

Motta v Ventura

2017 NY Slip Op 33380(U)

April 26, 2017

Supreme Court, Westchester County

Docket Number: Index No. 60251/16

Judge: Lewis J. Lubell

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This opinion is uncorrected and not selected for official publication.

SCP 6/13/17 @ 9:15 a.m.

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF WESTCHESTER

-----X
ANTONINO MOTTA,

Plaintiff,

-against -

SALVATORE VENTURA,

Defendant.

-----X
LUBELL, J.

DECISION & ORDER

Index No. 60251/16

Sequence No. 2

The following papers were considered in connection with this second motion by plaintiff for an Order pursuant to CPLR 3215 (i) granting to plaintiff judgment upon default as to liability; (ii) directing that defendant immediately provide plaintiff with a full and proper accounting as to the financial condition of the property at issue in this litigation; (iii) entering a permanent injunction for the relief sought in plaintiff's verified complaint; (iv) setting the matter down for a hearing on the damages, attorney's fees, and costs to be awarded to plaintiff:

PAPERS

NOTICE OF MOTION/AFFIRMATION/EXHIBITS 1-5
OPPOSITION PAPERS

NYSCEF

5-15
NONE

This is an action by plaintiff, Antonino Motta, against defendant, Salvatore Ventura, the co-owner of an eighteen unit residential property located at 426 East 73rd Street, New York, New York, (the "Premises"). Herein, plaintiff seeks various relief against defendant in connection with defendant's alleged . . .

. . . blatant, ongoing abuse of his current position managing . . . [the Premises] that plaintiff Antonino Motta and Ventura own. Among other wrongful actions, Ventura has failed and refused to provide plaintiff with financial information, to account to plaintiff for monies received, or to remit 50% of monthly balances to plaintiff as required. He has failed and refused to provide information concerning leases and lease renewals. He has

spent tens of thousands of dollars on ongoing demolition and construction work in one of the apartments undertaken without plaintiffs knowledge, no less his permission. He has engaged in such work without obtaining required permits. Moreover, despite repeated requests and demands, Ventura has failed and refused to cease or rectify his wrongdoing.

(Complaint, ¶1). These alleged "actions violate not only Ventura's obligations to Mr. Motta as his business partner, but also the express terms of a management agreement into which the parties entered" (Complaint, ¶2) in 2011. Plaintiff relies in material part on various provisions of the management agreement to support the claims herein advanced and relief herein sought including monetary damages, an accounting, an injunction, attorney's fees, costs, and expenses.

By Decision & Order of February 16, 2017, the Court denied plaintiff's identical first motion. Upon doing so, the Court found that, although plaintiff met all of the requirement necessary for an award of a default judgment in his favor and against defendant (see Todd v. Green, 122 AD3d 831, 831-32 [2d Dept 2014]), plaintiff had failed to provide the Court with a copy of the underlying written agreement (see Giordano v. Berisha, 45 AD3d 416, 417 [1st Dept 2007] [failure to include underlying contract and assignment and inadequacy of assignor's affidavit to provide particulars of the contract assigned to the decedent warrants denial of the motion]). Thus, the motion was denied without prejudice to an otherwise timely and proper re-application.

This motion follows, accompanied by a copy of the underlying management agreement executed by both parties on March 11, 2011 (the "Management Agreement").

Now, upon review and consideration of the motion and Management Agreement and upon the Court's findings in its Decision & Order of February 16, 2017, and there being no opposition, it is hereby

ORDERED, that judgment is entered in favor of plaintiff as to liability; and, it is further

ORDERED, that, within ten days of service of a copy of this Decision & Order with Notice of Entry, defendant (1) shall provide plaintiff a full and proper accounting as to the financial condition of the property located at 426 East 73rd Street, New York, New York ("Property") and all monies due and owing to plaintiff pursuant to the underlying Management Agreement and (2) shall deliver to plaintiff for his review and that of his legal and financial advisors all books and records belonging to or relating

to the affairs of the Property from 2011 to the present; and, it is further,

ORDERED, that, within ten days of service of a copy of this Decision & Order with Notice of Entry, defendant shall (1) deliver copies of all leases and lease renewals to plaintiff; (2) notify tenants to make rent checks payable to both owners; (3) provide plaintiff with the required monthly statements; (4) account to plaintiff for monies received and expended; and (5) remit 50% of monthly balances to plaintiff; and, it is further

ORDERED, that, defendant shall cease and desist from any ongoing demolition work and new construction in any of the apartments at the Property absent the express written authorization by plaintiff; and, it is further

ORDERED, that, defendant shall refrain from taking any further actions with respect to the Property or any bank or other accounts associated with the Property or its management, maintenance, operations, or otherwise, absent express written authorization by plaintiff; and, it is further

ORDERED, that, defendant shall refrain from wasting or harming the Property or any assets of or associated with the Property; and, it is further

ORDERED, that defendant is hereby removed as agent and the services of agent shall be performed by a professional property manager and, with respect to financial matters, by a certified public accountant, each to be chosen and engaged by plaintiff, on seven days notice to defendant, and in the interim, plaintiff shall perform said duties; and, it is further

ORDERED, that, the parties are directed to appear on June 13, 2017 at 9:15 a.m. in the Settlement Conference Part, Courtroom 1600, Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York, to schedule an inquest on damages, attorneys' fees (as allowed in the Management Agreement) and cost.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
April 26th, 2017



HON. LEWIS J. LUBELL, J.S.C.

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