

**Miller v Xi Hui Wu**

2024 NY Slip Op 31611(U)

March 14, 2024

Supreme Court, Kings County

Docket Number: Index No. 535794/2023

Judge: Rupert V. Barry

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Index No.: 535794/2023

the “Queens Property”)<sup>1</sup> that was owned by 9008 LLC, and which funds were currently being held in escrow by Silverman, Shine, and Schnider PLLC with the Webster Bank.<sup>2</sup>

Defendants filed a cross-motion to stay this action and compel arbitration.

Defendants assert that Plaintiff tendered his 20% share in 9008 LLC as collateral for a 4.75 million dollar loan Plaintiff received from Ai Yun Chen. Defendants then assert that Plaintiff defaulted on the loan to Ai Yun Chen. Defendants further assert that Plaintiff borrowed 2 million dollars from Defendants to pay off Ai Yun Chen and in exchange Defendants received Plaintiff’s 20% interest in 9008 LLC as collateral. When Plaintiff defaulted on Plaintiff’s 2 million dollar loan from Defendants, Defendants asserted, per the loan agreement, they acquired Plaintiff’s 20% interest in 9008 LLC.

Plaintiff alleged that after the fraudulently executed release of Plaintiff’s 20% share in 9008 LLC, the “Queens Property” owned by 9008 LLC was sold for \$125,000,000.00, and Plaintiff was excluded from voting on the sale and receiving any funds from the sale.

For a movant to prevail on an application for a preliminary injunction, the movant must establish ““(1) the likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movants favor”” (*Ying Fung Moy v Hoho Umeki*, 10 AD3d 604 [2d Dept 2004]).

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<sup>1</sup> Prior to December 2, 2016, 9008 LLC was the owner of real property located at 89-52/90-02 Queens Boulevard a/k/a/ 57-19 Hoffman Drive, Elmhurst, New York 11373 and 87-28 58<sup>th</sup> Avenue a/k/a 58-02 Hoffman Drive, Elmhurst, New York 11373 (collectively, the “Queens Property”).

<sup>2</sup> Plaintiff further alleged that a prior so-ordered stipulation was violated from Queens County that directed Defendants to hold \$10,000,000.00 of the disputed funds in escrow until his claims were resolved. As Plaintiff was not a party to the stipulation in the Queens Court action, this Court finds that that stipulation has no bearing on this Court decision.

Index No.: 535794/2023

This Court finds that Plaintiff failed to submit sufficient credible evidence to prevail even on the first prong required for the granting of the equitable relief Plaintiff seeks. Plaintiff has failed to establish Plaintiff's likelihood of success on the merits. Interestingly, in his papers, Plaintiff does not reference the loan by Ai Yun Chen to Plaintiff, or Plaintiff's 20% interest in 9008 LLC being tendered as collateral for that loan. Additionally, Plaintiff does not reference in his papers, the 2 million dollar loan made by Defendants to Plaintiff so that Plaintiff could pay off the default on Plaintiff's loan from Ai Yun Chen. Nor did Plaintiff address Defendants assertion that Defendants received Plaintiff's 20% interest in 9008 LLC for Defendants loaning Plaintiff that 2 million dollars. Moreover, the affidavit of Miroslava Simanovsky is far from persuasive. In her affidavit, Ms. Simanavsky states in substance that (i) "...I have no recollection or documentation that would refresh my recollection that I notarized the 'Release and Estoppel Certificate'..." and (ii) "The notary signature on the 'Release and Estoppel Certificate' ... does not appear to me to be my signature." Ms. Simanavsky's protestation falls considerably short of what would be needed to persuade this Court that Plaintiff has made a *prima facie* showing that his signature on the April 15, 2015, Release and Estoppel Certificate was forged.

Furthermore, in that the relief Defendants seek is a stay of the proceedings and arbitration as to the contested issues, this Court finds that Plaintiff has also failed to show irreparable injury to Plaintiff absent granting his requested injunctive relief, and that balancing of the equities favor Plaintiff. In short, Plaintiff has failed to make a *prima facie* showing of Plaintiff's entitlement to any of the relief Plaintiff seeks in Plaintiff's application to this Court.

"Arbitration is a matter of contract, grounded in agreement of the parties" (*Matter of Belzberg v Verus Invs. Holdings Inc.*, 21 NY3d 626, 630 [2d Dept 2013]).

Index No.: 535794/2023

Turning now to Defendants crossclaim for a stay of the instant proceedings and to compel arbitration in this case. Defendants submitted the Amended and Restated Operating Agreement of Queens Blvd Loft LLC (hereafter “the Agreement”) signed by Plaintiff on July 28, 2014. Plaintiff does not dispute the validity of the Agreement and indeed references the Agreement in his complaint. Section 14.17 of the Agreement references the repayment of the loan of Ai Yun Chen and section 14.19 clearly indicates that any dispute arising out of the agreement shall be decided before the American Arbitration Association.

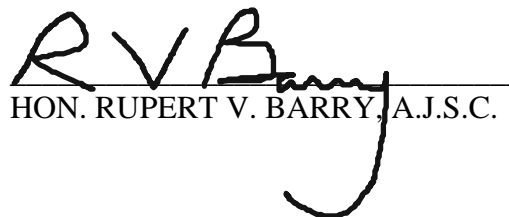
This Court finds that Defendants have provided sufficient credible evidence to support the relief they seek in their application to this Court. Accordingly, it is

**ORDERED**, that Plaintiff’s motion for injunctive and declaratory relief DENIED in its entirety. It is further

**ORDERED**, that Defendants’ motion to stay the proceedings in this case and compel arbitration with American Arbitration Association is GRANTED.

This constitutes the decision and order of this Court.

\*All applications not specifically addressed herein are denied.

  
HON. RUPERT V. BARRY, A.J.S.C.