

S&H Nadlan, LLC v MLK Assoc. LLC

2016 NY Slip Op 30523(U)

March 7, 2016

Supreme Court, New York County

Docket Number: 652108/2015

Judge: Donna M. Mills

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

-----X
S&H NADLAN, LLC and DROR ARGAMAN,

Plaintiffs,

Index No.: 652108/2015

-against-

MLK ASSOCIATES LLC, BEACH 84TH ST I, LLC,
MENDEL GROUP INC., ABE MENDEL and
STEVEN MENDEL,

Defendants.

-----X
DONNA MILLS, J.:

In this declaratory judgment action, plaintiffs S & H Nadlan, LLC (Nadlan) and Dror Argaman (Argaman) (together plaintiffs) move, pursuant to CPLR 3212, for summary judgment compelling defendants MLK Associates LLC (MLK), Beach 84th St I, LLC (Beach) (together, the LLCs), Mendel Group Inc. (MGI), Abe Mendel and Steven Mendel (the Mendels) to produce the books and records of the LLCs and for accountings of those entities.

The facts of this case are undisputed. Plaintiffs are minority members of the LLCs which are limited liability companies that hold the deeds to properties in Rockaway Beach and Brooklyn, New York.¹ MGI manages those properties. In February, March and May 2015, plaintiffs sent MGI demands for inspection of the LLCs' books and records, along with a demand for accountings.

Defendants do not object to plaintiffs' request for access to the LLCs' books and records

¹ Plaintiffs became members of MLK in 2007 and they became members of Beach in 2008.

* 2]

(Mendel Aff., ¶ 3). However, defendants requested that plaintiffs sign a confidentiality agreement wherein plaintiffs would agree to protect the LLCs' confidential information, including rent rolls, bank statements, tax returns and other financial records and, wherein they would agree not to contact other members of the LLCs (*id.* ¶ 20).

Plaintiffs do not object to signing an appropriate confidentiality agreement for documents that are confidential (Rosenberg affirmation, ¶ 9), but they take the position that defendants have no legal right to prohibit them from contacting other members of the LLCs, and they refused to sign a confidentiality agreement that contains that prohibition.

Defendants argue that plaintiffs have no legitimate business reason to contact the other members of the LLCs (Mendel aff., ¶ 20) and, to date, they have not produced the books and records of those entities.

DISCUSSION

Summary judgment will be granted if it is clear that no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden is on the moving party to make a prima facie showing of entitlement to summary judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion (*Zuckerman v City of New York*, 49 NY2d at 562; *see also Ellen v Lauer*, 210 AD2d 87, 90 [1st Dept 1994] [it "is not enough that the party opposing summary

judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists . . . “).

Plaintiffs have made a prima facie showing that they are entitled to judgment as a matter of law by submitting defendants’ answer where in defendants admit that, pursuant to the Limited Liability Company Law (LLCL), plaintiffs are entitled to inspect the books and records of the LLCs (Rosenberg affirmation, exhibit 2, ¶¶ 22, 35; *see also Gartner v Cardio Ventures, LLC*, 121 AD3d 609 [1st Dept 2014] [a member of an LLC has an independent statutory right to inspect the LLC’s books and records]).

Moreover, LLCL § 1102 (a) provides, in pertinent part, that a limited liability company is required to maintain: “a current list of the full name . . . and last known mailing address of each member together with the contribution and the share of profits and losses of each member . . . ; a copy of the articles of organization and all amendments thereto or restatements thereof . . . ; a copy of the operating agreement, any amendments thereto and any amended and restated operating agreement; and a copy of the limited liability company’s federal, state and local income tax returns . . . , if any, for the three most recent fiscal years.”

LLCL § 1102 (b) states:

“Any member may, *subject to reasonable standards as may be set forth in, or pursuant to, the operating agreement*, inspect and copy at his or her own expense, for any purpose reasonably related to the member’s interest as a member, the records referred to in subdivision (a) of this section, any financial statements maintained by the limited liability company for the three most recent fiscal years and other information regarding the affairs of the limited liability company as is just and reasonable”

(emphasis added).

The only restrictions on a member’s right to inspect the LLC’s books and records are set forth in LLCL § 1102 (c):

If provided in the operating agreement, certain members or managers shall have the right to keep confidential from other members for such period of time as such certain members or the managers deem reasonable, any information which such members or the managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which such certain members or the managers in good faith believe is not in the best interest of the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential”

(emphasis added).

In opposition, defendants have failed to produce the operating agreements of the LLCs, or any other evidence, to demonstrate that there are restrictions on plaintiffs’ right to inspect the LLCs’ books and records and/or restrictions on plaintiffs’ right to contact the other LLC members. Moreover, defendants’ unsubstantiated and speculative allegations that plaintiffs want to contact the other members of the LLCs to solicit the sale of their memberships or to solicit other, unrelated investments and/or that the other members’ privacy rights must be respected, is insufficient to overcome plaintiffs’ prima facie showing that they are entitled to inspect the LLCs’ books and records and contact the other members of the LLCs.

Plaintiffs’ demand for accountings of the LLCs is also granted. Here, defendants have admitted that plaintiffs are members of the LLCs and it is well settled that, as such, they are entitled to an accounting (*Gottlieb v Northriver Trading Co. LLC*, 58 AD3d 550, 551 [1st Dept 2009] [“(M)embers of a limited liability company may seek an equitable accounting under

common law”]; *Jacobs v Westchester Industrial Complex LLC*, 2014 WL 7927865 at *40 [Sup Ct, Westchester County 2014] “[LLC members may seek an equitable accounting given the fiduciary relation between the members”]; *363-367 Neptune Ave., LLC v Neary*, 30 Misc 3d 779, 795 [Sup Ct, Kings County 2010]). Defendants have failed to oppose plaintiffs’ demand for accountings and, therefore plaintiffs’ demand for accountings for MLK and Beach is granted (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975] [“in the absence of (a) party challenging the verity of the alleged facts, as is true in the instant case, there is, in effect, a concession that no question of fact exists”]; *see also Madeline D’Anthony Enters., Inc. v Sokolowsky*, 101 AD3d 606, 609 [1st Dept 2012]).

Accordingly, it is ORDERED that the branch of plaintiffs S & H Nadlan, LLC and Dror Argaman’s motion which seeks a declaratory judgment with respect to the subject matter of the complaint’s first and second causes of action is granted; and it is further

ADJUDGED and DECLARED that plaintiffs are entitled to a declaratory judgment against defendants MLK Associates LLC, Beach 84th St I LLC, Mendel Group Inc., Abe Mendel, and Steven Mendel declaring that defendants must grant plaintiffs a full inspection of the books and records of the Beach 84th Street I LLC and MLK Associates LLC companies; and it is further

ORDERED that the branch of the motion that seeks a full accounting of Beach 84th St I LLC is granted; and it is further

ORDERED that the branch of the motion that seeks a full accounting of MLK Associates LLC is granted; and it is further

ORDERED and ADJUDGED that plaintiffs S & H Nadlan, LLC and Dror Argaman, having an address at _____, do recover from

[* 6]
defendants MLK Associates LLC, Beach 84th St I LLC, Mendel Group Inc., Abe Mendel, and
Steven Mendel, having an address at _____,
costs and disbursements as taxed by the Clerk upon presentation of an appropriate bill of costs.

Dated: 3/7/16

ENTER:

Donna M. Mills

J.S.C.

DONNA M. MILLS