

Interfaith League of Devotees v Kumaravelan

2008 NY Slip Op 31687(U)

May 29, 2008

Supreme Court, New York County

Docket Number: 0108124/2007

Judge: Jane S. Solomon

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

PRESENT: HON JANE S. SOLOMON

PART 55

Index Number : 108124/2007

INTERFAITH LEAGUE OF DEVOTEES

VS.

KUMARAVELAN, NARK

SEQUENCE NUMBER : # 001

SUMMARY JUDGMENT

stice

INDEX NO.

108124-07

MOTION DATE

3-4-2008

MOTION SEQ. NO.

#001

MOTION CAL. NO.

ad on this motion to/for

PAPERS NUMBERED

1-3

4-7

8-10

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

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

N.B. Counsel to appear at preliminary conference on Monday, June 23, 2008 at 12 Noon in Part 55, Room 432, 60 Centre Street.

FILED
JUN 02 2008

NEW YORK
COUNTY CLERK'S OFFICE

Dated:

5/29/08

HON. JANE S. SOLOMON ^{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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X

INTERFAITH LEAGUE OF DEVOTEES,
a Not-for-Profit Corporation,
by its BOARD OF DIRECTORS,

Plaintiff,

INDEX NO. 108124/2007

-against-

NARK KUMARAVELAN a/k/a NARK PALLIANDY
a/k/a NARK KUMARAVELAN PALLIANDY,

DECISION and ORDER

Defendant.

-----X

JANE S. SOLOMON, J.

Plaintiff, Interfaith League of Devotees, a Not-for-Profit Corporation, by its Board of Directors ("Interfaith"), moves for summary judgment on its complaint for declaratory relief that the residential and commercial leases of its property held by defendant Nark Kumaravelan a/k/a Nark Palliandy a/k/a Nark Kumaravelan Palliandy ("Kumaravelan") are null and void. The motion is denied as follows.

Interfaith is a Type B religious corporation organized under Not-for-Profit Corporation Law ("N-PCL") § 201(b), for the religious and spiritual purposes of furthering the Krishna Consciousness. Interfaith's principal place of business, and its primary asset, is a mixed-use building located at 25 First Avenue in Manhattan (the "Premises"). The Premises consist of a six floor building, with a restaurant on the first floor, a place of worship on the second floor, and two apartments on each of the

remaining four floors. Interfaith's By-Laws provide that the corporation's property would be managed by its Board of Directors (the "Board"), and, except as otherwise provided, decisions about that property require a majority vote at a Board meeting, where a quorum (2/3 of the Board) is present.

Kumaravelan was one of the founders of Interfaith in 1994, and served as its president from March 1998 until January 2005. From 1996 to August 26, 2005, Kumaravelan was married to non-party Susan Bauer ("Bauer"), who is, and was, at all relevant times, a member of the Board.

On or about August 20, 2003, Interfaith entered into a ten year commercial lease with Kumaravelan to rent the entire first floor and basement of the Premises for use as a restaurant. The lease was to run from December 28, 2003, until December 21, 2013, and was executed by Bauer on behalf of Interfaith.

Also on August 20, 2003, Kumaravelan and Interfaith executed a residential lease granting Kumaravelan use of Apartment 6E from January 1, 2004 through January 2, 2014. Section 4 of the residential lease states, in relevant part, "[t]he demised premises shall be used and occupied by Lessee [Kumaravelan] exclusively as a private single family residence . . ." Section 24 provides "Nark Kumaravelan does have the expressed consent of the Interfaith League to sublet or license to other parties, the use of any portion of premises of above

mentioned (#6E) apt. for the entire ten year lease." Bauer executed the residential lease on behalf of Interfaith. She also lived together with Kumaravelan in apartment 6E until sometime in or around 2005 when they divorced (as discussed below).

It is undisputed that Interfaith did not seek the approval of the New York State Supreme Court prior to entering into either lease. In addition, plaintiff alleges that Bauer signed these leases without the Boards's authority, and that, when this was ultimately discovered, the Board issued a formal resolution on September 27, 2005, declaring that the leases were null and void.

In opposition to the motion, however, Paramanantham Hariyogam¹ ("Hariyogam") submits an affidavit stating that Bauer signed both leases with the Board's approval. Hariyogam contends that the minutes proving such approval "were under control of the Board and are presently missing or no longer exist." (Hariyogam Aff. ¶¶ 11, 15) Two former Board members, Ronald Nay² ("Nay") and Ketan Patel³ ("Patel"), also contradict plaintiff's

¹Hariyogam's affidavit states that he is Kumaravelan's cousin, and that he is submitting the affidavit in his cousin's stead because Kumaravelan is presently unavailable and out of the country.

²Nay's affidavit states that he joined Interfaith in 1996 and served as Board secretary from 2000 to 2005.

³Patel's affidavit states that he joined Interfaith in 1997, served as a Board member from 2000 to 2004, and served as Board President in 2005. Plaintiff's Reply papers contain copies of

contention. Specifically, both Nay and Patel assert that they were "present at the Board meetings when these leases were approved" and that Kumaravelan was given the leases in appreciation for work he performed on Interfaith's behalf. They further allege that invalidation of the leases was part of scheme by Bauer and a rival religious organization with which she had affiliated herself -- the International Society for Krishna Consciousness⁴ ("ISKON") -- to gain control of the Board and of the Premises.

In 2005, Kumaravelan and Bauer were in the midst of their divorce and Bauer had an Order of Protection issued against Kumaravelan, a copy of which is submitted as Exhibit F to the motion. Apparently based on this order, Kumaravelan was prevented from occupying Apartment 6E. During this same time, Kumaravelan was removed from the Board. He commenced an illegal lockout proceeding against Interfaith and Bauer regarding Apartment 6E. The parties settled the lockout proceeding via a So Ordered Stipulation of Settlement dated December 13, 2005, a copy of which is provided as Exhibit E to the motion. The Stipulation provides that Kumaravelan would not be restored to

various Board minutes, which provide that Patel became the vice president of Interfaith on August 8, 2003 (Plaintiff's Exhibit A to Reply Aff.).

⁴ISKON, like Interfaith, is a religious/spiritual organization involved in Krishna Consciousness.

occupancy of Apartment 6E, but that he would occupy Apartment 4E instead. It further provides that "[t]he parties will retain all rights of the lease to Apt. 6E and any and all rights and Landlord and/or tenant," and concludes that it "settles this 'lockout' order to show cause with parties retaining their rights regarding any other issues regarding these apartments." This scenario supports the notion that Kumaravelan and Bauer lived in 6E and that the relief plaintiff seeks may be for her benefit.

On or around June 11, 2007, Interfaith commenced this action by filing a Summons and Complaint with the New York County Clerk. Plaintiff contends that the commercial lease and the lease for Apartment 6E were invalid *ab initio* because they were entered into without approval from the Board and the Supreme Court. The Complaint further alleges that Kumaravelan's occupancy of Apartment 4E should also be declared null and void because the Stipulation settling the lockout proceeding was based on the residential lease for Apartment 6E.

A review of the Board minutes submitted on this motion fails to reveal that the Board voted on, or even addressed, the subject of the leases. However, despite their limited evidentiary value due to the failure of the named defendant to submit his own sworn affidavit, the sworn affidavits of Hariyogam, Nay and Patel present a question of fact regarding whether the Board approved Bauer's authority to enter into the

leases, and thus prevent this court from granting summary judgment on this issue.

That aspect of plaintiff's motion seeking a finding that the leases are null and void due to a lack of Supreme Court approval also is denied. Religious Corporation Law § 12(1) and N-PCL § 511(a) require Supreme Court approval for the sale or lease of all or substantially all of the assets of a not-for-profit, such as Interfaith. Interfaith acknowledges its failure to seek Supreme Court approval for the lease transactions, and asserts its intention not to seek retroactive judicial approval in order to validate them (see Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v. Congregation Yetev Lev D'Satmar, Inc., 9 N.Y.3d 297, 301 [2007]).

However, notwithstanding Interfaith's assertions to the contrary, Interfaith has not produced evidence that the commercial leasehold for the first floor and basement, together with the residential leasehold for one of the Premises' eight apartments, constitutes "all or substantially all" of Interfaith's assets. Accordingly, there has been no showing that the lease transactions required Supreme Court approval.

Finally, the court notes the request for *nunc pro tunc* validation of the leases which is contained in the body of defendant's opposition papers. Not only does defendant fail to demonstrate entitlement, statutory or otherwise, to this relief,

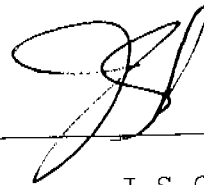
but CPLR § 2215 mandates that a demand for relief by a party other than movant, be properly made by service of a notice of cross-motion (see Myung Chun v North Am. Mtge. Co., 285 A.D.2d 42, 45 [1st Dep't 2001]; CPLR §§ 2214, 2215). If properly made, however, the foregoing narrative indicates he too would not be entitled to a declaration in his favor.

Accordingly, it hereby is

ORDERED that the motion for summary judgment is denied; and it further is

ORDERED that counsel shall appear for a preliminary conference in Part 55, 60 Centre Street, Room 432, New York, NY on Monday, June 23, 2008 at 12:00 Noon.

Dated: May 29, 2008



J.S.C. **HON. JANE S. SOLOMON**

FILED

JUN 02 2008

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