

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D54995
C/hu

_____AD3d_____

Argued - December 1, 2017

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
FRANCESCA E. CONNOLLY
LINDA CHRISTOPHER, JJ.

2015-03642
2015-03645

DECISION & ORDER

Metropolitan Lofts of NY, LLC, appellant-respondent,
v Metroeb Realty 1, LLC, respondent, RedSky Capital,
LLC, respondent-appellant.

(Index No. 503441/12)

Kaplan Kravet & Vogel, P.C. (Mischel & Horn, P.C., New York, NY [Scott T. Horn], of counsel), for appellant-respondent.

Lupkin & Associates PLLC, New York, NY (Jonathan D. Lupkin and Michael B. Smith of counsel), for respondent-appellant.

Cohen Tauber Spievack & Wagner, P.C., New York, NY (Kenneth J. Rubinstein and Jackson S. Davis of counsel), for respondent.

In an action to recover damages for breach of contract, for specific performance of a contract for the sale of real property, and for declaratory relief, the plaintiff appeals from (1) so much of an order of the Supreme Court, Kings County (Carolyn E. Demarest, J.), dated February 27, 2015, as granted the separate motions of the defendants, Metroeb Realty 1, LLC, and RedSky Capital, LLC, to recover damages, costs, and attorneys' fees resulting from the issuance of a preliminary injunction, and granted the separate cross motions of the defendants for sanctions against the plaintiff, and (2) so much of a judgment of the same court dated March 12, 2015, as, upon the order, is in favor of the defendant Metroeb Realty 1, LLC, and against the plaintiff in the principal sum of \$2,469,354.95 and in favor of the defendant RedSky Capital, LLC, and against the plaintiff in the principal sum of \$222,211.70; and the defendant RedSky Capital, LLC, cross-appeals from

April 4, 2018

Page 1.

METROPOLITAN LOFTS OF NY, LLC v METROEB REALTY 1, LLC

(1) so much of the order as denied its motion to direct the plaintiff to replace an injunction bond with a cash undertaking and awarded it the sum of only \$222,211.70 in damages, and (2) so much of the judgment as is in favor of it and against the plaintiff in the principal sum of only \$222,211.70.

ORDERED that the appeal and cross appeal from the order are dismissed; and it is further,

ORDERED that the judgment is reversed, on the law and in the exercise of discretion, the separate motions of the defendants for damages, costs, and attorneys' fees resulting from the issuance of a preliminary injunction and the separate cross motions of the defendants for sanctions against the plaintiff are denied, the motion of the defendant RedSky Capital, LLC, to direct the plaintiff to replace an injunction bond with a cash undertaking is denied as academic, and the order is modified accordingly; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal and cross appeal from the order must be dismissed because the right of direct appeal and cross appeal therefrom terminated with the entry of the judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal and cross appeal from the order are brought up for review and have been considered on the appeal and cross appeal from the judgment (*see* CPLR 5501[a][1]).

In light of our determination in *Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC* (____ AD3d ____ [Appellate Division Docket No. 2014-05885; decided herewith]), that the contract between the plaintiff and the defendant Metroeb Realty 1, LLC (hereinafter Metroeb), was valid and enforceable, the motions by Metroeb and the defendant RedSky Capital, LLC (hereinafter RedSky), to recover damages, costs, and attorneys' fees resulting from the issuance of a preliminary injunction should have been denied (*see* CPLR 3212[b]), the defendants' separate cross motions for sanctions against the plaintiff should have been denied (*see* 22 NYCRR 130-1.1[c]), and RedSky's motion to direct the plaintiff to replace an injunction bond with a cash undertaking should have been denied as academic.

MASTRO, J.P., BALKIN, CONNOLLY and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court