

Seaton v Babad

2024 NY Slip Op 34416(U)

December 17, 2024

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, | INDEX NO. | <u>654196/2021</u> |
| Plaintiff, | MOTION DATE | <u>09/30/2024</u> |
| - v - | MOTION SEQ. NO. | <u>009</u> |
| CHIAM BABAD, CONGREGATION KAHAL MINCHAS CHINUCH, INC., PARK 121 REALTY, LLC, | DECISION + ORDER ON MOTION | |
| Defendant. | | |

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 238, 239, 240, 241, 242, 243, 244, 245, 246, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301
 were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, (i) Ariel E. Belen, Esq. (the **Receiver**)’s motion (Mtn. Seq. No. 009) to (a) substitute counsel, (b) retain a Special Landlord-Tenant Counsel and authorize them to proceed against all outstanding rents, (c) authorize payment to the Receiver, (d) authorize payment to the Rosenfarb firm (the **Forensic Accountant**), (e) authorize payment to I. Scott Edelstein, Esq. and Novick, Edelstein, Pomerantz P.C. (the **Outgoing Counsel**), and (f) approve the Receiver’s interim accounting is GRANTED, and (ii) Simon and Debra Seaton’s cross-motion for an order (a) authorizing the payment to Advanced Locksmith, Inc. (the **Locksmith**), in the amount of \$1,559.27 and (b) authorizing the payment to A. Gross, CPA, P.A. (the **Company Accountant**), in the amount of \$5,778.00 is GRANTED solely to the extent that the Company Accountant’s fee is approved.

Reference is made to (i) a Decision and Order of the Court (NYSCEF Doc. No. 76), dated January 13, 2022, appointing the Receiver to operate the business of Park 121 Realty, LLC

(**Park 121**) and (ii) an Order granting the Receiver's request to engage the Forensic Accountant (NYSCEF Doc. No. 222), dated May 26, 2023.

Now, the Receiver moves for an order (i) permitting him to retain and substitute Gregory M. LaSpina, Esq. of Borchert & LaSpina, P.C. in the place the Outgoing Counsel as his counsel, (ii) approving his requested appointment and retention of Chad Karp, Esq. as Special Landlord-Tenant Counsel to the Receiver for all nonpayment, eviction, holdover and ejectment proceedings, (iii) granting permission to the Special Landlord-Tenant Counsel to pursue all rent arrears as concerns the subject real property, (iv) awarding the Receiver an interim commission of \$183,731.29 for the period of the beginning of the Receivership through September 17, 2024, (v) awarding the Forensic Accountant an interim fee of \$67,432.10 for the period of the beginning of the Receivership through July 31, 2024, (vi) awarding the Outgoing Counsel an interim legal fee of \$13,028.15 for the period of the beginning of the Receivership through September 17, 2024, and (vii) approving the Receiver's interim accounting for the period of the beginning of the receivership through September 17, 2024.

The Seatons partially oppose the Receiver's motion as to the payment of the fees to the Forensic Accountant and cross-move for an order authorizing the payments of the Locksmith and the Company Accountant on behalf of Park 121.

The Seatons do not object to the change of counsel, the payment of the Receiver's fees to date, the approval of the Receiver's interim accounting, the retention of a Special Landlord-Tenant

Counsel or the grant of permission to the Special Landlord-Tenant counsel to pursue rent arrears. As such, the Receiver's motion is granted as unopposed as to those requests.

The Seatons also do not object to the payment of the Outgoing Counsel, however, they request that the \$12,052.50 already paid to counsel (NYSCEF Doc. No. 244 at 21) has been deducted from the total payment sought. Attorney Jason K. Fuhrman from the Outgoing Counsel notes in his reply affirmation that prior to this motion there were total billings of \$17,440.65 made by their office and that their bookkeeper confirmed that the \$9,802.50 shown on the Receiver's accounting was paid to their office, leaving a balance of \$7,638.15. Mr. Fuhrman asserts that he has spent four additional hours on the instant motion and therefore requests an additional \$1,600.00 in fees, for a total of \$9,238.15 to be paid to the Outgoing Counsel. The Receiver similarly affirms that "the amount requested for outgoing counsel takes into account the amounts already paid or credited" (NYSCEF Doc. No. 297 at 2). As the Seatons do not object to this payment, this portion of the Receiver's motion is granted.

The Seatons do however take issue with the payment of the fees to the Forensic Accountant as they assert that the accounting is biased against them and in favor of the defendants and that the fee should therefore be "dramatically reduced" by the Court. The Seaton's argument lacks merit as they have refused to cooperate with the Forensic Accountant's requests for documentation, and even after the Forensic Accountant sent the Seaton's counsel a copy of the draft forensic report via an email (NYSCEF Doc. No. 300) on June 6, 2024, they failed to produce any documents to the Forensic Accountant. Furthermore, the Seatons did not contest the expert's findings in the draft report nor did they respond to them by producing documents or otherwise.

The Seaton's cross-motion to authorize payment to the Locksmith and the Company Accountant on behalf of Park 121 is granted solely to the extent that the Receiver does not object to the payment of the Company Accountant's proposed fee of \$5,778.00 and the parties shall provide a proposed joint stipulation and order holding the receivership harmless from and indemnifying the receivership for any claims arising from the work of the Company Accountant.

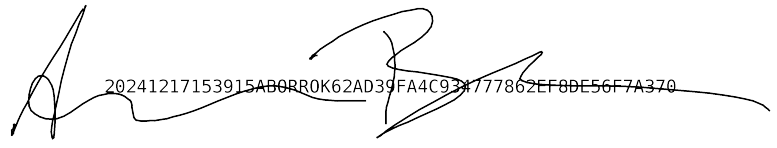
The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the Receiver's (Mtn. Seq. No. 009) is GRANTED to the extent set forth above; and it is further

ORDERED that the Seaton's cross-motion is GRANTED solely to the extent that the Company Accountant's fee of \$5,778.00 is approved as set forth herein; and it is further

ORDERED that the parties shall provide a proposed joint stipulation and order holding the receivership harmless from and indemnifying the receivership for any claims arising from the work of the Company Accountant.



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12/17/2024

DATE

ANDREW BORROK, 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