

<b>Reilly v Lacarrere-Meijer</b>
2009 NY Slip Op 31268(U)
June 5, 2009
Supreme Court, New York County
Docket Number: 110749/08
Judge: Marcy S. Friedman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN  
*Justice*

PART 57

*Railly*

INDEX NO. 110749/08

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

- v -

MOTION SEQ. NO. 001

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

Marga Lacarvera-Meijer et al.

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

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

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

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

PAPERS NUMBERED

1

2-9

*Memo of Law M1, M2*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER.**

**FILED**

JUN 12 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/5/09

*M. Friedman*

**MARCY S. FRIEDMAN** 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):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_  
JESSICA B. REILLY, x

*Plaintiff(s)*,

Index No.: 110749/08

- against -

MARGA LACARRERE-MEIJER, MAJA  
PROPERTIES, LLC, EDWARD STEVEN  
FELDMAN, and KRISTOFER LACARRERE,  
*Defendant(s)*.

DECISION/ORDER

**FILED**  
JUN 12 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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x

In this action seeking, among other things, to void an allegedly fraudulent conveyance pursuant to Debtor and Creditor Law § 276 (“DCL”), plaintiff moves for a preliminary injunction enjoining defendants Marga Lacarrere-Meijer (“Meijer”), Maja Properties, LLC (“Maja”), and Edward Feldman from encumbering or transferring property located at 138 Lexington Avenue, New York, during the pendency of this action. By separate motions, defendants Meijer and Maja move to dismiss the complaint against them on the grounds of documentary evidence and failure to state a cause of action. Defendant Feldman cross-moves for summary judgment dismissing the complaint against him.

“[I]n fashioning relief for a creditor under § 279 of the Debtor and Creditor Law” for a fraudulent conveyance, the court “may restrain defendants from transferring property” provided that the standards for a preliminary injunction are met. (Daley v The Related Cos., 179 AD2d 55, 58 [1<sup>st</sup> Dept 1992], as amended 184 AD2d 425. See also AMP Svcs. Ltd. v Walanpatrias Found., 34 AD3d 231 [1<sup>st</sup> Dept 2006].)

It is well settled that a preliminary injunction is a drastic remedy which will be granted “only where the movant shows a likelihood of success on the merits, the potential for irreparable injury if the injunction is not granted and a balance of equities in the movant’s favor (Grant Co. v Srogi, 52 NY2d 496, 517; McLaughlin, Piven, Vogel, Inc. v Nolan & Co., 114 AD2d 165, 172, lv denied 67 NY2d 606).” (Chernoff Diamond & Co. v Fitzmaurice, Inc., 234 AD2d 200, 201 [1<sup>st</sup> Dept 1996].) “The movant has the burden of establishing a right to this equitable remedy.” (McLaughlin, Piven, Vogel, 114 AD2d at 172.)

Plaintiff has made a prima facie showing of the merits of her claims both that she is a person who may have a matured claim against defendant Kristofer Lacarrere (“Lacarrere”), and that he made a fraudulent conveyance to Maja – a limited liability corporation of which 50% is owned by his mother, Meijer – of the property that plaintiff seeks to restrain defendants from further transferring. More particularly, plaintiff, the former companion of Lacarrere and mother of a child with him, makes an uncontradicted showing that Lacarrere’s paternity of the child has been established by a Florida court and that she will be entitled to child support from Lacarrere. Plaintiff also makes an undisputed showing that Lacarrere owned a one-half interest in the subject property and transferred it to Maja within one month after plaintiff obtained a temporary child support order from the Florida court.

Plaintiff further makes a showing of irreparable harm. Specifically, plaintiff shows that Lacarrere has been behind in his child support payments. In opposition, Lacarrere submits no evidence that he has assets other than the subject property to cover his child support arrears. Moreover, “[p]laintiff’s allegations of a deliberate attempt to stave off creditors by putting property in such a form and place that creditors cannot reach it suffice[s] in support of [her ]

claim.” (AMP Svcs. Ltd., 34 at 238-239.) The balance of equities also favors plaintiff, as she demonstrates that Lacarrere may have transferred assets to Maja in an attempt to avoid paying his child support obligations.

The motion of defendants Maja and Meijer should be denied. This is not a case in which documentary evidence establishes the lack of merit of plaintiff’s claims. Defendants submit cancelled checks and other documentation of payments or transfers of funds from Meijer to Lacarrere. However, there are no contemporaneous loan documents reflecting these payments. Indeed, it does not appear that a loan agreement was executed until March 31, 2008 in connection with the transfer of the property from Lacarrere to Maja. The court also rejects defendants’ contention that plaintiff fails to state a claim because she has not obtained a judgment against Lacarrere. A plaintiff need not be judgment creditor in order to bring an action for a fraudulent conveyance. (See DCL 276.)

Defendant Feldman’s cross-motion to dismiss should be granted. The complaint alleges that Feldman, as Lacarrere’s attorney, prepared the documents for the loan and transfer of the property in furtherance of a conspiracy between Lacarrere and Meijer to render Lacarrere judgment-proof. Plaintiff attests that he was acting solely as co-defendants’ attorney. In opposition, plaintiff fails to raise a triable issue of fact as to Feldman’s liability.

It is accordingly hereby ORDERED that plaintiff’s motion is granted to the extent that it is

ORDERED that pending the determination of the instant action, and conditioned on the posting of an undertaking, defendant Maja Properties, LLC is hereby enjoined and restrained from encumbering or transferring the premises located at 138 Lexington Avenue, #1, New York,

NY, 10016; and it is further

ORDERED that plaintiff shall post an undertaking by cash or surety bond in the amount of \$72,500.00 within 5 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the motion of defendants Marga Lacarrere-Meijer and Maja Properties, LLC is denied; and it is further

ORDERED that the cross-motion of Edward Feldman is granted to the extent that the complaint is dismissed against him, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the remaining claims are severed and shall continue; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in Part 57 (Room 328, 80 Centre St.) on Thursday, July 23, 2009, at 11:00 a.m.

This constitutes the decision and order of the court.

Dated: New York, New York  
June 5, 2009

  
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MARCY FRIEDMAN, J.S.C.

**FILED**  
JUN 12 2009  
COUNTY CLERK'S OFFICE  
NEW YORK