

Prodigy Homes, LLC v Salters
2007 NY Slip Op 33026(U)
September 21, 2007
Supreme Court, New York County
Docket Number: 1687-07/
Judge: Stephen A. Bucaria
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

PRODIGY HOMES, LLC, MJM REALTY CO.,
LLC, MJM SOUTH CAROLINA, INC., MJM
NORTH CAROLINA, INC., MJM LOUISIANA
CORPORATION and MARK RUBIN,

Plaintiffs,

-against-

JAMES SALTERS, DANISMINE CORP.,
CATALYST DEVELOPMENT CORP. and
SALTERS AND SALTERS, INC.,

Defendants.

TRIAL/IAS, PART 6
NASSAU COUNTY

INDEX No. 011687/07

MOTION DATE: Sept. 20, 2007
Motion Sequence # 001

The following papers read on this motion:

Order to Show Cause.....	XXX
Affirmation in Opposition.....	XXX
Affirmation in further Opposition.....	X
Reply Affidavit	X
Memorandum of Law.....	XX
Reply Memorandum of Law.....	X

The motion, by plaintiffs, brought on by order to show cause, for an order

1. Issuing a preliminary injunction enjoining defendants from selling or otherwise dispossessing the property of any plaintiff;

2. Issuing a preliminary injunction enjoining defendants from divesting, secreting, transferring, alienating or dissipating any funds that they have received from any of the plaintiffs and any funds that they have received from the sales of any of plaintiffs' property;
3. Granting and maintaining temporary restraints prohibiting defendants from selling, transferring, alienating or otherwise affecting the ownership of the property of any plaintiff, and from divesting, secreting, transferring, alienating or dissipating any funds that they have received from any of the plaintiffs and any funds that they have received from the sales of any of plaintiffs' property;
4. Requiring defendants to divulge to plaintiff all accounts now holding any funds that any defendant received from any of the plaintiffs and any funds that they have received from the sales of any of plaintiffs' property; and
5. Awarding plaintiffs such other, further or different relief in plaintiffs' favor as is just and proper;

and a motion, by plaintiffs, brought on by order to show cause, for an order

- (i) pursuant to Sections 750, 751, 753 and 756 of the Judiciary Law; (a) holding the defendants in the above captioned action in civil and criminal contempt, imposing appropriate fines against the defendants and incarceration as against James Salters and granting sanctions and costs against the defendants for their failure to comply with the Court's July 23, 2007 and August 3, 2007 Orders; (b) awarding plaintiffs their reasonable attorneys fees in connection with attempting to enforce the July 23, 2007 and August 3, 2007 Orders, and in preparing and submitting the within motion; (c) ordering disgorgement of any monies received by defendants in violation of the Court's July 23, 2007 and August 3, 2007 Orders; and (d) for such other and further relief as the Court may deem proper;

- (ii) restraining and enjoining the defendants, and their agents, servants, employees, and any and all others acting on behalf of or in concert with them, from conducting any business whatsoever, including but not limited signing any documents whatsoever on behalf of any plaintiff or conducting any financial and/or banking activities, on behalf of any plaintiff and from acting or purporting to act on behalf of any plaintiff in this action;
- (iii) restraining and enjoining the defendants, and their agents, servants, employees, and any and all others acting on behalf of or in concert with them, from selling, releasing, distributing, transferring, assigning, removing, disposing, encumbering, dissipating, divesting, secreting or otherwise dispossessing any property in which any plaintiff has any interest;
- (iv) restraining and enjoining the defendants, and their agents, servants, employees, and any and all others acting on behalf of or in concert with them, from selling, releasing, distributing, transferring, assigning, removing, disposing, encumbering, dissipating, divesting, secreting or otherwise paying any funds they have received from the sale of any property in which any plaintiff has any interest or any other assets of the plaintiffs;
- (v) directing defendants and their agents, servants, employees, and any and all others acting on behalf of or in concert with them, to maintain and safeguard, all records, including without limitation, all financial records, journals, ledgers, account summaries, bank statements, checks, cash receipts, invoices, financial statements, balance sheets and any other documents which concern or refer to the financial condition of any plaintiff or defendant in this action;

and an application, by defendants, brought on by order to show cause, for an order preliminarily enjoining plaintiffs Prodigy Homes, LLC, MJM Realty Co., LLC, MJM South Carolina, Inc., MJM North Carolina, Inc. and MJM Louisiana Corporation, (the "Entity Plaintiffs") and plaintiff Mark Rubin ("Rubin") acting on behalf of the Entity plaintiffs, from:

- [a] operating the Plaintiff Entities or making management decisions with respect to the operations and/or assets of the Plaintiff Entities **without** first providing defendants, through their counsel, with reasonable advance written notification of the nature of the issues and proposed actions with respect thereto, respecting the properties owned by the Plaintiff Entities, including, without limitation, meetings with anyone concerning the various project sites; the borrowing of money; the encumbering of assets; and/or incurring new debts or obligations; and
- [b] encumbering any assets of the Plaintiff Entities without prior authorization from the board of directors or all members, as applicable, or an order of this Court;
- [c] selling, transferring, conveying, contracting to sell, assigning or affecting ownership rights to any real property owned and/or controlled by any of the Plaintiff Entities, regardless of whomever holds title and regardless of whether the plaintiffs their agents, servants, employees, and any and all others acting on behalf of or in concert with them are purporting to act for **without first** providing all counsel of record in this action with the terms of any sale, and a copy of the sales contract and any and all documents related to any proposed real estate transaction, including without limitation, a listing of all liens and all expenses proposed to be paid at the specified closing, at least ten (10) business days prior to the date any such contract is signed or executed or any closing is scheduled to occur or any such real property is sold, transferred, conveyed, so that any party and their respective counsel can review the proposed transaction and seek appropriate judicial review and/or judicial relief from the Court if such party objects in any way to the proposed real estate transaction or closing of any said real estate. Any contracts to sell any real property signed by or behalf of plaintiffs, their agents, servants, employees, and any and all others acting on behalf of or in concert with them shall be provided to all counsel of record, i.e., Steven Cohn, Esq., Steven

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Cohn, P.C., counsel to defendants, One Old Country Road, Carle Place, NY 11514; Ronald J. Rosenberg, Esq., Rosenberg, Calica & Birney, LLP, co-counsel for plaintiffs at 100 Garden City Plaza, Garden City, NY 11530, and Alex Spizz, Esq., Todtman nachamie Spizz & Johns, P.C., co-counsel to plaintiffs, 425 Park Avenue, New York, NY 10022, upon execution (the same day the contract is signed);

- [d] selling, encumbering, or otherwise disposing of any assets of the Plaintiff Entities without either the prior written consent of James J. Salters or a prior order of the Court; and
- [e] granting defendants such other and further relief as the Court deems just and proper,

are respectfully referred to Special Referee Frank Schellace for a hearing on any and all issues that may come before him, and he shall hear and report.

Counsel shall appear for such hearing on October 1, 2007 at 9:30 a.m.

Dated

September 21, 2007

Stephen A. Brennan
J.S.C.

ENTERED
SEP 25 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE