

Seaton v Babad

2023 NY Slip Op 33302(U)

September 22, 2023

Supreme Court, New York County

Docket Number: Index No. 654196/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SIMON SEATON, DEBRA SEATON,

Plaintiff,

- v -

CHIAM BABAD, CONGREGATION KAHAL MINCHAS
CHINUCH, INC.,PARK 121 REALTY, LLC,

Defendant.

INDEX NO. 654196/2021

MOTION DATE N/A

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227

were read on this motion to/for REMOVE RECEIVER/COMPEL ACCTING.

Upon the foregoing documents and as discussed on the record (9.20.23), the Plaintiffs’ motion seeking an order to (i) remove the Receiver, Hon. Ariel E. Belen, his counsel, Novick Edelstein Pomerantz PC, and the Property Manager, EK Realty, (ii) disallow any fee application by the Receiver, his counsel, or the Property Manager, (iii) disgorge any fee that they may have taken to date, (iv) surcharge the Receiver, his counsel, and the Property Manager in the amount of \$276,000 and increasing on a monthly basis, (v) appoint a Referee, (vi) remove the Receiver’s bank account at TD Bank from the possession of the Property Manager, (vii) require that all written accounts, itemized receipts and expenditures, and all bank records statements and check ledgers for the Receiver’s bank account at TD Bank be immediately provided to all parties, and (viii) award to the Plaintiffs attorneys’ fees and costs is denied. The drastic remedy sought by the Plaintiffs is premised on allegations that (i) the Receiver, his counsel, and the Property Manager intentionally did not enter into a lease proposed by the Plaintiffs with an entity called

Little Grace Bakery and (ii) that the Receiver, his counsel, and the Property Manager have favored and colluded with the Defendants in this case.

The record before the Court does not support the allegations advanced by the Plaintiffs.

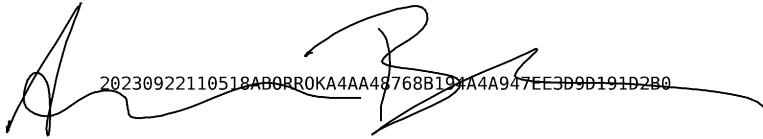
Although the parties dispute what information was requested of and provided by the Plaintiffs' proposed tenant, the record indicates that the proposed tenant did not offer the security requested by the Receiver and otherwise backed away from the proposed rent prior to consummation of the transaction. It also was not inappropriate for the Receiver to require the Plaintiffs to pay the money that the Court had ordered that the Plaintiffs pay over to the Receiver. This does not constitute mismanagement or a dereliction of duty, favoring of either party or provide a basis to remove the Receiver. It is irrelevant that the Property Manager worked with a brokerage firm connected to the Defendants. The issue of concern is whether the proposed tenant was connected to either party so that the Receiver could ensure that the Receiver was achieving an appropriate deal for all parties and the record evidence is that when the deal with the Plaintiffs' proposed tenant did not go forward, the Receiver promptly found a tenant who was prepared to (and did) provide adequate security for the lease (*i.e.*, a guaranty). Finally, to the extent the Plaintiffs allege that the Receiver has improperly refused to share records pursuant to CPLR 6404, these allegations appear to have been premature as they appear to be made prior to the time that the Receiver emailed the records to the parties. In any event, this the Receiver was not required to do pursuant to CPLR 6404 and the Receiver has in fact shared records with the parties. Therefore, the motion is denied.

The Receiver's cross-motion for an order to (i) enter judgment against the Plaintiffs in the amount of \$84,793.60 plus costs and interests and (ii) hold the Plaintiffs in contempt for noncompliance with this Court's January 13, 2023 order is granted in part. By Order dated January 13, 2023 (NYSCEF Doc. No. 157), the Court ordered the Plaintiffs to turn over to the Receiver forthwith monies that should have been previously turned over, including (i) \$35,200 in security deposits, (ii) \$13,643.60 used to pay Mr. Seaton's private credit cards, (iii) \$16,000 in rent from Red Rabbit for basement space from June 2021-January 2022, (iv) \$19,950 in rent pre-paid by Red Rabbit to Mr. Seaton, and (v) \$18,887.92 which was wired by Plaintiffs' counsel into the wrong account. The Court further ordered that failure to make such payments within 10 days of the filing of the January 13, 2023 order would subject the Plaintiffs to contempt of court (*id.*, at 2). The Court notes the Plaintiff indicates that it never received the Red Rabbit money. However, the Plaintiff has never produced an affidavit, bank records or anything in support of its position. It is however not disputed that the Plaintiffs have failed to pay to the Receiver these monies (other than the \$18,887.92 which was initially wired into the wrong account). As such, the Plaintiffs have willfully and contumaciously violated a direct order of this Court and the Plaintiff is therefore in contempt of Court. The Plaintiffs may however purge their contempt by (x) paying over such monies no later than October 28, 2023 and (y) with respect to the Red Rabbit money set forth above, the Plaintiffs shall either (1) pay over such money or (2) produce both an affidavit indicating that it never received such money and bank records of all accounts in which they have a beneficial interest during the relevant period of time demonstrating that they never received any such money from Red Rabbit.

If the Plaintiffs fail to pay such monies by October 28, 2023 (or, with respect to the Red Rabbit money, otherwise demonstrate that they did not receive such Red Rabbit money), the Receiver shall email Part 53, and the Court shall enter judgment against the Plaintiffs in the unpaid amount.

It is hereby ORDERED that the Plaintiffs' motion to remove the Receiver is denied; and it is further

ORDERED that the Receiver's cross-motion is granted in part as set forth above.



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9/22/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE