

**Sprung v MacGregor**

2024 NY Slip Op 32268(U)

June 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 504677/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

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

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DAVID SPRUNG, as Administrator of the  
Estate of Randall S. Sprung,

Plaintiff,

Decision and order

- against -

Index No. 504677/19

BANNOR MICHAEL MacGREGOR, JEFFREY  
KATZ, and LIFE DESIGN STATION  
INTERNATIONAL, INC., a/k/a Vastech Auto  
America, a/k/a Intuitive Capital Management  
LLC, a/k/a Intuitive Technology Ventures  
Corporation, a/k/a Vastech Technologies  
Corporation,

Defendants,

June 25, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #8

The defendants move pursuant to CPLR §3212 seeking summary judgement dismissing the action. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held.

After reviewing all the arguments this court now makes the following determination.

As recorded in a prior decision, on December 6, 2017 the plaintiff entered into a stock purchase agreement wherein he invested \$400,000 with defendant Life Design that represented it had obtained a master license to manufacture motors by utilizing certain patented technologies for use in electric automobiles. On January 26, 2018 the parties entered into a second addendum whereby the plaintiff invested another \$3,850,000 in assets in a Wyoming corporation called Sprung Investments LLC in exchange for stock in Life Design. The Life Design stock was placed in a

second Wyoming corporation called Randal S. Sprung LLC. A third addendum dated March 20, 2018 was signed by the parties wherein the plaintiff transferred his interest in Sprung Investments LLC to Life Design to improve Life Design's financial position. A fourth addendum was allegedly signed between the parties on July 5, 2018. This agreement, denominated a 'final agreement' waived many of Sprung's rights and required him to pay an additional \$1,800,000 in exchange for more Life Design stock.

The plaintiff initiated this lawsuit and asserted various causes of action including the defense of fraud in the execution seeking to void the fourth addendum. Specifically, the plaintiff alleges the fourth addendum was never signed by the plaintiff but that the plaintiff signed a different document which the defendants then attached to a fictitious document called the fourth addendum. The court denied a motion to dismiss the fraud in the execution defense on the grounds sufficient facts were alleged to enable the parties to engage in discovery.

The defendants have now moved seeking summary judgement dismissing the action. They assert that due to the passing of the plaintiff Randall Sprung there is no admissible evidence sufficient to establish any fraud in the execution. The defendants argue that claim was largely supported by an affidavit of Mr. Sprung. However, his passing has rendered such affidavit inadmissible hearsay and without other evidence cannot be

considered in a motion to defeat summary judgement. Further, if the fourth addendum is held valid then the other claims are barred. Consequently, the motion seeking to dismiss the fraud in the execution defense essentially resolves the entire lawsuit. As noted, the motion is opposed.

#### Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

It is certainly true that hearsay cannot be considered on a motion for summary judgement if it is the only evidence submitted (Kontorinakis v. 27-10 30<sup>th</sup> Realty LLC, 172 AD3d 835, 101 NYS3d 50 [2d Dept., 2019]). There is no dispute the affidavit of Randall Sprung constitutes inadmissible hearsay. It is further true that in the prior decision denying the motion to dismiss this defense the court instructed the parties to proceed with discovery. The plaintiff asserts the defendants have largely failed to comply with all discovery requests. The defendants

counter the argument discovery is not complete is not a basis upon which to deny summary judgement unless the party can demonstrate such discovery will produce evidence sufficient raise questions of fact. Further, in reply the defendants argue there is no further discovery that could possibly raise any questions regarding the alleged fraud in the execution.

It is well settled that the hope future discovery might yield questions of fact is merely speculation insufficient to defeat a motion for summary judgement (Silverstein v. Westminster House Owners Inc., 50 AD3d 257, 855 NYS2d 64 [1<sup>st</sup> Dept., 2008]). Thus, arguments that discovery might raise questions of fact is without merit (see, Lopez v. WS Distribution Inc., 34 AD3d 759, 826 NYS2d 516 [2d Dept., 2006]). "A party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (Valencia v. Glinski, 219 AD3d 541, 194 NYS3d 111 [2d Dept., 2023]). For example, in Westport Insurance Company v. Altertec Energy Conservation LLC, 82 AD3d 1207, 921 NYS2d 90 [2d Dept., 2011] the court explained that to adequately oppose a motion for summary judgement on the grounds discovery has not been completed the party must submit an affidavit "establishing that facts existed which were essential to justify opposition to the motion but were

not in its possession in light of the fact that discovery had yet to be completed" (id). Thus, the test whether additional discovery is required is whether the party seeking the discovery can demonstrate additional discovery might lead to relevant evidence (Reynolds v. Avon Grove Properties, 129 AD3d 932, 12 NYS3d 199 [2d Dept., 2015]). While it may be difficult to draw an appropriate line when discovery sought may be relevant or when it is merely hope and speculation, nevertheless, if a party can present the existence of relevant discovery then summary judgement is premature. In this case, the affidavit of Randal Sprung surely establishes sufficient facts raising questions that could be buttressed by further discovery. That would remain true even if Mr. Sprung had not passed away. Any evidence that could support the assertion of fraud in the execution is surely relevant. The defendants assert in reply that there is no scenario whereby further discovery could yield any evidence supporting the plaintiff because the plaintiff has failed to demonstrate that further discovery could lead to relevant evidence. That circular argument impermissibly blurs the distinction between demonstrable facts and sheer speculation. As noted, the affidavit of Mr. Sprung is a demonstration of sufficient facts that compel further discovery. The fact Mr. Sprung passed away and the affidavit is now rendered inadmissible does not render it entirely useless. It alleges specific details

concerning fraud in the execution which further discovery may support.

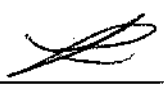
Concerning the parameters of such discovery, most of the discovery sought is irrelevant regarding the only issue of concern, namely fraud in the execution. Thus, any other evidence about any of the other claims, at this juncture, would not support the fraud in the execution defense. However, any evidence, whether in the form of emails or other communications among the defendants or any documents or drafts of the fourth addendum or the existence of any other evidence that can support the contents of Mr. Sprung's affidavit are surely relevant and coupled with the affidavit itself may be sufficient to defeat summary judgement.

Therefore, at this time, the motion seeking summary judgement is denied. The parties are directed to engage in discovery as noted. Following the completion of all such discovery the court permits the defendants, if they chose, to move for summary judgement again.

So ordered.

ENTER:

DATED: June 25, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC