SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VADIM LEVOTMAN,

Plaintiff,

v.

ALEXANDER TISHELMAN,

Defendant.

Case No. 20STCV40408

ORDER ON PHASE I TRIAL

Background

On September 19, 2022, the parties presented the court with a Joint Stipulation Re Trial Bifurcation. The court approved the Stipulation and bifurcated the trial of this matter into two phases. The first phase pertained to the interpretation of an "Option to Purchase Real Property" (the "Option Agreement") between plaintiff Vadim Levotman ("Levotman" or "Optionee") and defendant Alexander Tishelman ("Tishelman" or "Optionor") concerning the property at 3949 Fredonia Drive, Los Angeles, California (the "Fredonia Property").

Phase One of the trial occurred on January 9, 2023. The parties put the following three issues before the court during this phase of the trial:

The parties defined Issue No. 1 as:

> a.) the rights, obligations, responsibilities, and duties of the parties with respect to paragraph 3 of the Option Agreement.
>
> c.) Whether Levotman's exercise of the option in paragraph 3 of the Option Agreement (for $750,000) entitles him to 50% or 100% of the Fredonia Property.

(Joint Stipulation, p. 3.)

The parties defined Issue No. 2 as:

> b.) The party's rights, obligations, responsibilities, and duties of the parties with respect to paragraph 4 of the Option Agreement.
>
> d.) Whether Levotman is required to pay the sum of $750,000 in order to exercise the right to sell the Property contained in paragraph 4 of the Option Agreement.

(*Id.*)

The parties defined Issue 3 as:

> e.) In the event the property is sold pursuant to an exercise of the right provided for in paragraph 4 of the Option Agreement, how are the profits from the sale to be calculated and divided between the parties.

(*Id.*)

Pursuant to the stipulation of the parties, all evidence concerning the contract interpretation issues was presented by way of declarations.

On January 9, 2023, after considering the evidence presented, the briefs submitted by the parties, and oral argument, the court ruled in favor of Defendant Tishelman regarding the interpretation of paragraph 3 of the Option Agreement and further ruled that Levotman "must pay the additional $600,000 in order to exercise the option set forth in Paragraph 4 (the sale of the property)." (Minute Order, 1/9/2023.) The court asked Tishelman's counsel to prepare a proposed order on the ruling on Phase One of the trial, and asked Levotman's counsel to prepare a proposed order "regarding where/how the $600,000 will be paid." (*Id.*)

The court further scheduled an Order to Show Cause Re: Proposed Orders for January 25, 2023.

On January 23, 2023, the parties submitted a Joint Stipulation Continuing the Submission of Proposed Rulings/Orders and OSC Hearing, requesting that the court continue the OSC to give counsel more time meet and confer as to the form of the Orders.

The court continued the OSC re Proposed Orders to February 8, 2023. By that time, the parties were still unable to agree on proposed orders. Accordingly, the court rules as follows.

<u>Discussion</u>

Issue No. 1.

Issue No. 1 pertains to Paragraph 3 of the Option Agreement, which provides in relevant part:

> Optionor [Tishelman] grants to Optionee [Levotman] an unlimited option to purchase Fredonia Property for the sum of $750,000.00 cash. Upon the exercise of the Option by Optionee, Optionor and Optionee shall execute the latest version of the California Association of Realtors' (CAR) Receipt of Deposit and Joint Escrow Instructions for the Purchase and Sale of Real Estate Agreement.

The Court reads the Option Agreement as a whole. The first "Whereas" clause of the Option Agreement specifies that the Optionor "is the owner of real property located at 3943 Fredonia Drive, Los Angeles, California." The second "Whereas" clause expressly provides that Optionee (Levotman) "desires to acquire an **undivided one-half interest** of Optionor's interest in said property." (Tishelman Ex. 3, p.1) (emphasis added). Consistent with this desire, the parties then valued the property at $1,500,000 (Option Agreement, ¶ 4) and made the option price one-half of that amount ($750,000). The Option Agreement thus expressed the mutual intent of the parties; that Levotman could acquire a one-half interest in the property for $750,000.

Levotman also prepared an "Acknowledgment Receipt," dated June 7, 2019, for a total amount of $150,000 received as partial payments Levotman made for the purchase of the option. The Acknowledgment Receipt specifies that the monies are for "a deposit to purchase **one half of undivided interest** in the Real Property commonly known as 3943 Fredonia Drive, Los Angeles...." (Tishelman Dec., Ex. 2) (emphasis added).

Finally, the court also notes that Exhibit A to the Option Agreement, which is a legal description of the Fredonia Property also prepared by Levotman, states: "Interest Acquired by Optionee: one half divided interest." The parties initialed each page of the Option Agreement and Exhibit A.

It is not disputed that Levotman drafted the Option Agreement, the Acknowledgment Receipt, and the legal description of the Property (Exhibit A to the Option Agreement). To the extent there is any uncertainty in the language of the Option Agreement, "the language [of the Option Agreement] should be interpreted most strongly against the party who caused the uncertainty to exist." (Civ. Code § 1654.)

Having considered the Option Agreement, including Exhibit A to the Option Agreement, the Acknowledgment, the arguments of counsel, and all the matters of record, the court finds that Levotman has the right under paragraph 3 of the Option Agreement to purchase 50% of the Fredonia Property for $750,000.

Issue No. 2

Issue No. 2 pertains to Paragraph 4 of the Option Agreement, which provides in relevant part:

> Either Optionor and Optionee have the right to cause a sale of Fredonia Property upon a 90-day written notice to the other party. Optionor and Optionee shall have a right of first refusal following such notice. It is agreed that the basis (value) of Fredonia Property is $1,500,000. Any income or loss from the sale of the property shall be divided equally between the parties, subject to mortgages, liens, encumbrances and the like.

The court finds that Levotman must own one-half interest in the Property in order to exercise the Option set forth in ¶ 4, the sale of the Fredonia Property. Levotman has already deposited

$150,000 with Tishelman for this purpose. (Acknowledgement Receipt.) He must therefore deposit an additional $600,000 to exercise the option in ¶ 3 before exercising the option in ¶ 4.

Issue 3

Issue No. 3 also pertains to Paragraph 4 of the Option Agreement. The parties asked the court to rule on the following: "[i]n the event the property is sold pursuant to an exercise of the right provided for in paragraph 4 of the Option Agreement, how are the profits from the sale to be calculated and divided between the parties."

The parties "agreed that the basis (value) of the Fredonia Property is $1,500,000." (Option Agreement, ¶ 4.) The parties also agreed that "[a]ny income or loss from the sale of the property" above or below $1,500,000 shall be divided equally between the parties "subject to mortgages, liens, encumbrances and the like." *(Id.,* ¶ 4.*)* The court finds that the parties shall divide equally the proceeds -- or loss -- of the sale after the mortgage has been paid. By way of example only, if the Property sells for a purchase price of $2,000,000 and the mortgage is $250,000 then: $250,000 is to be paid to the lender, and the Property shall have income totaling $1,750,000, which shall be divided equally: $875,000 to Levotman, and $875,000 to Tishelman.

Conclusion

The OSC re Filing of Amended Complaint and OSC re Proposed Orders are continued from March 1, 2023, to March 3, 2023, at 8:30 a.m. The court schedules a status conference for the same date and time. The parties are encouraged to appear with their counsel.

Dated: February 21, 2023

Gail Killefer
Judge, Los Angeles Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	**FILED** Superior Court of California County of Los Angeles 02/21/2023 David W. Slayton, Executive Officer / Clerk of Court By: J. Jones Deputy
PLAINTIFF/PETITIONER: Vadim Levotman	
DEFENDANT/RESPONDENT: Alexander Tishelman, et al.	
CERTIFICATE OF MAILING	CASE NUMBER: 20STCV40408

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (RULING ON MATTER SUBMITTED ON FEBRUARY 10, 2023) of 02/21/2023 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 02/24/2023

By: J. Jones
Deputy Clerk