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SHORT FORM ORDER

INDEX  
NO.: 17471-07

SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION  
TRIAL TERM, PART 44 SUFFOLK COUNTY

PRESENT: Honorable Elizabeth H. Emerson

\_\_\_\_\_  
ROBERT E. GRISNIK, x

Plaintiff,

-against-

HARBOR RESORTS, INC.,

Defendant.  
\_\_\_\_\_ x

MOTION DATE: 9-2-10  
SUBMITTED: 10-21-10  
MOTION NO.: 004-MOT D  
005-MG

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Upon the following papers numbered 1-62 read on this motion and cross-motion for partial summary judgment; Notice of Motion and supporting papers 1-14; Notice of Cross Motion and supporting papers 15-57; Answering Affidavits and supporting papers 58-60; Replying Affidavits and supporting papers 61-62; it is,

**ORDERED** that the motion by the plaintiff for partial summary judgment on the first cause of action for conversion and for dismissal of the defendants' counterclaims sounding in fraud is granted to the extent that the first, third, and fourth counterclaims are dismissed; and it is further

**ORDERED** that the motion is otherwise denied; and it is further

**ORDERED** that the cross motion by the defendant for partial summary judgment dismissing the first cause of action for conversion is granted.

The defendant, Harbor Resorts, Inc. ("Harbor"), is a sub-chapter S-corporation that owns and operates *The Inn at Baron's Cove*, a hotel and resort located in Sag Harbor, New York. The plaintiff, Robert Grisnik ("Grisnik"), has been a Harbor shareholder since 1995. Between 1995 and December 22, 2001, he owned a 4% interest in Harbor. In 2000, the shareholders received a \$4 million offer to purchase Harbor, and a majority of the shareholders

wanted to sell the company. The minority shareholders, including Grisnik, offered to purchase the stock of the majority for the amount they would have received had the sale been consummated. Harbor subsequently obtained a loan from North Fork Bank that was personally guaranteed by Grisnik and another minority shareholder, Donald Whitehead, who had a 28.4% ownership interest in Harbor. In exchange for his personal guarantee, Grisnik was to receive a 28% ownership interest in Harbor upon the closing of the North Fork loan. The loan closed in May of 2001. At the annual shareholders' meeting on December 22, 2001, the remaining shareholders voted to redistribute their shares as follows:

Donald Whitehead	43%
Robert Grisnik	28%
Richard Girardi	13%
James Carnicelli	8%
James LaScala	8%

The minutes of the December 22, 2001, shareholders' meeting reveal that the aforementioned shareholders voted to seek new financing and to re-vote on the stock-ownership issue at some point in the future.

New financing was obtained from Smithtown Bank in 2003. The terms of the Smithtown Bank loan were more favorable than the North Fork Bank loan. The Smithtown Bank loan was personally guaranteed by Whitehead and did not require a personal guarantee from Grisnik. At a telephonic, special shareholders' meeting on August 6, 2003, the shareholders consented to move forward with the Smithtown Bank loan, and Dick Girardi offered to sell his shares for \$250,000. Harbor agreed to purchase Girardi's shares upon the closing of the Smithtown Bank loan. The shareholders then voted on a motion to redistribute their shares as follows upon the closing of the Smithtown Bank loan:

Donald Whitehead	70.3%
Robert Grisnik	9.9%
James Carnicelli	9.9%
James LaScala	9.9%

Although Grisnik objected to the redistribution, the motion passed 51% (Whitehead and Carnicelli) to 36% (Grisnik and LaScala), with Girardi abstaining. The Smithtown Bank loan closed in September of 2003. In November 2003, Harbor's accountants sent a letter to all shareholders revising the share distribution to account for the redistribution of Girardi's 13% ownership interest after it was purchased by Harbor. Upon such redistribution, the shareholders' ownership interests were as follows:

Donald Whitehead	65.86%
Robert Grisnik	11.38%
James Carnicelli	11.38%
James LaScala	11.38%

In 2005, Whitehead transferred 5.62% of Harbor stock to Carnicelli, increasing Carnicelli's ownership interest to 17%. Due to an accounting error, Whitehead's new ownership interest was recorded as 60.22% rather than 60.24%, and the .02 % difference was split evenly between Grisnick and LaScala, giving them 11.39% each.

In February 2007, Harbor entered into an agreement to sell all of its assets to Nalex International Development Corp. for \$10 million. Grisnick commenced this action in June 2007, claiming that Whitehead and Harbor had converted his shares on August 6, 2003, when his ownership interest was reduced from 28% to 9.9% and that he should have been given a greater share of Girardi's 13% ownership interest when it was redistributed in 2003. Grisnick claims that his current ownership interest in Harbor should be 32.184%. Grisnick moves for summary judgment on his conversion claim and for dismissal of Harbor's counterclaims for fraud, fraud in the inducement, and fraudulent misrepresentation. Harbor cross-moves for summary judgment dismissing Grisnick's conversion claim on the ground that it is time-barred.

Conversion is governed by a three-year statute of limitations (CPLR 214 [3]), which accrues when the alleged conversion takes place (**Grunfeld v Kasnett**, 18 Misc 3d 1143[A] at \*3 [and cases cited therein]). The alleged conversion in this case occurred on August 6, 2003, when Grisnick's ownership interest in Harbor was reduced from 28% to 9.9%. This action was commenced almost four years later on June 6, 2007. Grisnick attempts to avoid the statute of limitations by arguing that there were multiple conversions and that 2005 is the operative date for determining whether the statute of limitations has expired.

Grisnick, relying on **Stanley v Morgan Guar. Trust Co. of N.Y.** (173 AD2d 390) contends that Harbor reacquired .02% of its stock in 2005, which it redistributed to him and LaScala, thereby extending the statute of limitations. **Stanley** stands for the proposition that, when there are multiple conversions, the date of the latest conversion is applicable in determining whether the statute of limitations has expired. In that case, the defendant, a broker, purchased and resold bearer bonds that had been acquired by and stolen from the plaintiff in 1983. The broker reacquired some of the stolen bonds in 1987 and 1988. The First Department held that the broker had failed to demonstrate that its reacquisition of the bonds did not constitute a second act of conversion, thereby extending the statute of limitations that ran on the original purchase (*see*, **Mirvish v Mott**, 75 AD3d 269, 275).

This case is distinguishable from **Stanley**. There is no evidence in the record, other than Grisnick's conclusory and self-serving assertions, that Harbor reacquired any of its stock in 2005. Moreover, Harbor has produced affidavits from its accountant in support its contention that Whitehead's 5.62% was not repurchased by Harbor in 2005, but transferred from Whitehead to Carnicelli and that an error was made in the subtraction of shares from Whitehead. Whitehead's ownership interest was recorded as 60.22% when it should have been 60.24%, and the difference, .02%, was split evenly between Grisnick and LaScala.

In view of the foregoing, the court finds that Grisnick has failed to demonstrate that there were multiple or repeated conversions of the same property (*see*, **Lefkowitz v Bank of**

New York, 676 F Supp 2d 229, 253 n 14 [SDNY], *citing Stanley v Morgan Guar. Trust Co. of N.Y., supra*). The fact that Grisnick may have continued to suffer damages as a result of Harbor's earlier alleged conversion is not relevant to the statute of limitations (*Grunfeld v Kasnett, supra* at \*4). Thus, that Grisnick would have been entitled to a greater share of Girardi's 13% in 2003 and Whitehead's .02% in 2005 if the earlier alleged conversion had not occurred does not extend the statute of limitations (*Id.*). Accordingly, the cross motion is granted, and the first cause of action for conversion is dismissed.

Harbor does not oppose the branch of Grisnick's motion which is for summary judgment dismissing the counterclaims sounding in fraud. Accordingly, that branch of the motion is granted, and the first, third, and fourth counterclaims are dismissed without opposition.

Dated: January 6, 2011

HON. ELIZABETH HAZLITT EMERSON

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J.S.C.