

Pachter v 3046 W. 22 St Props., LLC

2020 NY Slip Op 33353(U)

October 13, 2020

Supreme Court, Kings County

Docket Number: 511622/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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RENA PACHTER in his representative capacity
as Executor of the ESTATE OF JUDITH
LINDENBERG, deceased,

Plaintiff, Decision and order

- against -

Index No. 511622/19

3046 WEST 22 ST PROPERTIES LLC, D-WIN
PROPERTIES LLC, HOMES BEAUTIFUL RE LLC,
and PARK 50 WEST PROPERTIES LLC,

Defendants, October 13, 2020

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PRESENT: HON. LEON RUCHELSMAN

On March 5, 2020 this court granted the plaintiff summary judgement that the plaintiff is entitled to an accounting. The plaintiff has now moved for contempt and for sanctions on the grounds the defendants have failed to comply with that order. The plaintiff further moves seeking to consolidate this action with another action pending, Pachter v. Winiarksy, Index Number 502779/2020. The defendants oppose the motion and cross-move for summary judgement dismissing the action. Papers were submitted by the parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

Background

As recorded in the prior order, the Estate is a fifty percent member in each of the four defendant entities that manage real estate in Kings County. The remaining fifty percent ownership

belongs to David and Esther Winiarsky respectively. The Estate initiated this lawsuit seeking an accounting to determine the value of each entity. As noted, the court granted summary judgement and ordered the defendants to provide all the accountings requested within sixty days. This motion for contempt has been filed wherein the plaintiff alleges the defendants have failed to provide such accountings. The motion seeking summary judgement dismissing the action has been filed as well.

Conclusions of Law

The Complaint filed in this case contains one cause of action, namely an equitable accounting. The court ruled that the plaintiff had satisfied all the elements for such cause of action and granted summary judgement ordering the defendants to provide all the accountings requested in the Complaint. Paragraph 36 of the Complaint states that "plaintiff requires the accountings requested in order to ascertain the value of the Estate's membership interests in the entities at issue and so to fulfil his duties as fiduciary for the Estate" (id). Thus, concerning the four properties in question the defendants provided balance sheets for the years 2008 through 2019, monthly billing summaries, tax documents from 2008 to 2016 and transaction by account documents. These documents are surely sufficient for the plaintiff to

ascertain the value of their interest in each property. The plaintiff objects that such accounting merely provides "a broad overview, rather than a detailed itemization, of the Companies' income and assets" (Plaintiff' Reply Memorandum, page 4). However, an itemization is not required for the stated purpose of the Complaint, namely the value of the plaintiff's membership interests.

In truth, the chief objection to the information submitted is that it does not account for the many improprieties the defendants have been accused of, including missing rents, fraud, unapproved loans and unaccounted sums. Indeed, the plaintiff argues that "petitioner has been clear throughout this litigation that the central purpose of the requested accountings has been particularly to discern the disposition of the Companies' unaccounted-for rental income" (Plaintiff' Reply Memorandum, page 9). However, those claims are adequately addressed in the companion lawsuit and are not properly the subject of the accounting sought here. As noted, this lawsuit seeking an accounting is purposely designed to discern the value of the plaintiff's shares of the four corporations, not to seek redress for fraud related activity. Moreover, the plaintiff alleges the defendants submissions contain "false and falsified figures" (Plaintiff' Reply Memorandum, page 5). However, even if true, the plaintiff does not explain how more detailed

statements will not contain similar falsehoods. Further, the plaintiff contends the information submitted is not sufficient in scope without explaining the nature of any missing scope. Lastly, the plaintiff argues the accounting necessarily lacks information relevant to determine the valuation of the properties. Thus, essentially, the plaintiff is objecting to the veracity of accounting submitted. It is well settled that where a party objects to the accounting submitted and presents evidence the accounting is incomplete the fiduciary may present evidence the account is accurate and complete (Matter of Estate of Schnare, 191 AD2d 859, 594 NYS2d 827 [3rd Dept., 1993]). Thus, whether the defendants have submitted a complete and accurate accounting will necessarily require a deeper examination of the issues presented by the plaintiff in this action. However, clearly, the motion seeking contempt is denied. Likewise, the cross-motion seeking dismissal is denied as well.

Turning to the motion seeking consolidation, there can be little dispute that the two actions are substantially related and concern the same parties, facts and circumstances. Moreover, much of the plaintiff's basis for relief in this motion will be adequately addressed in the other lawsuit where a thorough examination of all the books and records of the four companies will be necessary. To that extent, the plaintiff here will be entitled to the more detailed accounting information that has been denied by

this motion. Therefore, the motion seeking to consolidate this action with Index Number 502779/2020 is granted.

So ordered.

ENTER:

DATED: October 13, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC