

Broadway Houston Mack Dev. LLC v Kohl

2007 NY Slip Op 32950(U)

September 19, 2007

Supreme Court, Suffolk County

Docket Number: 0012800/2005

Judge: Emily Pines

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Supreme Court - State of New York
Commercial Division, Part 46, Suffolk County

Present:

HON. EMILY PINES
J. S. C.

CORRECTED
DECISION AND
ORDER

_____ X
BROADWAY HOUSTON MACK
DEVELOPMENT LLC,

Action # 1
Plaintiff,

-against-

TED KOHL and JAMES STUMPF,
_____ X

Defendants .

Leslye Kohl,
_____ X

Action #2
Petitioner,

-against-

BROADWAY HOUSTON MACK
DEVELOPMENT LLC, ARENT FOX, PLLC, and
TED KOHL,
_____ X

Respondents.

BROADWAY HOUSTON MACK
DEVELOPMENT LLC,
_____ X

Action # 3
Plaintiff,

-against-

TED KOHL, LESLYE KOHL, BRIAN MARLOWE
and DOE DEFENDANTS 1-10,
_____ X

Defendants.

Action # 1 Index # 12800-2005
Original Motion Dates: 03-09-2006 & 01-11-2007
Motion Submit Date: 02-01-2007
Motion Sequence No's.: 004 MOTD; 005 MOTD

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Action #2 Index # 35841-2006
Original Motion Date: 01-17-2007 & 02-01-2007
Motion Submit Date: 02-01-2007
Mot. Seq. No's.: 001 MOTD; 002 MOTD; 003 MOTD

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Action #3 Index # ~~4017~~ 4019/07-2007
Original Motion Dates: 04-04-2007 & 05-07-2007
Motion Submit Date: 05-07-2007
Mot. Seq. No's.: 001 MOTD & 002 MOTD

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The Court is considering herein seven separate, yet inter-related motions in three actions/proceedings all arising from essentially the same facts and circumstances. In the interest of judicial economy, and in light of the inescapable conclusion that these matters are inextricably linked, this Decision addresses the following motions in their respective action/proceeding:

1. In the action captioned *Broadway Houston Mack Development v. Ted Kohl and James Stumpf*, index number 12800-2005 ("Action #1"):
 - a. Order to Show Cause with Temporary Restraining Order and for a Preliminary Injunction (motion sequence no. 4) dated March 3, 2006;
 - b. Order to Show Cause with Temporary Restraining Order (motion sequence no. 5) dated December 21, 2006.

2. In the action captioned *Leslye Kohl v. Broadway Houston Mack Development, LLC, Arent Fox PLLC and Ted Kohl*, index number 35841-2006 (“Action #2”):
 - a. Notice of Petition and Petition (motion sequence no. 1) for declaratory judgment dated December 25, 2006;
 - b. Amended Notice of Broadway Houston Mack Development LLC and Arent Fox LLP’s Joint Motion to Dismiss Leslye Kohl’s Petition (motion sequence no. 2) dated January 19, 2007; and
 - c. Notice of Cross-Motion of Leslye Kohl (motion sequence no. 3) dated January 24, 2007 for summary judgment.
3. In the action captioned *Broadway Houston Mack Development, LLC, v. Ted Kohl, Leslye Kohl, Brian Marlowe and Doe Defendants 1-10*, index number 4619-2007 (“Action #3”):
 - a. Notice of Motion to Dismiss (motion sequence no. 1) dated March 12, 2007; and
 - b. Notice of Motion to Vacate Stay (motion sequence no. 2) dated April 20, 2007.

Factual and Procedural History

These three actions/proceedings center around a certain contractual relationship between Broadway Houston Mack Development, LLC (“BHMD”) and IDI Construction Company, Inc. (“IDI”). The record reflects that on or about June 17, 2003, BHMD and IDI contracted for the construction of a commercial office building in Manhattan and in accordance therewith, IDI retained certain sub-contractors. Ted Kohl (“Kohl”) and James Stumpf (“Stumpf”) worked for IDI. Essentially, BHMD alleges that Kohl and Stumpf diverted some of the more than \$7 million dollars in funds it paid IDI that were earmarked for the subcontractors. Specifically, these motions relate to the adjudication of the rights to and disposition of certain valuable artwork originally owned by Kohl and his now former wife, Leslye Kohl (“Leslye”). These seven (7) motions can be boiled down to an analysis of the claims of each of the respective parties to this artwork.

Action #1

BHMD commenced Action #1 against Kohl and Stumpf in which it seeks money damages for diversion of trust funds under **Article 3-A of the Lien Law**, conversion and breach of fiduciary duty. In this action, BHMD also sought injunction relief. IDI was not joined as a party Defendant because it had filed for bankruptcy protection in December of 2004. By Order (HENRY, J.) dated October 30, 2005, the Court granted an attachment against the proceeds of the sale of Kohl’s residence in Southampton and an accounting of the proceeds of the sale. By Order to Show Cause (PINES, J.) dated March 3, 2006, BHMD

seeks an Order attaching the proceeds of the sale of certain artwork owned by Kohl and directing that a share of the net proceeds of the sale be held in the joint escrow account maintained by counsel for BHMD and IDI. In the Order to Show Cause, the Court ordered that if a “sale or transfer of the Artwork occurs prior to the Return Date of this Order to Show Cause, the share of the net sale proceeds to which Defendant Kohl is entitled shall be immediately delivered into the Joint Escrow upon closing of title”.

Subsequent to the return date on the Order to Show Cause but prior to the issuance of a Decision by the Court, IDI, as part of its Chapter 11 bankruptcy case, sought an Order from the Bankruptcy Court staying the determination of the motion. By Order (Bernstein, J.) dated May 2, 2006 the Bankruptcy Court enjoined and restrained BHMD from taking any action to enforce the March 3, 2006 Order against the 50% interest of Kohl in the artwork. By further Order (PINES, J.) dated June 22, 2006, the Court directed that the Temporary Restraining Order issued on March 3, 2006 would remain in full force and effect pending the determination of the motion. On November 8, 2006, IDI withdrew its application for a stay of enforcement of the March 3, 2006 Order and the stay was thus lifted. By Stipulation and Order dated December 18, 2006, IDI entered into an agreement fixing the unsecured claim of BHMD against IDI at \$2,682,322.58 and preserving BHMD’s right to pursue any claims against Ted Kohl, James Stumpf or others.

Thereafter, by Order to Show Cause dated December 21, 2006, BHMD moved for an Order, *inter alia*, enjoining Kohl and the custodians of the artwork (to wit, Sotheby’s and Christie’s auction houses) from transferring, selling, exchanging and/or disposing of the artwork; alternatively requiring Kohl to post collateral; holding Kohl in contempt of the March 3, 2006 restraining Order; awarding attorney’s fees; and directing discovery. This Court denied BHMD’s request for a further Temporary Restraining Order, however, such denial was modified in part by the Appellate Division, Second Department by Order dated December 22, 2006. In that Order, the Court enjoined Kohl and the custodians of the artwork from transferring, assigning, selling, exchanging and/or disposing of the artwork. A review of BHMD’s December 22, 2006 motion papers demonstrates that it failed to reveal to either this Court or the Appellate Division, that the very artwork they were seeking to attach, had been placed before Judge Bernstein in the bankruptcy proceeding for distribution to the unsecured creditors of IDI. Judge Bernstein had delegated distribution those assets to Justice Drager in the divorce proceeding between Ted and Leslye Kohl. Thereafter, by So-Ordered Stipulation (Pines, J.) dated January 31, 2007, Sotheby’s and BHMD entered into an agreement whereby Sotheby’s withdrew its opposition to BHMD’s motion and agreed that if Kohl, Leslye or non-party Brian Marlowe consigned any artwork to Sotheby’s the proceeds would not be disbursed.

Kohl has opposed both of these motions and they have been fully submitted to the Court for consideration.

Action #2

Leslye Kohl commenced Action #2 against BHMD, Arent Fox PLLC (“Arent Fox”) and Kohl by Notice of Petition and Petition dated December 25, 2006. In that proceeding, Leslye Kohl seeks an adjudication determining her rights in the artwork that is the subject of the March 3, 2006 Order of Attachment. The gravamen of Leslye Kohl’s argument is that as a result of a Judgment of Divorce¹ (DRAGER, J.), she was the sole owner of the artwork that was subject to the Order of Attachment. In opposition, BHMD and Arent Fox move to dismiss the petition for failure to effectuate proper service and failure to plead a proper claim. Leslye Kohl then cross-moves pursuant to **CPLR §3211(c)** seeking the Court to convert the motion to dismiss into a motion for summary judgment and grant her the relief sought in the Petition and awarding money damages pursuant to **CPLR§6315**.

Kohl has not submitted any papers on the Petition and/or motions in Action #2 and they have been fully briefed and submitted to the Court for consideration.

Action #3

BHMD commenced a third action against Kohl, Leslye Kohl and Brian Marlowe (“Marlowe”) by filing a Summons and Verified Complaint on February 1, 2007. In this action, BHMD seeks to recover allegedly fraudulent transfers of artwork from Ted Kohl to Marlowe and Leslye Kohl. Essentially, BHMD argues that Kohl transferred a piece of artwork, specifically a bronze piece entitled “Little Bird” (“Little Bird”), in violation of the March 3, 2006 restraining Order. BHMD also alleges that Kohl transferred the remainder of his interest in the artwork to Leslye Kohl in violation of the March 3, 2006 Order. The Complaint alleges that these transfers violated **Debtor Creditor Law §§273, 273-a and/or 276**. The submissions reflect that Ted Kohl transferred Little Bird to Marlowe on or about October 13, 2006 and the bill of sale reflects that the consideration for the transfer was only \$10.00. However, Marlowe alleges that the transfer of the Little Bird sculpture was in satisfaction of certain debts owed by Ted Kohl to Marlowe in an amount totaling \$200,000. These loans were secured by both promissory notes and UCC Financing Statements.

¹A discussion/analysis of the Matrimonial action between Kohl and Leslye Kohl and resultant Judgment of Divorce is discussed in full below.

Leslye Kohl has moved (motion sequence no. 1) pursuant to **CPLR Rule 3211(a)(1)** on the basis of documentary evidence; and pursuant to **CPLR Rule 3211(a)(7)** for failure to state a cause of action against her. BHMD cross-moves (motion sequence no. 2) pursuant to **CPLR §3214** to vacate the stay of discovery pending the motion to dismiss and to strike from Leslye Kohl's filings in the action any reference to transcripts of the matrimonial court proceedings.

These motions have also been fully briefed and submitted to the Court for consideration.

The Divorce Action, the Bankruptcy Proceeding and the Artwork

The Divorce Action

In 2000, Leslye Kohl commenced an action for divorce against Ted Kohl in New York County (index no. 350801-2000) and the matter was tried before the Hon. Laura Drager over an 18 day period spanning March through August of 2003. Justice Drager issued a 35 page Trial Decision on October 20, 2004 and pursuant thereto, a Judgment of Divorce was granted on April 21, 2005. Regarding the artwork, the Judgment ordered, that unless Leslye and Ted Kohl agreed within twenty (20) days to an equitable distribution of the artwork, which was valued at \$2.2 million dollars², all items (with the exclusion of certain delineated pieces determined to be Leslye Kohl's separate property) were to be placed on the market for sale and each party was to receive 50% of the proceeds. Ted Kohl also retained the "Little Bird" sculpture valued at \$200,000. The Judgment of Divorce further provided that each party was entitled to 50% of the proceeds of their retirement accounts, which amounted to \$711,859.50 each. The Judgment also provided that Ted Kohl would pay Leslye Kohl maintenance in the initial amount of \$15,000 per month and declining first to \$12,000 per month on the sale of their Southampton residence and again to \$7,000 per month upon Ted Kohl's reaching 70 years old in 2011. Maintenance arrears were to be paid over a three month period from January 2005 to March 2005. The Appellate Division, First Department, affirmed the Judgment of Divorce by Decision and Order dated December 13, 2005.

Not surprisingly, post-judgment enforcement motion practice ensued before Justice Drager regarding Ted Kohl's failure to pay Leslye Kohl her share of the retirement and bank accounts in the amount of approximately \$697,000 and unpaid maintenance arrears. On or about December 19, 2005,

²This valuation was based upon a stipulation between Ted and Leslye Kohl based upon an appraisal done by an art appraisal company.

Justice Drager ruled that from Ted Kohl's share of the proceeds of the sale of the artwork (as directed in the Judgment of Divorce), he would pay the approximate \$690,000 he owed to Leslye Kohl for her share of the equitable distribution of the retirement accounts.

The divorce proceedings did not end here and motion practice continued regarding the payment of Leslye Kohl's share of the retirement and bank accounts and maintenance. As of October 2006, Ted Kohl was obligated to pay Leslye Kohl \$7,000 per month until November of 2011. To settle their disputes, the parties entered into a Stipulation that was So-Ordered by Justice Drager on October 20, 2006. That Stipulation of Settlement provided that Leslye Kohl was the owner of the parties' art collection with the exception of the "Little Bird" sculpture. In exchange, Ted Kohl retained title to the retirement accounts and his obligation to pay Leslye Kohl maintenance was terminated. As a result of this Stipulation and Order therefore, *Leslye Kohl became the owner of the artwork*, with the sole exception being the Little Bird sculpture³ (emphasis added). As indicated in the Reply Affirmation of Leslye Kohl's counsel and further borne out by the October 20, 2006, Order of Justice Drager, Stan Goldberg, Esq., of the Platzer Firm, attorneys for the unsecured creditors of IDI, including BHMD, actually moved in the divorce proceeding for release of the funds in escrow and was present when the transfer between the Kohls took place. Thus, BHMD's argument that these transfers were made without notice to BHMD or any other creditor is without merit and clearly Justice Drager denied their request for relief.

The Bankruptcy Proceeding

While the divorce action between Ted and Leslye Kohl was continuing in the Supreme Court, Nassau County, the bankruptcy proceeding of IDI was traveling its own parallel and often intersecting path in the United States Bankruptcy Court for the Southern District of New York. The bankruptcy proceeding was commenced in December of 2004 and BHMD was a party thereto as an unsecured creditor of IDI.

By way of background, the submissions reflect that on or about June 7, 2005, Ted Kohl was indicted for numerous felonies in connection with the operation of IDI and, on October 11, 2005 he entered into a Plea Agreement with the District Attorney of New York County. The Plea Agreement provided that Ted Kohl was to make restitution of three million dollars (\$3,000,000.00) of which two million four

³The Court notes, that at the time BHMD brought its March 3, 2006 Order to Show Cause seeking attachment of the artwork, it elected not to advise this Court regarding the proceedings in the Matrimonial Court before Justice Drager. Such strategy, was despite the fact that Justice Drager had already determined in December of 2005 that Ted Kohl was to pay Leslye Kohl the \$690,000 from his share of the artwork that BHMD was seeking to attach.

hundred thousand dollars (\$2,400,000.00) was to be held by the attorney for the unsecured creditors, which included BHMD. Thus, Kohl agreed, as part of the Plea Agreement that he would individually remit the restitution to the Bankruptcy Court to satisfy the claims of the creditors of IDI.

Thereafter, the attorney for IDI made a motion to the Bankruptcy Court for approval of the Plea Agreement and Leslye Kohl opposed the motion on the ground that she was still owed funds pursuant to the Judgment of Divorce and if his assets were used to satisfy the claims of the creditors of IDI, she would not receive what was owed. By Order (Bernstein, J.) dated January 12, 2005, the Court approved the Plea Agreement and specifically ordered that “such approval shall have no affect on Kohl’s title if any, to any of the assets dealt with by the Matrimonial Court” and that “ownership of the assets identified in paragraph 8b(ii) and (iii) of the Kohl Plea Agreement shall *remain subject to entry of a final order, after the resolution of all applications, motions and appeals in connection with such ownership (“Final Order”), of the matrimonial court (the “Matrimonial Court”) having jurisdiction over the judgment of divorce between Leslye and Ted Kohl*” (emphasis added).

Thus, when, in October of 2006, Justice Drager So-Ordered the Stipulation of Settlement between Ted and Leslye Kohl, she was doing so as a result of the express direction of Justice Bernstein in the Bankruptcy Court proceeding.

Again, despite the fact that BHMD was a represented unsecured creditor during the bankruptcy proceeding, and specifically referred to in the January 12, 2005 Order, it failed to advise this Court of the existence of this Order or the status of the proceeding when it sought the March 3, 2006 Order. As a result of BHMD’s actions in seeking an attachment of the artwork, as discussed more fully above, IDI sought, and obtained a stay of motion for an Order of Attachment which was ultimately lifted on November 8, 2006. Ultimately, as set forth above, on December 18, 2006, BHMD and IDI entered into an agreement fixing the unsecured claim of BHMD against IDI at \$2,682,322.58. In the Stipulation and Order, BHMD preserved its rights to asserts any claims against Ted Kohl, James Stumpf or any other person or entity.

Analysis

As set forth herein above, when this Court was initially presented with an Order to Show Cause by BHMD in March 2006, it was made aware only of the debt owed to BHMD by IDI Construction and its principal, Ted Kohl. Specifically, this Court was not briefed on the bankruptcy proceeding before Judge Bernstein nor of the Judgment of Divorce, granted by Justice Drager. In fact, this Court’s extensive review

of the record demonstrates that the very assets (to wit, the artwork) that BHMD sought to attach in a proceeding before this Court were the same assets before Judge Bernstein in IDI's bankruptcy proceeding. After pleading guilty to conversion of IDI's assets, Ted Kohl, who worked for IDI, placed these assets before the Bankruptcy Trustee for distribution to IDI's creditors, including BHMD. After Leslye Kohl objected in that action, Judge Bernstein specifically delegated to the Supreme Court Justice sitting in the divorce action between Ted and Leslye Kohl, the issue of ownership of the artwork. Thus, Judge Bernstein's January 12, 2005 Order effectively determined that to the extent that Justice Drager concluded that the artwork was the property of Leslye Kohl, it would be excluded from the debtor IDI's bankruptcy estate and thus, would not be reachable by Ted Kohl's creditors, which happen to include BHMD. Notably, Judge Bernstein was inarguably fully aware of BHMD's claims when he issued this Order.

As recently set forth by the Second Circuit Court of Appeals in *Musso v. Ostashko*, 468 F.3d 99 (2d Cir. 2006)⁴, there is a process to be followed where Bankruptcy Law, the **Domestic Relations Law** and the **NYS Debtor and Creditor Law** intersect. Specifically, if the bankruptcy proceeding is commenced prior to the entry of the Judgment in the divorce proceeding, the non-debtor spouse may not affect the rights of such creditors of the debtor spouse until the Judgment of Divorce is entered. At that point, if the non-debtor spouse is awarded property under **DRL §236**, he/she becomes an unsecured creditor in the bankruptcy proceeding. It is then the sole province of the Bankruptcy Judge to determine the non-debtor spouse's rights *vis a vis* the other unsecured creditors. *Musso* at p. 108.

The situation described in *Musso* is precisely what occurred in this case. Once Judge Bernstein determined that the artwork awarded Leslye Kohl, if any, in her divorce from Ted Kohl would not be subject to claims from IDI's creditors, it became the law of the case. Had BHMD or any other creditor of IDI objected to that determination, its remedy was before Judge Bernstein or on appeal to the District Court for the Southern District of New York. BHMD had no right to seek to collaterally attack Judge Bernstein's determination before this jurist.

Conclusions

As eloquently stated by the Second Circuit in *Musso, supra*, "despite the complicated procedural history of this case and its related ... proceedings, the issue before this Court is relatively straightforward". Here, the issue is whether the artwork awarded to Leslye Kohl in her Supreme Court

⁴*Musso* was the "Decision of the Day" in the New York Law Journal on November 14, 2006, during the pendency of these actions and proceedings.

divorce action is subject to attachment by her former husband's creditors. As demonstrated herein above, based upon the determination of Judge Bernstein, as applied by Justice Drager, this question must unequivocally be answered in the negative. After protracted litigation, Justice Drager awarded all of the artwork belonging to Ted and Leslye Kohl solely to Leslye Kohl, with the exception of the Little Bird Statute. This Court is bound by these determinations. That being said, the Court rules as follows:

Orders of Attachment (Action #1)

The motions (motion sequences no. 4 & 5) by BHMD for Orders of Attachment and preliminary injunctions in Action #1 are denied based upon the determination of Justice Drager, with the imprimatur of Judge Bernstein, that Leslye Kohl is the sole owner of the artwork, with the exception of the Little Bird sculpture. The issue of the attachment of the proceeds of the transfer of the Little Bird sculpture is referred to the Court conference to be held on May 31, 2007 at 9:30 a.m. The application seeking to punish Ted Kohl for contempt is denied in light of the determination herein and the failure to provide the proper statutory warning pursuant to **Judiciary Law §756**.

Declaration of Ownership of Artwork (Action #2) and Violations of the Debtor-Creditor Law (Action #3)

Actions #2 and #3 are essentially mirror images of each other. In Action #2, Leslye Kohl seeks an order declaring her rights to the artwork. In Action #3, BHMD in effect, seeks to nullify those proceedings and/or transactions which resulted in Leslye Kohl and Marlowe's ownership of the artwork.

The Petition of Leslye Kohl for a declaration of her rights to the artwork is granted as set forth herein above. Justice Drager has ruled on this issue and declared Leslye Kohl the sole owner of the artwork with the exception of the Little Bird sculpture. Leslye Kohl may dispose of the artwork in any manner she sees fit without any interference or objection by BHMD or its counsel, Arent Fox.

Based upon the foregoing, the motion by Arent Fox and BHMD to dismiss the Petition is denied. The argument of Arent Fox and BHMD as to improper service of the Notice of Petition and Petition is wholly without merit in that the Notice of Petition was served in accordance with **CPLR §6221** and **CPLR Rule 2103(b)(6)**.

In light of the above determination granting the Petition, the cross-motion of Leslye Kohl for summary judgment is denied as moot.

In consideration of the complicated implications surrounding the intersection of state matrimonial law and Federal Bankruptcy Law, the Court denies Leslye Kohl's application for sanctions, damages and counsel fees against the law firm of Arent Fox and BHMD. It is important not to lose sight of the fact that Kohl plead guilty to conversion of approximately \$7 million dollars of BHMD's funds. In that context, BHMD had already been awarded attachment of the proceeds of Kohl's Southampton residence by Justice Henry and has found itself frustrated by the fact that such proceeds have long since been dissipated. Second, BHMD and Arent Fox have stated that their efforts to proceed with the accounting awarded them by Justice Henry's 2005 Order has been frustrated and ignored. Under all the circumstances set forth, neither sanctions, damages, nor counsel fees are warranted and accordingly, such application is denied.

For the reasons set forth at length above, the motion by Leslye Kohl to dismiss BHMD's complaint against her for alleged violations of the New York Debtor & Creditor Law is granted. BHMD alleges that the transfer of the artwork by the So-Ordered Stipulation (DRAGER, J.) was fraudulent because it violated **Debtor and Creditor Law ("DCL") §§ 273 and 276**.

DCL §§273 and 276 are designed to protect creditors from fraudulent transfers for less than valuable consideration. **DCL §273** states that "Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration." **DCL §276** states that "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors."

Leslye Kohl argues that the transfer of the artwork cannot be considered fraudulent as a matter of law because it was made to settle the outstanding obligations of Ted Kohl pursuant to the Judgment of Divorce. In sum, she argues that in exchange for Ted Kohl's share of the artwork valued at \$803,983.50, he was relieved of his obligation to pay maintenance arrears, retirement and bank accounts and unpaid maintenance totaling \$1,219,673.66. Thus, it is argued that Ted Kohl received more than full consideration for transferring his share in the artwork. Moreover, she argues that there can be no "actual intent" to defraud BHMD because the artwork was transferred to Leslye to settle the outstanding obligations pursuant to the Judgment of Divorce.

In opposition, BHMD cross-moves and seeks to lift the stay on discovery and to strike Leslye Kohl's submissions for purported failure to include the entire transcript from the matrimonial proceeding. BHMD further argues that the motion to dismiss should be denied because issues of fact exist regarding

the value of the artwork and that documentary evidence does not establish that Ted Kohl received fair consideration for the transfer of the artwork.

The Court disagrees with BHMD. First, the transfer of the artwork was not a “conveyance” from Ted to Leslye Kohl within the meaning of the Debtor & Creditor Law. Rather, the artwork was determined by Order of Justice Drager, with the approval of Judge Bernstein to belong to Leslye Kohl in satisfaction of the substantial debts owed to her by Ted Kohl. Thus, **DCL §§273 and 276** should not even apply under these circumstances. However, even if the Court were to find that they did apply, as set forth herein repeatedly, the law of this case has been established by the Bankruptcy Court and the Matrimonial Court. Justice Drager set the value of the artwork owned by Ted and Leslye Kohl and established the equitable distribution, maintenance and maintenance arrears owed by Ted to Leslye Kohl. This Court will not pass judgment on Justice Drager’s determination as to the value.


For the reasons set forth herein, the motion by Leslye Kohl to dismiss the complaint against her is granted and the action is dismissed as to Leslye Kohl only. BHMD’s cross-motions are accordingly, denied, to the extent that they relate to Leslye Kohl since the Court has dismissed the complaint against her in Action #3.

With regard to BHMD’s action against Kohl and Brian Marlowe, BHMD’s motion to lift the stay of discovery is now moot, since that action is severed and will continue. Discovery on that action may proceed only with regard to the consequence of the transfer of the Little Bird sculpture from Kohl to Marlowe.

This matter is scheduled for a compliance conference on May 31, 2007 at 9:30 a.m. before the undersigned. Counsel should appear prepared to discuss the remaining issues: to wit, BHMD’s the application for an Order of Attachment against the Little Bird sculpture.

The foregoing constitutes the **DECISION** and **ORDER** of the Court.

Dated: September 19, 2007
Riverhead, New York



EMILY PINES
J. S. C.