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Order on Motion to Dismiss (SHAIENDRA)

Alice D. Bonner

Superior Court of Fulton County

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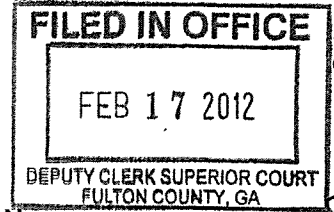
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY



M. ("SHI") SHAIENDRA, an)
individual, and KIRAN SHAIENDRA,)
an individual,)

Plaintiffs,)

v.)

Civil Action File No.

RAHIM SABADIA, an individual,)
NAFEES EL BATOOL, an individual,)
ISHTAQ A. KHAN, an individual,)
KINGSLEY ASSET MANAGEMENT,)
LLC, a Delaware limited liability)
company, MILLENIUM PARTNERS,)
LLC, a Georgia limited liability)
company, AHAD PROPERTIES, LLC,)
a Georgia limited liability company,)

2011CV195621

Defendants,)

and)

RAHIM SABADIA and NAFEES EL)
BATOOL, as Trustees of the Sabadia)
Family Trust dated December 1996,)
as Amended on July 15, 2005;)
ISHTAQ A KHAN, as Trustee of the)
Sabadia Irrevocable Family Trust;)
SHI HOLDINGS, LLC, a Georgia)
limited liability company; 21 14th)
STREET ONE THIRD, LLC, a Delaware)
limited liability company; 21 14th)
STREET TWO THIRDS, LLC, a)
Delaware limited liability company;)
SHI INVESTMENTS ONE, LLC, a)
Georgia limited liability company;)
VIRGINIA HAMMOND KHAN, an)
individual,)

Nominal Parties.)

ORDER ON DEFENDANTS' MOTION TO DISMISS

On January 19, 2012, counsel appeared before the Court to present oral arguments on Defendants' Motion to Dismiss. Upon consideration of the briefs and

materials submitted in connection with the motion, the arguments of counsel, and the record of the case, this Court finds as follows:

This case involves a dispute among former business partners. Plaintiff Shi Shailendra (“Shailendra”) is a real estate developer and land investor. Over the years, he and his wife partnered with Defendants Ishtaq Khan (“Khan”), his former wife, nominal party Virginia Hammond Khan, Defendant Raheem Sabadia (“Sabadia”) and Defendant Nafees El Batool in various real estate investments, which Shailendra managed, personally or as manager of various limited liability companies. Plaintiffs contend that, although the investments were often held in individual entities—tenants in common or limited liability companies—for tax purposes, the parties operated under a general partnership structure, which governed their rights and obligations with respect to the individual investments and superseded and supplanted the written terms of any written co-tenancy or LLC operating agreement.

Plaintiffs allege that Defendants failed to make capital contributions to the partnership as required. Plaintiffs also contend that Defendants breached fiduciary duties they owed to Plaintiffs by secretly purchasing loans taken out to fund partnership assets in an effort to foreclose on Plaintiffs’ interest in the property. Finally, Plaintiffs allege that Defendants have tortiously interfered with Shailendra’s business relations by initiating a campaign of slander against Shailendra designed to harm his professional reputation.

Plaintiffs assert the following claims against Defendants: 1) Breach of Partnership Agreement; 2) Breach of Fiduciary Duty; 3) Tortious Interference with Business Relationships; 4) Unjust Enrichment; 5) Slander Per Se; 6) Slander Per Quod;

7) Alter Ego; 8) Unjust Enrichment; 9) Imposition of Constructive Trust; 10) Injunctive Relief; and 11) Attorneys' Fees.

In addition to the instant action, four other cases are pending in Fulton County Superior Court involving the same or similar parties.¹ Defendants Sabadia, Nafees El Batool, Khan and Millenium Partners, LLC (collectively, the "Sabadia Defendants") move the Court to dismiss Plaintiffs' claims against them, contending that the claims are all compulsory counterclaims that should have been raised in prior-pending actions.

Under O.C.G.A. § 9-11-13(a), if a claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, such claim must be asserted as a compulsory counterclaim.

Georgia courts have interpreted "same transaction or occurrence" to mean "whether or not there exists a logical relationship between the respective claims of the parties." Bigley v. Mosser, 255 Ga. App. 583, 583 (1998). The logical relationship test "requires a determination of 'whether the essential facts of the various claims are so

¹ Khan, et al. v. Shailendra, et al., CAFN 2010CV194327 (the "Khan Action"), was initiated on December 10, 2010. This case was transferred to Business Court and assigned to Judge Bonner on March 10, 2011. Plaintiffs, including Khan, assert claims for fraud, breach of fiduciary duty, conversion and fraudulent conveyances based on Shailendra's alleged misconduct in managing several investments.

21 14th Street One-Third, LLC. V. 21 14th Street Two-Thirds, LLC, et al. (the "21 14th Street Action"), CAFN 2010CV194412, was initiated on December 14, 2010. This case involves claims related to Shailendra's alleged misconduct in managing a specific real estate investment.

Millenium Partners, LLC, et al. v. Shailendra, et al., CAFN 2011CV195604 (the "Millenium Action"), was initiated on January 25, 2011, the same day as the instant case. This case was transferred to Business Court and assigned to Judge Bonner on March 7, 2011. It involves claims related to Shailendra's alleged mis-management of one of the Pasco Property, one of the properties at issue in this case.

Shi Investments One, LLC v. Shailendra, et al., CAFN 2011CV195696, was initiated on January 26, 2011, and involves Shailendra's alleged mis-management of Shi Investments One, LLC. This case is stayed pending the outcome of arbitration.

logically connected that considerations of judicial economy and fairness dictate that all the issues be resolved in one lawsuit.” Id., 255 Ga. App. at 585-86.

Defendants contend that the claims in this case are compulsory counterclaims to the Khan Action, the 21 14th Street Action and the Millenium Action because these actions all similarly allege that Shailendra breached his fiduciary duties to the other partners, co-tenants and members by mismanaging certain investment entities. And Defendants point out that, at the same time, this action alleges that such breaches of fiduciary duty were all part of a wide-ranging “partnership” between Shailendra, Sabadia and Khan that encompasses all of the parties’ investments, including the properties and entities involved in the Khan Action, the 21 14th Street Action and the Millenium Action.

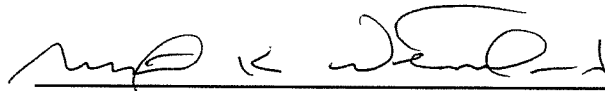
In contrast, Plaintiffs distinguish this case from the related cases by emphasizing that this case involves the overarching partnership between the parties, Defendants’ breaches of fiduciary duty under the partnership agreement, and allegations of slander and interference with Shailendra’s business relationships, while the other actions focus on specific allegations of wrong-doing associated with a particular partnership asset. Plaintiffs also point out that Defendants have failed to submit any evidence to support their motion to dismiss. For the reasons set forth below, the Court rules in favor of Plaintiffs.

Ideally, the claims raised in this case and the other pending cases involving the parties’ disagreement over their property investments would have been pursued in one action. But the parties have not elected that strategy in favor of pursuing their claims transaction by transaction. Under the compulsory counterclaim standard, the Court is not inclined to find that the claims asserted in this action should have been raised in

another prior pending proceeding. First, one of the actions in which Defendants contend that Plaintiffs should have brought these claims was filed on the same day as this action. Under those circumstances, the Court has difficulty ascribing to the Millenium Partners Action the status of a "prior pending case" for purposes of ruling that the claims raised in this case are compulsory to that action.

But beyond the timing issue, the Court finds a distinction between the transactions out of which the claims allegedly arise. This case involves an overarching partnership agreement and the parties' rights and liabilities in the context of that structure. In contrast, the other actions involve specific partnership entities and the parties' rights and liabilities in the context of those smaller, more particularized structures. Under these circumstances, the Court cannot say that the claims raised in this action arise out of the same transaction or occurrence as the claims at issue in the other actions, although they may share certain commonalities. See Bigley v. Mosser, 255 Ga. App. 583 (1998) (finding that the mere fact that an election provided a backdrop for two claims of libel did not require one claim to be a compulsory counterclaim of the other when the claims were based on separate statements). Accordingly, the Court **DENIES** Defendants' Motion to Dismiss.

SO ORDERED this 17th day of February, 2012.



MELVIN K. WESTMORELAND, SENIOR JUDGE
for ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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