

Short Form Order(h)

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, DUANE A. HART IAS PART 18  
Justice

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LARRY STATHAKIS and ALLIED BUILDERS AND CONSTRUCTION CORP.,	Index No.: 19593/06
Plaintiff(s),	Motion Date: October 31, 2007
-against-	Cal. No.: 37
EVANGELOS GERASIMOU, ANNAMARIA GERASIMOU, AM HOLDING OF NY CORP. AND 41-98 FORLEY ST. LLC.,	Mot. Seq. No. 2
Defendant(s).	

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The following papers numbered 1 to 6 read on this motion.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits .....	1 - 4
Answering Affidavits-Exhibits.....	5 - 6
Replying Affidavits.....	

The motion is brought on by Defendants, who seek an order vacating a Notice of Pendency, which has been filed by plaintiff against three properties with which Defendant Evangelos Gerasimou is associated:

Property No. 1 - 41-01 23 Street, Astoria, (A) currently owned by AM Holdings; also a defendant.

Property No. 2 - 8-29 Astoria Blvd., Astoria (F),

Property No. 3 - 57-25 East Hampton Blvd., Bayside (B), owned by Defendant AnnaMaria Gerasimou, the wife of Evangelos Gerasimou.

All three properties are in Queens County.

The motion is an outgrowth of the underlying action, in which plaintiffs allege that he and Defenant Evangelos Gerasimou were the only members of Dodeka Realty, LLC (Dodeka), which owned premises located at 41-98 Forley Street, Elmhurst until June 11,

2004. On that day say plaintiffs also contend that he and Evangelos Gerasimou were equal owners of Allied Builders and Construction Corp., (Allied), which was the owner of the property located at 88-34/40 161 Street, Jamaica. They say that all the members of Allied agreed to the sale.

In each instance say, plaintiffs, Evangelos Gerasimou, appeared at the closing on their behalf, signed all the transfer documents and received the net proceeds of the sale, \$2,000,000.00 and \$2,720,000.00, respectively. In each instance, they say, Evangelos Gerasimou failed to give them their half of the net proceeds.

Plaintiffs further allege that Evangelos Gerasimou used the net proceeds from the sale of both the Dokeda dn Allied sales to purchase property No. 1 in the name of Defendant AM Holding, which now uses the property for its own purposes.

Plaintiffs, claiming that a breach of "fiduciary obligation... by reason of the trust and confidence..." they place on Evangelos Gerasimou and the other defendants seek to have AM Holding declared a trustee of Property No. 1 for their benefit and be directed to turn the property over to them.

Additionally, plaintiffs assert that Evangelos Gerasimou fraudently and without the consent of the shareholders of Allied fraudently transferred Property NO. 2 to Defendants Forley without consideration. The property was owned by Allied, which, says plaintiffs, was "rendered insolvent: by Evangelos Gerasimou.

Continuing, plaintiffs state that in early to mid 2004, Evangelos Gerasimou encumbered Property No. 3 with a umber of mortgages and later transferred the premises to Defendant Annamaria Gerasimou without consideration. Plaintiff charges that after the sale of the properties at 41-98 Forley Street and 88-34 161Street, the Gerasimou defendants used the proceeds from those sales to satisfy the mortgages on Property NO. 2. Plaintiffs, alleging fraud, plaintiffs seek to have Annamarie Gerasimou declared the sole owner of Property No. 3 and the imposition of a \$700,000.00 lien, in their favor, on the premises.

Evangelos Gerasimou in moving to vacate the Lis Pendens are defective. He further argues that the action is being brought because of animosity between the parties; the plaintiffs cannot show that any of the funds used in connection with the purchase, transfer or satisfaction of mortgages came from the sale of the properties owned by either Dodeka or Allied.

Further, Defendant Gerasimou argues that Plaintiff Stathakis

had no claim to Allied's assets because he "withdrew" from the corporation by fleeing to the U.S.A. to avoid prosecution by the Federal Government, and, in so doing, gave a Power of Attorney to his wife, who had knowledge of and consented to the sales.

Defendant Gerasimou further contends that no constructive trust was created when the various transfers were made, adding that the Lis Pendens should be vacated because the action does not affect title to, possession or use and enjoyment of any of the properties.

Plaintiffs oppose the motion. They argue that a constructive trust was created because STathakis funds from the proceeds of the sale which belonged to hm was used in all of Gerasimou's transactions involving the transfer of the Dodeka and Allied properties. Further, say plaintiff, an equitable lien was created as to Property No. 2. They conclude that there is a constructive trust and a fraudulent conveyance, all of which effect title to, possession of and use and enjoyment of real property.

Dated:

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J.S.C.