

NY Tower Capital LLC v Freund

2024 NY Slip Op 31393(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 650335/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

NY TOWER CAPITAL LLC

Plaintiff,

- v -

SIGMUND FREUND,

Defendant.

-----X

INDEX NO. 650335/2023

MOTION DATE 04/10/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105

were read on this motion to/for ENFORCEMENT.

The motion by plaintiff for an order directing defendant to turnover certain shares and membership interests is granted.

Background

In this post-judgment motion, plaintiff seeks a turnover in order to satisfy the judgments it obtained against defendant totaling \$1,446,271.71. Plaintiff observes that defendant filed a bankruptcy petition in January 2023 and that, in connection with this bankruptcy proceeding, an auction was held for the sale of a property owned by defendant. Plaintiff alleges that it submitted a “stalking horse bid” for \$1.1 million that was accepted by the bankruptcy trustee.

Plaintiff admits that it closed on the property but had to pay \$524,936.60 to satisfy liens on the property. It concludes that, therefore, the net benefit of the acquisition of this property towards satisfying plaintiff’s judgments was \$575,063.40. In order to satisfy the remaining amount owed in the judgments, plaintiff seeks a turnover of defendant’s shares and membership interests in various entities.

In opposition, defendant contends that plaintiff's acquisition of plaintiff's property at the auction satisfied the judgment. He observes that plaintiff never filed a deficiency judgment motion under the RPAPL. Defendant also contends that even if the Court were to find that the judgments were not satisfied, the Court should not grant the motion because plaintiff has not satisfied its prima facie burden for a turnover.

In reply, plaintiff observes that defendant did not contest any of the key facts at issue. It points out that defendant did not assert that he lacks ownership interest in the entities cited by plaintiff in the moving papers nor does he contest the fact that plaintiff had to pay off various liens on the property in order to effectuate the closing. Plaintiff argues that the acquisition of the subject property did not satisfy the judgment and that defendant's insistence that plaintiff had to file a deficiency judgment motion is misplaced as that requirement only applies to foreclosure cases.

Discussion

The Court grants the motion. As plaintiff observes, defendant did not dispute the fact that he has ownership interests in the entities cited by plaintiff or that plaintiff had to pay off various liens in order to get title to the property. Nor does defendant insist that he paid off the remaining amount of the judgment. Defendant's only cited basis in his opposition is that the judgments were satisfied due to plaintiff's failure to file a deficiency judgment motion after the auction. However, the Court finds that this requirement (found in RPAPL 1371) is not applicable as the auction was not held in a foreclosure case or any type of RPAPL proceeding. Rather, the auction was held in connection with defendant's bankruptcy petition. And defendant did not cite any caselaw for the proposition that plaintiff was required to follow RPAPL 1371 with respect to a property auction in a federal bankruptcy proceeding.

The Court also finds that plaintiff is entitled to reasonable legal fees incurred in connection with the preparation of this motion and it shall therefore make a separate motion for such fees (as it did not include a specific request in its papers) on or before April 30, 2024.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a turnover is granted; and it is further


ADJUDGED that defendant is directed, within fifteen days of receipt of a certified copy of this order and judgment, to turn over to the petitioner his shares and membership interests in the following entities on or before April 30, 2024:

(A) 1176 Park Place LLC; (B) 1202 Bedford LLC; (C) 1198 Bedford Realty LLC; (D) 1300 Sterling Realty LLC; (E) 1433 Lincoln Place LLC; (F) 147 Utica LLC; (G) Utica Residence LLC; (H) 40 Granite LLC (I) Macdonough Realty NY LLC; (J) Rutland Ventures, LLC; (K) Spencer Developers Inc.; (L) Stuyvesant Prime Residence LLC; and, (M) Sy Prospect LLC; up to a maximum amount of \$957,120.10 (the amount plaintiff says remains due on the judgment), plus post-judgment interest from December 1, 2023;

and it is further

ORDERED that if defendant fails to timely turn over his shares and membership interests as ordered herein, then plaintiff may bring a further motion to enforce this order, such as seeking relief directly from these entities; and it is further

ORDERED that plaintiff shall make a separate motion for reasonable legal fees incurred in connection with this motion on or before April 30, 2024.

<u>4/11/2024</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE