

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Mehdizadeh v. Mehbisar, Inc.

2019 NY Slip Op 04687 (N.Y. Ct. App. 2019) · No. 2018-04156 · Decided June 12, 2019

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendant summary judgment dismissing the portion of an accounting claim accruing on or after March 24, 2008. The court held that the six-year limitations period did not begin until the plaintiff received direct, definitive notice repudiating his alleged interest, and the defendant failed to establish that such repudiation occurred before March 24, 2008.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	John M. Leventhal, J.P.; Jeffrey A. Cohen, J.; Sylvia O. Hinds-Radix, J.; Valerie Brathwaite Nelson, J.
JURISDICTION	New York
DECIDED	June 12, 2019
DOCKET	2018-04156
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying its motion for summary judgment dismissing the portion of the complaint seeking an accounting as of March 24, 2008.
STANDARD OF REVIEW	On a motion for summary judgment dismissing a complaint as time-barred, the defendant bears the initial burden of establishing prima facie that the limitations period has expired, including when the cause of action accrued.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Mehbisar, Inc. v. Moussa Mehdizadeh

TOPICS

statute of limitations

summary judgment

accounting

appellate procedure

standard of review

PRACTICE AREAS

civil procedure

corporate law

remedies

QUESTIONS PRESENTED

1. Whether defendant established prima facie that the plaintiff's accounting claim was time-barred as of March 24, 2008.
2. Whether the statute of limitations began to run before March 24, 2008, absent direct and definitive notice repudiating the plaintiff's alleged interest in the corporation.
3. Whether defendant was aggrieved by the order denying summary judgment as to the portion of the accounting claim accruing on or after March 24, 2008.

HOLDINGS

1. Defendant failed to establish prima facie that it had directly and definitively repudiated the plaintiff's alleged interest before March 24, 2008. Therefore, dismissal of the accounting claim was properly limited to the period more than six years before commencement of the action.
2. Defendant was aggrieved by the order insofar as it denied summary judgment dismissing the portion of the complaint seeking an accounting as of March 24, 2008.

KEY QUOTATIONS

*"Here, the applicable six-year statute of limitations did not begin to run until the plaintiff received direct, definitive notice repudiating his alleged interest in the defendant" (*2)*

FACTUAL BACKGROUND

The plaintiff alleged that he had owned shares of Mehbisar, Inc. since its incorporation in 1985. He commenced an action for an accounting on March 24, 2014. The defendant sought dismissal as time-barred or, alternatively, dismissal of any accounting claim covering a period more than six years before commencement, but did not establish that it had directly and definitively repudiated the plaintiff's alleged interest before March 24, 2008.

PROCEDURAL HISTORY

The plaintiff commenced an action for an accounting on March 24, 2014. The Supreme Court, Nassau County, granted defendant summary judgment dismissing claims seeking an accounting for periods before March 24, 2008, but denied summary judgment as to the requested accounting as of March 24, 2008. Defendant appealed from the denial of that latter relief, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- RCI Plumbing Corp. v. Turner Towers Tenant Corp., 152 AD3d 723, 723

- Wells Fargo Bank, N.A. v. Toral, 151 AD3d 1115, 1116
- Scharlack v. Richmond Mem. Hosp., 127 AD2d 580, 581
- Alberi v. Rossi, 117 AD2d 574
- Amica Mut. Ins. Co. v. Kingston Oil Supply Corp., 134 AD3d 750, 751
- Sears, Roebuck & Co. v. Patchogue Assoc., LLC, 87 AD3d 629, 630
- Barry v. Cadman Towers, Inc., 136 AD3d 951, 952
- Gould v. Decolator, 121 AD3d 845, 847
- Wasay v. Alvi, 148 AD3d 1089, 1090
- Zwarycz v. Marnia Constr., Inc., 102 AD3d 774, 776

OPINION

PER CURIAM.

Mehdizadeh v Mehbisar, Inc. (2019 NY Slip Op 04687) Mehdizadeh v Mehbisar, Inc. 2019 NY Slip Op 04687 Decided on June 12, 2019 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 12, 2019 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department JOHN M. LEVENTHAL, J.P.

JEFFREY A. COHEN SYLVIA O. HINDS-RADIX VALERIE BRATHWAITE NELSON, JJ. 2018-04156 (Index No. 601302/14) [*1]Moussa Mehdizadeh, respondent, vMehbisar, Inc., etc., appellant. Lynn Gartner Dunne, LLP, Mineola, NY (Kenneth L. Gartner and Stephen Livingston of counsel; Joseph Covello, former of counsel), for appellant. Law Offices of Steven Cohn, P.C., Carle Place, NY (Susan E. Dantzig and Peter Chatzinoff of counsel), for respondent.

DECISION & ORDER In an action for an accounting, the defendant appeals from an order of the Supreme Court, Nassau County (Vito M. DeStefano, J.), entered March 9, 2018. The order, insofar as appealed from, denied that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as sought an accounting as of March 24, 2008.

ORDERED that the order is affirmed insofar as appealed from, with costs. On March 24, 2014, the plaintiff commenced this action against the defendant, Mehbisar, Inc., for an accounting. The complaint alleged, inter alia, that the plaintiff has owned shares of the defendant since its incorporation in 1985.

The defendant moved for summary judgment dismissing the complaint as time-barred or, in the alternative, for summary judgment dismissing so much of the complaint as sought an accounting for the period which was more than six years prior to the commencement of the action.

The Supreme Court granted that branch of the defendant's motion which was for summary judgment dismissing so much of the complaint as sought an accounting for the period prior to March 24, 2008, but denied that branch of the motion which was for summary judgment dismissing so much of the complaint as sought an accounting as of March 24, 2008.

The defendant appeals from so much of the order as denied that branch of its motion which was for summary judgment dismissing so much of the complaint as sought an accounting as of March 24, 2008. The plaintiff's contention that the defendant is not aggrieved by the order appealed from is without merit (see *RCI Plumbing Corp. v Turner Towers Tenant Corp.*, 152 AD3d 723, 723; *Wells Fargo Bank, N.A. v Toral*, 151 AD3d 1115, 1116; *Scharlack v Richmond Mem.*

Hosp., 127 AD2d 580, 581; cf. *Alberi v Rossi*, 117 AD2d 574). On a motion to dismiss a complaint as time-barred, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired (see *Amica Mut. Ins. Co. v Kingston Oil Supply Corp.*, 134 AD3d 750, 751; *Sears, Roebuck & Co. v Patchogue Assoc., LLC*, 87 AD3d 629, 630).

To meet its burden, a defendant must establish when the cause of action [*2]accrued (see *Barry v Cadman Towers, Inc.*, 136 AD3d 951, 952; *Gould v Decolator*, 121 AD3d 845, 847). Here, the applicable six-year statute of limitations did not begin to run until the plaintiff received direct, definitive notice repudiating his alleged interest in the defendant (see *Wasay v Alvi*, 148 AD3d 1089, 1090; *Zwarycz v Marnia Constr., Inc.*, 102 AD3d 774, 776).

The defendant failed to establish, prima facie, that it directly and definitively repudiated the plaintiff's alleged interest prior to March 24, 2008—six years before the commencement of this action (see *Wasay v Alvi*, 148 AD3d at 1090; *Zwarycz v Marnia Constr., Inc.*, 102 AD3d at 776).

Accordingly, we agree with the Supreme Court's determination to limit dismissal of the complaint to so much of the complaint as sought an accounting for that period which was more than six years prior to the commencement of the action. LEVENTHAL, J.P., COHEN, HINDS-RADIX and BRATHWAITE NELSON, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court