

Grand W. Place, LLC v Karras

2008 NY Slip Op 30595(U)

February 28, 2008

Supreme Court, New York County

Docket Number: 0116087/2006

Judge: Shirley W. Kornreich

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

PRESENT: Kornreich
Justice

PART 54

GRAND WEST PLACE

- v -

MAMA KARRAS

INDEX NO. 116087/06
MOTION DATE 12/3/07
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 8 were read on this motion to/for enforce
stipulation

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3
4-6
7-8

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED
MAR 04 2008
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

Dated: 2/28/08

[Signature]
HON. SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

3-4-08
cc

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

-----X

GRAND WEST PLACE, LLC,

Plaintiff,

-against-

MARIA KARRAS a/k/a MARIA KARRAS POLLATOS
and EVAN KARRAS,

Defendants.

-----X

SHIRLEY WERNER KORNREICH, J.

Index No. 116087/06

DECISION & ORDER

FILED
MAR 04 2008
NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff Grand West Plaza, LLC (GWP), a joint venture, moves to direct defendants, or their present or former attorneys: 1) to comply with a stipulation of settlement dated December 13, 2006; 2) to turn over to plaintiff's counsel the proceeds of the sale of a condominium apartment; 3) to pay the proceeds into court; 4) to account for the proceeds; and 5) for a preliminary injunction enjoining defendants and/or their counsel from disposing of the proceeds. Plaintiff, alternatively, moves to strike defendants' answer. In an interim order, dated September 25, 2007, the court granted a preliminary injunction staying defendants and their present and former attorneys from distributing proceeds from the closing and ordering them to place the proceeds in escrow pending a hearing on October 17, 2007.

Factual Background

On January 27, 2004, GWP and defendant Maria Karras Pollatos (Karras) entered into a joint venture agreement (Contract). The Contract provides that Karras, as nominee for GWP, had entered into an agreement to purchase from Hudson Waterfront Company, LLC (Sponsor), a residential condominium, unit 140, in the building located at 240 Riverside Drive, New York,

NY (Unit). The Contract states that GWP had contributed \$56,000.00; that the Unit was to be held in the name of GWP; that it could be conveyed "upon the signature of any of the authorized agents, manager or managing member" of GWP; that the capital of GWP would be used for the purchase, operation, servicing and management of the Unit; that the joint venture would end upon the sale of the Unit; that after the sale, all assets should be liquidated; and that, after payment of all liabilities, the funds were to be distributed at the direction of GWP. The Contract further provided that no interest of any of the joint venturers "shall be sold, assigned, hypothecated or otherwise encumbered without the prior consent of all the other joint venturers first obtained in writing." In their answer to paragraphs five and six of the complaint, defendants admit that plaintiff provided the initial 5% deposit to purchase the Unit and the funds necessary to upgrade the Unit pursuant to an agreement with the Sponsor.

In support of the motion, plaintiff submits affidavits by Tarik Davis, its attorney, and Glyne Hurley, a managing member of GWP. The following additional facts alleged by plaintiff are not in dispute. The complaint in this action and a notice of pendency were filed on October 26, 2006. The Unit was sold at a closing held on December 13, 2006 at the offices of Sacco & Fillas, LLP. Prior to the closing counsel for the parties entered into a stipulation.

Defendants submit the affidavit Mr. Arber, defendants' counsel. He states that the day before the closing, defendants contacted him and he attempted to resolve the notice of pendency. As a result, he and plaintiff's counsel, Mr. Davis, entered into a stipulation, which is annexed to plaintiff's order to show cause. It provided that GWP would cancel the notice of pendency and that, after payment of all expenses related to the sale of the Unit, the remaining proceeds of the sale would be held in escrow by plaintiff's attorney, Mr. Davis. The stipulation further provided

that

The remaining issue in this matter shall be limited to the amount due defendants as payment for expenses incurred as a result of the purchase of the property and the consideration due for the defendants role in the purchase of the property. These amount together shall not be more than \$110,000. [sic]

Sacco & Fillas, LLP (S&F), the attorneys who handled the closing of the Unit for defendants, did not submit an affidavit. However, Richard Godosky, as attorney for S&F, submitted an affidavit in which he avers that S&F received \$186,000 to be held in escrow, which was deposited on October 27, 2006 and December 14, 2006. Annexed to Mr. Godosky's affidavit are copies of the following checks, which were drawn on an S&F attorney trust account:

Date	Payee	Amount
12/15/06	Evan Karras	\$50,000
12/15/06	Maria Karras	\$61,000
12/15/06	Rosa & Chris Karanases	\$3,933
2/20/07	Maria Karras	\$71,167

Mr. Godosky, who admits that he has no knowledge of the facts, merely avers that S&F, his clients, received \$186,000 to be held in escrow and distributed the above-listed checks.

Maria Karras submitted an affidavit in which she states that her family owns a mortgage company which transacted business with S&F for a number of years and that very substantial funds moved back and forth between her family and the law firm for quite some time. Ms. Karras further avers that although she has made a diligent search of her records, "it is impossible for me to tell from the exhibits submitted by said law firm [S&F] what transaction these checks relate to." She does not deny that Mr. Arber acted on defendants' instructions in negotiating the

stipulation. She denies neither that the closing took place nor that defendants received the proceeds of sale from S&F. She does not state whether she attended the closing. The other defendant, Evan Karras, has not submitted an affidavit.

Discussion

CPLR §2104 authorizes a court to enforce a written stipulation relating to any matter in an action that is subscribed by the parties or their attorneys. Where the action has not been terminated by the stipulation, it may be enforced upon a motion. *Teitelbaum Holdings, Ltd. v. Gold*, 48 N.Y.2d 51, 56 (1979); *Wilson v. St. Vincent's Hosp.*, 172 A.D.2d 310 (1st Dept. 1991). A stipulation is a contract and is governed by general contract principles for its interpretation and effect. *Kraker v. Roll*, 100 A.D.2d 424, 436 (2nd Dept. 1984); *Pellino v. Pellino*, 308 A.D.2d 522 (2nd Dept. 2003). The role of the court is to determine the intent and purpose of the parties based on an examination of the record as a whole. *Id.* Where the meaning of a stipulation is uncertain, the proper approach is to hold an evidentiary hearing. *Teitelbaum Holdings, Ltd. v. Gold, supra*, 48 N.Y.2d at 56. A hearing is necessary where the amount of money due to a party is ambiguous. *Kraker v. Roll, supra*, 100 A.D.2d at 437-438.

Applying these principles to the case at bar, the stipulation is enforceable upon motion as the action has not been terminated. The parties expressly reserved the issues of the amount due defendants as payment for expenses incurred as a result of the purchase of the property and the consideration due for the defendants' role in the purchase of the property.

The stipulation unambiguously states that defendants agreed that the proceeds of sale, minus expenses of sale, were to be held in escrow by plaintiff's attorney. However, the amount of money that should have been turned over cannot be ascertained on this record. A hearing is

necessary to determine the amount of proceeds received at the closing and the expenses incurred by defendants in connection with the sale.

The court disagrees with defendants' assertion that plaintiff bears the burden of proving that defendants received the proceeds of the sale at the closing. Those facts are exclusively within the control of defendants and their attorneys. *See, Noce v. Kaufman*, 2 N.Y.2d 347, 353 (1957) ("where an adversary withholds evidence in his possession or control that would be likely to support his version of the case, the strongest inferences may be drawn against him which the opposing evidence in the record permits"). Here, an inference must be drawn that defendants received the proceeds of the sale of the Unit. They did not deny it. Karras only professed ignorance as to whether the checks received from S&F, their closing attorneys, related to the closing of the Unit, while Evan Karras remained silent. Moreover, S&F, through their attorney, admitted placing \$186,000 in escrow. Accordingly, it is

ORDERED that the motion is granted solely to the extent that the stipulation shall be enforced and the court refers the following issues to a Special Referee to hear and determine: 1) an accounting by defendants of the amounts of money received minus the expenses of sale defendants paid in connection with the sale of the Unit on December 13, 2006, plus interest from that date, to be paid by defendants and then held in the escrow account of Tarik Davis, Esq.; and 2) all pre-hearing disclosure issues; and it is further

ORDERED that pending collection by Tarik Davis, Esq., of the funds ordered by the Special Referee to be paid by defendants, the stay contained in the order of this court, dated September 25, 2007, is hereby continued; and it is further

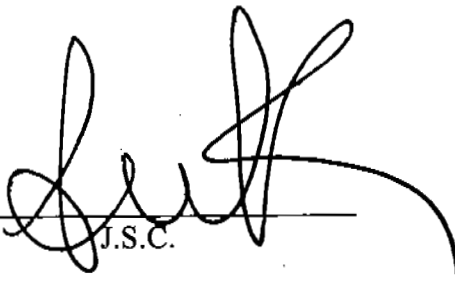
ORDERED that a copy of this order with notice of entry shall be served on the Clerk of

[* 7]
the Reference Part (Room 119) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that the Clerk of the Reference Part shall notify all parties of the date of the hearing and all pre-hearing disclosure conferences.

Dated: February 28, 2008

ENTER:



J.S.C.

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