

**Lanbar Assoc. v Fenton 135 LLC**

2007 NY Slip Op 32313(U)

July 20, 2007

Supreme Court, New York County

Docket Number: 0106437/2005

Judge: Judith J. Gische

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

PRESENT: Sudith J. Gesehe  
Justice

PART 10

Lanbar Assoc

INDEX NO. 106437/05

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 008

MOTION CAL. NO. \_\_\_\_\_

Tentan 135 LLC et al

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

**FILED**  
JUL 27 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/20/07

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Supreme Court of the State of New York  
County of New York: Part 10

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Lanbar Associates,

Plaintiff,

Decision/Order

-against-

Index#106437/05

Fenton 135 LLC, et. al.,

Defendants,

Mot. Seq. #008

-and-

Etta Fenton, et al.,

Intervening-defendants.  
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Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

PAPERS

OSC, SEU affd., exhibits.....	1
SH affirm. In support.....	2
AEM affirm in opp., exhibit.....	3
MMB Supp, affirm in further support, exhibit.....	4
AEM Supp. Affirm in opp., exhibits.....	5

**FILED**  
 JUL 27 2007  
 NEW YORK  
 COUNTY CLERK'S OFFICE

NUMBERED

Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

This is an action to foreclose a mortgage held on the premises known as 234-240 West 130<sup>th</sup> Street in Manhattan ("property"). Defendant-Interveners have interposed claims that they are the true owners of the property. Sally E. Unger, the court appointed temporary receiver for the property, has moved to compel Lanbar, petitioning-mortgage holder, to pay a tax foreclosure lien representing unpaid real estate taxes on the property. The City has already started a tax foreclosure proceeding (index # 580001/07). There is no dispute that the property does not generate enough

income to pay such tax expenses. The court originally entered such an order directing Lanbar to pay the lien, but on May 10, 2007, it rescinded the order and allowed the parties to make supplemental submissions on the issue of whether the court had the authority to compel the mortgage holder to pay the outstanding taxes.

Lanbar argues that it has no legal responsibility to pay the real estate taxes that are due on the property. While it can do so voluntarily, it has made a business decision not to because if the defendant-interveners prevail in this action, then Lanbar will likely lose its entire financial investment in the property. It is not willing to put any further funds at risk. Not surprisingly, the defendant-interveners support the Temporary Receiver's application that Lanbar pay the taxes and they are not willing themselves to pay the taxes. Nor are they willing to concede that if they are found to be the true owners of the property they will not only have to reimburse Lanbar for any real estate taxes and penalties paid by Lanbar, but they would be responsible to pay Lanbar interest.

For the reasons set forth below, the motion is denied.

There is no authority by which this court can compel Lanbar to advance further monies to support the property while the receivership is pending. The court's July 7, 2005 order appointing the temporary receiver provides that Lanbar "may, but shall not be required to" advance funds to maintain the property. In general, while a receivership is pending, a receiver is bound to pay the expenses of a receivership from the monies that are collected from the rents. Where, as here, the monies collected are insufficient to meet the expenses, the receiver cannot compel a plaintiff to advance the necessary funds. Litho Fund Equities, Inc. V. Alley Spring Apartment Corp., 94 AD2d

13 (1<sup>st</sup> dept. 1983); East Chatham Corp. v. Iacovone, 25 AD2d 622 (1<sup>st</sup> dept. 1966).

The authority relied upon by the receiver does not command a different result. CPLR § 8004(b) permits a court to order, at the end of the receivership, that the party who sought appointment in the first place should pay the receiver's commissions if the receivership funds are otherwise depleted. This statutory provision is limited to special circumstances, only at the end of the receivership and to the payment of commissions only. It is based upon the recognition that a receiver provides services to preserve the property for the benefit of the party from whom payment is sought. Sun Beam Enterprises, Inc. v. Liza Realty Corp., 210 AD2d 153 91<sup>st</sup> dept. 1994). Here we are neither at the end of the receivership; nor are the monies sought for commissions. Indeed, at this point, we do not even know that Lanbar will be the party entitled to the property at the end of the day and the one for whose benefit such monies are being paid.

The case of 64 B Venure v. American Realty Co., 194 AD2d 504 (1<sup>st</sup> dept. 1993), cited by the receiver, does not command a different result. While the court in that case recognized that it could vest a receiver with broad powers to fulfill its mandate, here the order requested is to compel Lanbar to do something; not to confer a power on the receiver.

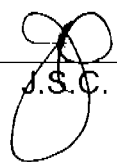
Since no one claiming a financial interest in the property is willing to pay the taxes and the rent roll of the property cannot support such payments, the City's foreclosure action cannot be avoided and whatever equity there is in the property will be used to satisfy that tax debt.

Accordingly, the motion to compel Lanbar to pay the tax lien is denied. Any

other requested relief not expressly granted herein is denied. This constitutes the decision and order of the court.

Dated: New York, New York  
July 20, 2007

SO ORDERED:

  
\_\_\_\_\_  
J.G. J.S.C.

**FILED**  
JUL 27 2007  
NEW YORK  
CLERK'S OFFICE