

**Pitter v Daniel**

2021 NY Slip Op 33118(U)

December 1, 2021

Supreme Court, Queens County

Docket Number: Index No. 712124/2019

Judge: Pam Jackman Brown

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**NEW YORK SUPREME COURT  
COUNTY OF QUEENS - IAS Part 19**



**SHORT FORM ORDER**

**Present: HONORABLE PAM JACKMAN BROWN**

**Justice**

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**Index #712124/2019**

**JASON PITTER,**

**Mot seq #6 & #7**

**Plaintiff,**

**-against-**

**JEROME DANIEL and REMEDE  
CONSULTING GROUP INC.,**

**Defendants.**

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Recitation, as required by CPLR § 2219(a), of the following e-filed papers numbered read on motion 006 e-filed by Plaintiff requesting an Order ordering the production of Remede’s Corporate Tax Returns from 2004 to 2020; and motion 007 by Defendants for an Order (1) Pursuant to CPLR 3212, granting Defendants summary judgment as to both causes of action alleged in the Complaint and dismissing the Complaint with prejudice; (2) granting fees and case disbursements under the prevailing party clauses in the parties 2004 and 2011 Agreements; (3) granting Defendants their reasonable attorney’s fees and case disbursements; and/or (4) granting Defendants such other, further or different relief to which they may be entitled.

	<u>PAPERS E-FILE NUMBERED</u>	
	Papers	Exhibits
(Motion #6) Notice of Motion - Affirmations, Memorandum of Law in Support, Affidavits, Proposed Order and Exhibits Annexed	102-105	106-120
(Motion #7) Notice of Motion - Affirmations, Memorandum of Law, Statement of Material Facts, Affidavits, and Exhibits Annexed	121-124, 135	125-134, 136-158

(Motion #6) Opposition - Memorandum of Law	165	-
(Motion #7) Opposition- Affirmation, Affidavit	160, 164	161-163
(Motion #6) Reply- Affidavit	169-170	171
(Motion #7) Reply-Affidavit, Memorandum of Law	166, 168	167, 172

Upon the papers listed above, both motions are decided in accordance with this Decision/Order.

This is an alleged breach of contract action. Plaintiff commenced the underlying action by filing a summons and complaint on July 15, 2019. Plaintiff is a former employee of Defendant, Remede Consulting Group Inc., (hereinafter referred to as “Defendant Company”). Defendant Jerome Daniel (hereinafter referred to as “Defendant Daniel”) is the Chief Executive Officer of Defendant Company. At the onset of Plaintiff’s employment, he was hired to recruit nurses, secure new contracts and ensure compliance with required rules and regulations. In 2004, Plaintiff became a registered nurse for Defendant Company. While still employed as a recruiter, Plaintiff and Defendant Company discussed compensation in the form of share options in exchange Plaintiff working more hours. Defendant Daniel allegedly offered Plaintiff 5% shares of Defendant Company’s stock in 2003. The agreement was allegedly memorialized in writing. Plaintiff claims a copy of the agreement was never provided to him. Defendant Daniel denies ever entering into such an agreement. After becoming a registered nurse for Defendant Company, Plaintiff was terminated for allegedly soliciting clients in violation of his employment agreement. However, Plaintiff maintains that the termination was a result of failing to sign a non-conflict agreement. Plaintiff filed the underlying action to obtain an Order declaring he is a 5% shareholder and issuing outstanding dividends owed since 2004.

Both Plaintiff and Defendants herein filed motions. Plaintiff filed motion sequence 006, which requests an Order compelling Defendant Company to release their tax documentation to prove or disprove the disbursement of dividends to Plaintiff. Motion sequence 007 was filed by Defendants and seeks for an Order dismissing the *lis pendens* as the statute of limitations has ran or for an Order granting summary judgment.

The Court now turns to motion sequence 006. In motion sequence 006, Plaintiff requests an Order compelling Defendant Company to release their tax documentation to prove or disprove the disbursement of dividends to Plaintiff. Defendants oppose the motion. When seeking disclosure of taxes, the party seeking disclosure must make a strong showing of necessity and demonstrate that the information contained in the returns is unavailable from other sources.” *Williams v. New York City Hous. Auth.*, 22 A.D.3d 315 (2005).

Here, there is conflicting testimony and evidence as to whether Plaintiff was to be provided with shares of Defendant Company. Although it is Plaintiff's position there was an agreement that dividends were to be paid to Plaintiff in exchange for longer hours at work, Defendant Daniel argues that the dividends were not to be paid to the Plaintiff but rather Defendant Company provided a loan to Plaintiff. The Court has been provided with a plethora of documentation. After thorough review of the documentation provided to the Court, no proof of the agreement between the parties was furnished to the Court. There is no evidence that an agreement exists. Additionally, Plaintiff has provided no evidence of the dividends he has allegedly received. The Court notes that had Plaintiff receive shares, it should have been memorialized in documented within his own possession and control of his tax documentation. Plaintiff has not provided any proof that the shares are recorded in his own tax documentation. Although, Plaintiff argues that an alleged breach occurred when he stopped receiving shares after September 2012, more than 6 years prior to the commencement of this action, there is no documentary proof of any dividends provided to Plaintiff prior to the alleged breach of contract.

The tax returns of Defendant Company are under the exclusive control of Defendant Company. If Defendant Company provided shares to Plaintiff, it would be listed within Defendant Company's tax return. However, Plaintiff has failed to provide any proof of an agreement, conversation, or contract documenting the agreement between Plaintiff and both Defendants. Provided to the Court was a previously submitted Statement of Net Worth submitted to this Court during Plaintiff's divorce action in 2011. The Statement of Net Worth sworn to by Plaintiff stated he has not received any dividends. There is no proof submitted to the Court by Plaintiff to prove that any dividends were ever paid to the Plaintiff nor is there proof of an agreement to provide dividends to Plaintiff to dispute the sworn statement in Plaintiff's Statement of Net Worth. Accordingly, there is no proof of an agreement to substantiate the need for Defendant Company to provide their tax records for review to Plaintiff.

The Court now turns to motion sequence 007. Within the motion, both Defendants move for summary judgment. When moving for summary judgment, the movant bears the initial burden of establishing, *prima facie*, entitlement to judgment as a matter of law, offering sufficient evidence, in admissible form, to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320[1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851[1985]; *Zuckerman v. City of New York*, 49 NY2d 557[1981]). Once a *prima facie* showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (CPLR §3212; *Giuffrida v. Citibank Corp.*, 100 NY2d 72[2003]; *see also Zuckerman v. City of New York*, 49 NY2d at 557).

Before the Court is the tax documentation of Plaintiff. None of the tax documents provided to the Court include any amounts of shares provided to Plaintiff. Plaintiff has failed to show any agreement by Defendants to provide shares to Plaintiff. Further,

Defendants maintain although there is no admission by Defendants regarding the breach of contract, even if there was, the statute of limitations has run. The Court agrees. In the instant action, Plaintiff alleges they were in receipt of shares until October of 2012. Therefore, the breach would have occurred as of 2012, more than six years ago. Defendants have met their burden for summary judgment.

The burden now shifts to Plaintiff to show that there is sufficient evidentiary proof to establish a material issue of fact. Plaintiff commenced this action July 15, 2019. Plaintiff failed to address the issue of statute of limitations in the opposing papers. This matter is barred by the statute of limitations which began in 2012. Accordingly, the motion for summary judgment is granted, the *lis pendens* is dismissed. Defendants' application for counsel fees is denied.

Based on the above determination. The motion sequence # 006 is denied. The motion sequence #007 is granted. This action is dismissed.

Defendants must serve a copy of this Order with Notice of Entry on Plaintiff within 20 days of this date.

The above constitutes the Decision and Order of the Court resolving both motion sequence #006 and #007.

Dated: December 1, 2021  
Jamaica, New York



HON. PAM JACKMAN BROWN, JSC

