

Farhadi v Golan Floors, Inc.

2022 NY Slip Op 33145(U)

September 19, 2022

Supreme Court, New York County

Docket Number: Index No. 655203/2019

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

DAVID FARHADI,

Plaintiff,

- v -

GOLAN FLOORS, INC., NORWEGIAN WOOD FLOORS, INC., GADI RUHAM, and DANNY HODAK,

Defendants.

INDEX NO. 655203/2019

04/16/2021,
04/19/2021,
05/10/2021,

MOTION DATE 01/25/2022

MOTION SEQ. NO. 002 003 004 005

DECISION + ORDER ON MOTION

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DANNY HODAK,

Third-Party Plaintiff,

-against-

ERIC RIVERA,

Third-Party Defendant.

Third-Party
Index No. 595922/2021

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 50, 51, 52, 53, 80, 81, 82, 83, 84, 85, 86, 87, and 109

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 88, 92, 102, 103, 104, 105, 106, 108, 112, 114, and 117

were read on this motion to DISQUALIFY COUNSEL.

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 107, 110, and 111

were read on this motion for SANCTIONS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 005) 121, 122, 123, 124, 125, 126, 127, and 128

were read on this motion for DEFAULT JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, motion sequence numbers 002, 003, 004, and 005 are consolidated for disposition in accordance with the following memorandum decision.

Background

This action, as alleged in the complaint, arises out of plaintiff David Farhadi's ("plaintiff") retention of defendants to install new flooring in his apartment following a leak. As more specifically set forth in the complaint, plaintiff alleges that defendants Golan Floors, Inc., ("Golan Floors") and Norwegian Wood Floors, Inc. ("Norwegian Wood"), improperly represent to the public that Norwegian Wood is a "d/b/a" name for Golan Floors, and alleges that both entities are sham corporations utilized as alter egos for defendants Gadi Ruham ("Ruham") and Danny Hodak ("Hodak") to shield themselves from liability (Complaint, NYSCEF Doc. No. 1, ¶¶ 9-18). As relevant to the motions, the complaint further alleges that plaintiff retained Norwegian Wood, dealing primarily with Ruham, to install new flooring in his apartment, but the work was done improperly and unprofessionally, causing plaintiff damages (*id.*, ¶¶ 31-45). Plaintiff retained an inspector to evaluate the damage to his apartment, and presented the inspector's report to Ruham seeking to have defendants implement the inspector's recommendations (*id.*, ¶¶ 46-58). However, defendants did not act on the report and allegedly have done nothing to correct the defects in their work (*id.*, ¶¶ 58-63).

Defendant Hodak's Motion for Default Judgment on its Third-Party Complaint against Eric Rivera (Mot. Seq. No. 005)

Hodak moves for a default judgment on his verified third-party complaint against third-party defendant Eric Rivera, an employee of Golan Floors. Hodak's verified third-party complaint alleges causes of action for false imprisonment, tortious interference, illegal eviction, *prima facie* tort, and punitive damages arising out of Rivera's alleged confinement of Hodak

within Golan Floors' office premises, Rivera's interference with Hodak's attempts to comply with discovery orders in this action, and Rivera's changing of the locks on Golan's premises so that Hodak cannot access that office premises (Third-Party Complaint, NYSCEF Doc. No. 118).

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of N.Y.*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Hodak fails to adequately allege causes of action for illegal eviction, *prima facie* tort, and tortious interference.

Regarding illegal eviction: Hodak does not identify Rivera as the owner/landlord of Golan's premises. Rather, Rivera is only alleged to be an employee of Golan (*see*, NYSCEF Doc. No. 118 ¶ 4). Thus, no allegation is made to the effect that the owner of Golan's presumably leased premises unlawfully "evicted" Hodak from the leasehold (*see, e.g., North Main St. Bagel Corp. v Duncan*, 6 AD3d 590, 591 [2d Dept 2004]).

Regarding *prima facie* tort: "To state a cause of action for prima facie tort, the plaintiff must allege (1) the intentional infliction of harm, (2) which results in special damages, (3)

without any excuse or justification, (4) *by an act or series of acts which would otherwise be lawful*” (*Freihofer v Hearst Corp.*, 65 NY2d 135, 142-43 [1985] [emphasis added]). Given the allegations concerning false imprisonment, a clearly unlawful act, as alleged (*see*, NYSCEF Doc. No. 118 ¶¶ 5-12), *prima facie* tort, which requires an otherwise lawful act, cannot lie.

Regarding the tortious interference claim: The cause of action is styled as one involving Rivera allegedly impeding Hodak’s access to documents which Golan needs to produce to the plaintiff in this action as pre-trial discovery (*see*, NYSCEF Doc. No. 118 ¶ 15). But as such, no allegation is sufficiently made as to interference with any contract between Hodak and Golan, or Hodak and the plaintiff, causing Hodak, thereby, to be in breach of such a contract (*see*, *White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422, 426 [2007] [“In a contract interference case – as here – the plaintiff must show . . . defendant’s intentional and improper procuring of a breach”]). Moreover, to the extent that Hodak, by virtue of his position as co-owner of Golan Floors, has a contract with Golan Floors, such contract is not exhibited to the court, making it impossible for the court to evaluate the merit of the claim.

Thus, the only cause of action that seems to be available to Hodak, as a third-party claim in this action, against Rivera, would be his cause of action for false imprisonment (*see*, NYSCEF Doc. No. 118 ¶¶ 5-12). To establish a cause of action for false imprisonment, a “plaintiff must show that: (1) the defendant intended to confine him, (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged” (*Broughton v State*, 37 NY2d 451, 456, *cert denied sub nom Schanbarger v Kellogg*, 423 US 929 [1975]). The third-party sets forth such allegations. The court, thus, is left with the question of the measure of damages to be assessed in recompense for the false imprisonment, as to which no briefing by Hodak has been submitted. The third-party complaint

ascribes what appears to be an arbitrarily chosen *ad damnum* – shared by all the causes of action – in the amount of \$10,000.¹ Thus, as to this cause of action, a default judgment will issue on liability, subject to further briefing by Hodak as to the standards for damages within the context of his instant claim for false imprisonment, which will also include further detail concerning the duration of the imprisonment.

Defendant Hodak’s Motion to Disqualify Counsel (Mot. Seq. No. 003)²

Hodak moves to disqualify the firm of Morrison Tenenbaum PLLC from representing Golan Floors, arguing primarily that since Golan Floors is a closely held corporation in which Hodak and Ruham are equal shareholders, it is a conflict of interest for Morrison Tenenbaum PLLC to represent both the corporation and one of its shareholders. In support of the motion, Hodak references a dissolution petition he filed against Ruham to dissolve Golan Floors pursuant to Business Corporation Law § 1104, captioned *Matter of Golan Floors, Inc.* (index No. 655063/2019 [Sup Ct NY County] [Bluth, J.]) (the “Dissolution Proceeding”). The court in the Dissolution Proceeding granted the petition for dissolution and directed submission of an order providing for the appointment of a receiver to wind up the affairs of the corporation, sell its assets, and direct payment of debts and distribution of remaining funds (Dissolution Proceeding, NYSCEF Doc. No. 19). The court notes that Morrison Tenenbaum PLLC appeared in the Dissolution Proceeding as counsel for Ruham.

¹ The third-party complaint also seeks punitive damages in respect of this cause of action by virtue of its concurrent nature as a criminal offense, citing Penal Law § 135 (*see*, NYSCEF Doc. No. 118 ¶ 3 n 1). The third-party complaint asserts a fifth cause of action for punitive damages predicated, in part, on false imprisonment (*see, id.*, ¶¶ 36-40), seeking treble the amount of Hodak’s arbitrarily chosen compensatory sum of \$10,000; meaning, \$30,000 (*see, id.*).

² This motion for disqualification of counsel for parties in the case-in-chief (index No. 655203/2019), which is granted hereinafter, can be decided concurrently with the foregoing disposition because it does not involve the third-party defendant at all (third-party index No. 595922/2021).

“[W]hether to disqualify an attorney rests in the sound discretion of the Court” (*Harris v Sculco*, 86 AD3d 481 [1st Dept 2011]). “A party’s entitlement to be represented in ongoing litigation by counsel of his or her own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted” (*Lipschitz v Stein*, 65 AD3d 573, 576 [2d Dept 2009]). “The party seeking to disqualify a law firm or an attorney bears the burden to show sufficient proof to warrant such a determination” (*id.*).

Here, as set forth above, Hodak and Ruham, the co-owners of Golan Floors, are engaged in an acrimonious dispute, leading to the dissolution of Golan Floors in the Dissolution Proceeding (Dissolution Proceeding, NYSCEF Doc. No. 19). Following dissolution, Golan Floors and Ruham do not have the same interests in resolving the instant action (*see*, Rules of Professional Conduct [22 NYCRR 1200.0] Rule 1.7 [a] [1] [“a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . the representation will involve the lawyer in representing differing interests”]). Given the fact that the corporation is evenly divided between Ruham and Hodak, it would be impossible for Golan Floors to have waived the conflict of interest (*id.*, Rule 1.7 [b] [4]). Morrison Tenenbaum PLLC could be capable of obtaining information through its representation of Golan Floors that could be adverse to Hodak that it could then use with respect to either the primary action or the cross-claims asserted against Hodak. Generally, where two shareholders of a corporation are adverse, it is a conflict for one lawyer to represent both the corporation and one of its shareholders (*Matter of Fleet v Pulsar Const. Corp.*, 143 AD2d 187, 188 [2d Dept 1988]; *Matter of Bowman Trading Co., Inc.*, 99 AD2d 459 [1st Dept 1984]). Accordingly, Morrison Tenenbaum PLLC must be disqualified from representing Golan Floors in this matter, and independent counsel for Golan Floors must be retained. As a receiver has not yet been appointed in the Dissolution Proceeding, this matter

(apart from the damages portion of the surviving third-party claim against Rivera) shall be stayed pending appointment of a receiver, and thereafter to allow time for the receiver to retain counsel.

In light of the foregoing, the motions to dismiss cross-claims and for sanctions (Mot. Seq. Nos. 002 and 004), as well as Hodak's cross-motion to amend his answer, are denied without prejudice to renew following appearance of new counsel for Golan Floors.

Accordingly, it is hereby

ORDERED that Defendant/Third-Party Plaintiff Danny Hodak's motion seeking entry of a default judgment against Third-Party Defendant Eric Rivera (Mot. Seq. No. 005) is granted only to the extent that said movant shall submit a briefing and supplemental fact affidavit pertinent to the issue of the quantum of damages to be assessed in respect of his viable third-party claim against Eric Rivera for false imprisonment, and such briefing and affidavit will be efiled herein no later than October 17, 2022, and the motion is otherwise denied; and it is further

ORDERED that the motion to disqualify counsel for defendant Golan Floors, Inc., is granted and, therefore, the law firm of Morrison Tenenbaum PLLC is hereby disqualified from representing defendant Golan Floors, Inc., in this matter; and it is further

ORDERED that, except as otherwise stated hereinabove, this action is stayed from this date until 30 days following notice to this court that a receiver has been appointed for Golan Floors, Inc., in *Matter of Golan Floors, Inc.* (index No. 655063/2019 [Sup Ct NY County] [Bluth, J.]), and defendant Golan Floors, Inc., shall, within said period, retain another attorney in place of the firm of Morrison Tenenbaum PLLC, and that notice of the appointment shall be submitted to the Clerk of this Part (Part 38) in accordance with the rules of the Part and filed to the electronic docket of this matter; and it is further

ORDERED that the new attorney retained by defendant Golan Floors, Inc., shall serve upon all parties a notice of appearance and file same with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of this Part (Part 38) within said 30-day period; and it is further

ORDERED that such filing with the Clerk of the General Clerk’s Office and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that motion sequence numbers 002 and 004 are denied without prejudice to renew as set forth above.

This constitutes the decision and order of the court.



<u>9/19/2022</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:			DENIED		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE