

Minovici v Wexler

2016 NY Slip Op 31728(U)

September 15, 2016

Supreme Court, New York County

Docket Number: 160691/2015

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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Stefan Minovici,
Plaintiff/Counterclaim-Defendant,

- against -

Elias Wexler,
Defendant/Counterclaim-Plaintiff.

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Index No.
160691/2015
**DECISION AND
ORDER**
Mot. Seq.: 003

HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Steven Minovici (“Plaintiff” or “Minovici”), seeks a declaratory judgment that the Promissory Note, executed by Plaintiff on February 16, 2015 and delivered to Defendant, Elias Wexler (“Defendant” or “Wexler”) is usurious and void ab initio. Defendant has asserted four Amended Counterclaims against Plaintiff. The first and second counterclaims are for breach of contract, and the third is for unjust enrichment.

The fourth counterclaim is for fraudulent inducement. The fourth counterclaim alleges that on February 15, 2015, Plaintiff called Defendant and “explained to Wexler that there was a sudden and unexpected \$40,000 shortfall in the budget for the 2015 annual ‘Romanian Day on Broadway’ festival.” The fourth counterclaim alleges, “As Minovici explained, a sponsor of the 2015 ‘Romanian Day on Broadway’ Festival had suddenly and unexpectedly reneged on its financial commitments to the event.” Defendant alleges that Plaintiff’s statements were false, and at the time Minovici made them, he knew that they were false. The fourth counterclaim further alleges, “Wexler learned after the commencement of this lawsuit that the supposed sponsor had never committed any funds to sponsor the 2015 festival” and that “Minovici purposefully concocted this lie in February of 2015 in order to fraudulently induce Wexler to extend a short-term \$40,000 loan to cover the alleged shortfall.” It alleges that Defendant justifiably relied upon Plaintiff’s misrepresentations and omissions of existing fact, and Defendant made the \$40,000 loan in reliance upon Plaintiff’s misrepresentations and omissions.

Presently before the Court is Defendant’s motion for an Order “striking Plaintiff’s pleadings in this action for refusing to obey this Court’s March 29, 2016 and June 7, 2016 Orders and for his willful failure to respond to Defendants’

December 10, 2015 First Request for Production of Documents and December 10, 2015 First Set of Interrogatories.” Plaintiff opposes.

Plaintiff states, “Although Minovici could not produce all of the discovery set forth in the June 7, 2016 Stipulation and Order, he produced most of the discovery by June 22, 2016 and all of it by August 14, 2016. That delay did not result in any prejudice to Wexler and I explained to Wexler’s counsel that there was no need for Wexler to file another discovery motion.”

In reply, Defendant claims Plaintiff’s responses to Defendant’s interrogatories remain deficient in the following way:

Interrogatory #6:

Interrogatory #6 requests: “Identify any person to whom Minovici transferred or disbursed, in whole or in part, the proceeds of the \$40,000 loan referenced in the Complaint and that Minovici received from Wexler. For each person identified, please state: the date on which Minovici transferred funds to the person, the amount of the transfer, and the purpose of the transfer.” Plaintiff’s Supplemental Response to Interrogatory #6 states, “On February 17, 2015, Wexler wire transferred the \$40,000 loan proceeds to into Minovici’s account at Citibank in the name of ZIUA USA Foundation, Inc. ending in 5124. It is not possible to trace how those particular funds were used since money is fungible. However, festival expenses include the invoices and receipts produced at SM-419 through SM-493 and highlighted transactions on Minovici’s bank statements at SM-497 through SM-623.” In reply, Defendant argues that Plaintiff’s contention that he cannot “trace how those particular funds were used” is “false” and “disingenuous.” Defendant states that Plaintiff’s bank records “reveal that within 10 days of the \$40,000 loan proceeds being wired into the account of ZIUA USA FOUNDATION INC. (the non-profit organization that accepts donations for and finances the annual “Romanian Day on Broadway” festival in New York), \$39,603.20 of that amount was disbursed,” and “[a]dditional documents produced by Minovici suggest that the largest disbursement, \$25,000, was to Minovici himself.” Defendant further states, “After transferring the \$25,000 to his personal account, Minovici seems to have withdrawn \$22,500 of this money in cash. Bank records suggest that Minovici deposited the money back into his account less than two weeks later, but then wrote a check for the full \$25,000 to an undisclosed payee.” Defendant argues, “Wexler does not presently know what Minovici did with this money, which was supposed to be used

exclusively for the 2015 'Romanian Day on Broadway' festival. This is precisely why Wexler demanded, and the Court ordered, that Minovici account for the \$40,000 in sworn interrogatory responses."

Interrogatory #3, 4, 7

Interrogatory # 3 requests: "For every lawsuit commenced from January 1, 2005 through the present in which Minovici has been named as a party, please identify the plaintiff(s); the defendant(s); the lawsuit's venue; and the lawsuit's index number, and whether a final judgment was entered in the lawsuit. Please provide a copy of all pleadings filed in connection with each lawsuit identified in response to this interrogatory."

Interrogatory # 4 requests: "For every lawsuit commenced from January 1, 2005 through the present in which MIC & Associates has been named as a party, please identify the plaintiff(s); the defendant(s); the lawsuit's venue; and the lawsuit's index number, and whether a final judgment was entered in the lawsuit. Please provide a copy of all pleadings filed in connection with each lawsuit identified in response to this interrogatory."

Interrogatory # 7 requests: "For every judgment that has been entered against Minovici from January 1, 2005 to the present, please identify the name of the creditor, the amount of the judgment, the date of the judgment, and state whether the judgment has been satisfied. Please provide a copy of all judgments identified in response to this interrogatory."

In response to Interrogatories #3, 4, and 7, Minovici states in his Supplemental Responses that he "has produced, or shall produce, all responsive documents in his possession." Defendant contends that on August 15, 2016 and August 18, 2016, Defendant asked Plaintiff to clarify whether Minovici has already produced all responsive documents in his possession, or whether there are additional responsive documents that he has not yet produced. Defendant contends that Plaintiff has not responded to these communications.

Defendant contends that there are other deficiencies in Minovici's supplemental discovery responses. Defendant states that Minovici was required to produce complete copies of bank records relating to the \$40,000 loan proceeds; however, many of the bank statements that Minovici produced are missing pages and Minovici has not produced any checks relating to the disclosed accounts. Defendant states, "Wexler requires an opportunity to see the checks because, as explained above, it

appears that Minovici disbursed significant portions of the \$40,000 loan proceeds not only through wire transfers, cash withdrawals, and credit card purchases, but also through checks, like the \$25,000 check that Minovici wrote to a presently-unknown payee on February 20, 2015.”

Here, Defendant’s seeks discovery that is relevant to Defendant’s fourth counterclaim which alleges that Plaintiff fraudulently induced Plaintiff to make the \$40,000 short term to cover an alleged shortfall in funding for the 2015 “Romanian Day on Broadway” Festival.

Wherefore it is hereby,

ORDERED that Plaintiff is directed to supplement his response to Interrogatory #6 within thirty (30) days because Plaintiff’s supplemental response is inadequate; and it is further

ORDERED that Plaintiff is directed to produce complete copies of bank records relating to the \$40,000 loan proceeds with no missing pages and all checks relating to the disclosed accounts within thirty (30) days; and it is further

ORDERED that Plaintiff is directed to provide an affidavit stating whether Minovici has already produced all responsive documents in his possession, or whether there are additional responsive documents that he has not yet produced, in response to Interrogatories Nos. 3, 4, and 7 within twenty (20) days and if there are additional responsive documents, those documents are to be produced within thirty (30) days; and it is further

and it is further

ORDERED that all parties are directed to appear for a compliance conference scheduled for March 29, 2017.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: SEPTEMBER 15, 2016

SEP 15 2016


EILEEN A. RAKOWER, J.S.C