

Commonwealth of Pa Dept. of Revenue v Kozel

2023 NY Slip Op 31850(U)

June 2, 2023

Supreme Court, New York County

Docket Number: Index No. 154568/2022

Judge: Lyle E. Frank

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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**

<p>PRESENT: <u>HON. LYLE E. FRANK</u> <i>Justice</i> -----X COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF REVENUE, Plaintiff,</p>	<p>PART 11M INDEX NO. <u>154568/2022</u> MOTION DATE <u>01/13/2023</u> MOTION SEQ. NO. <u>008</u></p>
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- v -

TODD F. KOZEL, 212 WEST 18 LLC, MARKUS
 HUGELSHOFER, INGA KOZEL, INRES INTERNATIONAL
 RESOURCES INCORPORATED, JOHN DOE, JANE DOE,
 AND ABC CORPORATIONS 1-10

**DECISION + ORDER ON
 MOTION**

Defendant.
 -----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 75, 76, 77, 78, 94, 101, 102, 103

were read on this motion to/for DISMISS.

This action arises out of plaintiff’s attempt to enforce a judgment based on defendant, Todd F. Kozel’s, tax liability. Defendant, Inga Kozel, moves to dismiss the complaint pursuant to CPLR § 3211(a)(7) and CPLR § 215(3). Plaintiff opposes the motion. For the reasons set forth below, Inga Kozel’s motion to dismiss is granted.

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the Court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. *See Leon v Martinez*, 84 NY2d 83 [1994].

Plaintiff’s first cause of action as against Inga, entitled “Alter Ego Liability”, alleges that she was an “alter ego” of defendant Todd F. Kozel (“Mr. Kozel”). The First Department has consistently held that “alter-ego liability is not an independent cause of action” (*Ferro Fabricators, Inc. v 1807-1811 Park Ave. Dev. Corp.*, 127 AD3d 479, 480 [1st Dept 2015]).

Notwithstanding, there are no factual allegations in the amended complaint to support the allegation that Inga was the alter ego of Mr. Kozel. *See id.* Plaintiff's affirmation in opposition fails to cure this deficiency. Accordingly, the first cause of action as asserted against Inga Kozel is dismissed.

Plaintiff's second cause of action is for liability as Mr. Kozel's nominee. Similar to plaintiff's first cause of action, the amended complaint is insufficient to plead a cause of action under the nominee theory. The amended complaint alleges that property was transferred to Inga, but fails to identify what property and the value of the property. Cases cited by plaintiff in support of the position that the nominee theory applies here and is sufficiently pled are cited in support of defendant's motion to dismiss, contending the opposite.

The Court agrees with defendant's interpretation of the cases and finds that nominee theory is insufficiently pled and as such is inapplicable to Inga. Specifically, in *Evseroff*, the Eastern District of New York defined the nominee doctrine, quoting another district court decision, as "when an owner of property may be considered a mere 'nominee' and thus may be considered to hold only bare legal title to the property" (*United States v Evseroff*, 2012 US Dist LEXIS 60344, at *33, 109 A.F.T.R.2d (RIA) 2012-1957 [EDNY Apr. 30, 2012, No. 00-CV-06029 (KAM)]). Further, the court goes on to explain that the nominee doctrine is applied when there is a transfer of property; however the transferee, who is the debtor, maintains control of the property. The Court finds that based on the amended complaint, and giving plaintiff all favorable inferences, and assuming that nominee liability is a cause of action, plaintiff fails to allege any factual allegations to support this cause of action against Inga.

Plaintiff's third cause of action alleges interference with plaintiff's enforcement of its judgment against Mr. Kozel. The amended complaint alleges that the alleged interference

occurred on December 16, 2013, when Mr. Kozel “caused a luxury condominium located at 212 West 18th Street, Unit 14-C-D, New York, New York 10011 to be purchased in the name of the LLC”. Defendant Inga contends that any allegations based on the December 16, 2013, conduct is barred by the 1 year statute of limitations.

In opposition, plaintiff contends that a 3-year statute of limitations applies, this argument however does not dictate a different result. Even assuming that a 3-year statute of limitations applies, this cause of action is still time barred as the complaint in this action was filed in 2022. The Court has review plaintiff’s remaining contentions and finds them unavailing. Accordingly, it is hereby

ORDERED that the motion of defendant Inga Kozel to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

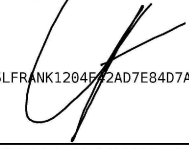
ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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).


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6/2/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE