NY Slip Op 30527(U)

February 14, 2005

Sup Ct, NY County

Docket Number: 601546/04

Judge: Jane S. Solomon

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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: PART 55

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HELENE GOTTLIEB,

Plaintiff,

Index No. 601546/04

- against -

DECISION AND ORDER

NORTHRIVER TRADING COMPANY LLC
and STEVEN SCHLAM,

Defendants.

----- X

JANE S. SOLOMON, J.:

Defendant Steven Schlam moves for dismissal of the complaint as against him on the ground of failure to state a cause of action, and for an award of costs and expenses incurred in defending this action.

Plaintiff Helene Gottlieb cross-moves for an interlocutory judgment against Northriver Trading Company LLC (Northriver) on default, directing Northriver to provide a full accounting of its financial affairs, and denying Schlam's motion to dismiss the complaint as against him.

Plaintiff seeks to compel defendants to provide her with an accounting of the financial affairs of Northriver. The complaint alleges as follows: Plaintiff is a member of Northriver, a New York limited liability company. Co-defendant Schlam is a Northriver managing member. Northriver was formed in 1994, and was engaged in the business of trading securities through December 31, 2000, at which time it ceased trading activities, and had assets exceeding \$2,000,000. From 1995 to 1999, plaintiff held a 50% interest in Northriver. She now holds a 20.6 % interest.

Beginning May 31, 2001, to the present, plaintiff has unsuccessfully sought an accounting

of Northriver's financial affairs, including income and expenses, profits and losses, overpayments of trading commissions, surcharges to traders regarding payments made to "Spear Leeds" for clearing transactions on Northriver's behalf, the amount of accounts receivable, and the net amount due to plaintiff. The complaint alleges further that defendants have imposed onerous and unreasonable preconditions on an accounting beyond the means of plaintiff to satisfy such that any accounting must be conducted by an accountant that defendants approve.

Motion

Schlam argues that plaintiff has no viable cause of action against him as a member of Northriver, because Northriver is a limited liability company. He argues, unpersuasively, that Sections 609 and 610 of the Limited Liability Company Law bar all claims asserted against him, and that the complaint mentions Schlam only as a managing member of Northriver.

Limited Liability Company Law § 609 (a) expressly exempts members and managers of a limited liability company from personal responsibility for the company's obligations (*Collins v E-Magine, LLC*, 291 AD2d 350 [1st Dept], *lv denied* 98 NY2d 605 [2002]). Limited Liability Company Law § 610 provides, however, that a member is a proper party to an action where another member seeks to enforce that member's right against or liability to the limited liability company. Section 610 ("Parties to actions") provides:

A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.

Thus, Schlam, who allegedly is a managing member of the LLC, is a proper party to this action, notwithstanding that he is exempt from any personal liability for the company's obligations (Limited Liability Company Law § 609 [a]).

Unlike the situation in *Collins v E-Magine, LLC* (291 AD2d 350, *supra*), cited by Schlam, where the plaintiff was an employee of the limited liability company, here the record indicates, at least for purposes of this motion, that plaintiff is a member of Northriver, and, thus, is permitted to utilize Limited Liability Company Law § 610 (*see* complaint ¶ 1; Affidavit of plaintiff, sworn to September 10, 2004, ¶ 3; Affidavit of Feivel Gottlieb, sworn to September 9, 2004, ¶ 16). Schlam himself does not deny that plaintiff is a member of Northriver, but contends that “upon its creation, plaintiff, rather than Feivel [plaintiff’s husband], was designated as a putative member of Northriver, in point in fact, plaintiff was a member in name only and never once participated in the firm, its operations or business” (Affidavit of Schlam, sworn to July 21, 2004, at ¶ 6).

Cross Motion

Neither defendant has answered the complaint. In support of her cross motion for a default judgment against Northriver, plaintiff argues that CPLR 3211 (f) did not extend Northriver’s time to answer the complaint, because, of the two defendants, only Schlam moved to dismiss the complaint. Here, where Schlam and North River have the same counsel, and considering the policy that favors resolution of actions on their merits (*Sanford v 27-29 W. 181st St. Assn.*, 300 AD2d 250 [1st Dept 2002]), both shall be permitted to answer upon the denial of Schlam’s motion.

Accordingly, it is

ORDERED that Steven Schlam’s motion to dismiss the complaint as against him is denied; and it is further

ORDERED that Helene Gottlieb’s cross motion for a default judgment against Northriver

Trading Company LLC is denied; and it is further

ORDERED that defendants are directed to serve their answers to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall appear for a preliminary conference in Part 55, 60 Centre Street, Room 432, New York, NY 10007, on April 11, 2005 at 11 AM..

Dated: 2/14/05

ENTER:



J.S.C.

JANE S. SOLOMON

FILED

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