

Matter of Firestone v Scomello

2010 NY Slip Op 33292(U)

November 23, 2010

Sup Ct, Suffolk County

Docket Number: 1146/2009

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY



PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

In the Matter of the Application of

ARNOLD B. FIRESTONE

Petitioner,

-against-

ADELINE SCOMELLO,

Respondent.

TO ENFORCE THE LIEN OF JUDGMENT
AGAINST EXEMPT HOMESTEAD OF A
VALUE IN EXCESS OF \$50,000.00

ORIG. RETURN DATE: SEPTEMBER 23, 2010
FINAL SUBMISSION DATE: SEPTEMBER 23, 2010
MTN. SEQ. #: 004
MOTION: MD

PETITIONER'S ATTORNEYS:
LAW OFFICE OF MARSHALL M. STERN, P.C.
17 CARDIFF COURT
HUNTINGTON STATION, NEW YORK 11746
631-427-0101

SELF-REPRESENTED RESPONDENT:
ADELINE SCOMELLO
21 WOODBINE STREET
CORAM, NEW YORK 11727
631-331-3121

**ATTORNEYS FOR NON-PARTY
SUFFOLK COUNTY SHERIFF:**
CHRISTINE MALAFI, ESQ.
BY: LAWRENCE J. NATALIE, ESQ.
ASSISTANT COUNTY ATTORNEY
H. LEE DENNISON BUILDING
P.O. BOX 6100
HAUPPAUGE, NEW YORK 11788
631-853-4049

**ATTORNEYS FOR NON-PARTY
LJ EQUITIES, LLC:**
SOLOMON & HASKELL
150 MOTOR PARKWAY - SUITE 401
HAUPPAUGE, NEW YORK 11788
631-278-3811

Upon the following papers numbered 1 to 8 read on this motion _____
FOR CONTEMPT AND OTHER RELIEF _____.

Order to Show Case and supporting papers 1-3; Affirmation in Opposition 4; Affirmation
in Opposition and supporting papers 5, 6; Affidavit and Affirmation in Opposition 7, 8; it is,

ORDERED that this motion by respondent ADELINE SCOMELLO (“respondent”) for an Order:

(1) pursuant to CPLR 5104, finding a contempt of court for each and every party who violated the alleged permanent injunction Orders of this Court dated September 29, 2009 and April 6, 2010, and the Order of Justice William Rebolini dated October 29, 2010;

(2) pursuant to CPLR 5238 and 5239, enjoining any transfer of title and deed of respondent for the premises at 21 Woodbine Street, Coram, New York (“Premises”), either:

(a) from respondent to a Sheriff’s deed; and/or

(b) from a Sheriff’s deed to LJ Equities, LLC or any other corporation, person, or agent;

(3) pursuant to CPLR 5238 and 5239, vacating any Sheriff’s deed and restoring the title and deed for the Premises to respondent;

(4) pursuant to CPLR 5238 and 5239, setting aside any sale of the Premises and restoring the title and deed for the Premises to respondent;

(5) pursuant to CPLR 5238 and 5239, ordering the Suffolk County Sheriff, petitioner, petitioner’s attorney, and LJ Equities, LLC’s attorney to produce any and all documents, judgments, liens, levies, and Court Orders upon which an auction and/or Sheriff’s deed and/or sale was promulgated; and

(6) pursuant to CPLR 5240, granting an order of protection protecting the Premises from being sold illegally and contemptuously,

is hereby **DENIED** in its entirety for the reasons set forth hereinafter. The Court has received opposition to the instant application from petitioner, non-party Suffolk County Sheriff, and non-party LJ Equities, LLC, the purchaser of the Premises at a Sheriff’s sale.

By Order dated September 29, 2009, this Court granted a petition by ARNOLD B. FIRESTONE to direct the Sheriff of Suffolk County to sell the

Premises, pursuant to CPLR 5206 (e) and 5236. The Court held therein that the proceeds from the sale in an amount not exceeding fifty thousand (\$50,000.00) dollars shall be paid to the respondent/judgment debtor, pursuant to CPLR 5206. The judgment in favor of petitioner and against respondent entered on June 7, 1990, in the amount of \$3,867.75, together with the costs and disbursements of the proceeding and all Sheriff's fees, was adjudged a lien upon the surplus of the sale.

Thereafter, respondent filed an application, by Order to Show Cause, for a stay of the sale pending appeal, pursuant to CPLR 5519. By Order dated October 29, 2009 (Rebolini, J.), the Court declined to grant respondent a temporary restraining order staying the sale of her homestead pending the determination of that motion and her appeal. By Order dated April 6, 2010, this Court granted respondent's motion for a stay pending her appeal, but upon the following terms and conditions: (a) that respondent pays use and occupancy to petitioner in the amount of \$2,000.00 per month, during the pendency of her appeal, retroactive to October 26, 2009; and (b) that within seven (7) days of service of a copy of that Order upon respondent with notice of entry, respondent posts an undertaking to secure the petitioner's interest against waste during the pendency of any appeal, in the sum of \$417,808.00, the approximate value of the property. The Court held that if respondent failed to satisfy either or both of the aforementioned conditions, a stay would not issue.

On June 15, 2010, pursuant to this Court's Order of September 29, 2009, the Suffolk County Sheriff sold the Premises to non-party LJ Equities, LLC. Respondent informs the Court that she received a letter from the Suffolk County Sheriff, dated August 19, 2010, which enclosed a check in the amount of \$107,479.02 representing respondent's \$50,000 homestead exemption (see CPLR 5206 [e]), plus the surplus monies from the sale after the judgment was paid. Respondent further informs the Court that by "Notice of Rejection" dated August 27, 2010, she returned the original check to the Suffolk County Sheriff, unsigned, "in compliance and respect for all of the Supreme Court Orders."

Respondent has now filed this latest application on September 9, 2010, seeking the relief described hereinabove. After a hearing held on even date, the Court (Costello, J.) declined to grant respondent a temporary restraining order. At the hearing, respondent admitted that she had not complied with either condition for a stay set forth in this Court's Order dated April 6, 2010, and had not perfected her appeal.

Again, respondent attacks the validity of the underlying judgment, which has been judicially reviewed and upheld numerous times, and also challenges the procedures utilized for the sale of the Premises. Respondent seeks to hold petitioner Arnold B. Firestone, Esq., petitioner's attorney Marshall M. Stern, Esq, Suffolk County Sheriff Vincent DeMarco, and LJ Equities, LLC's attorney Debra J. Haskell, Esq., in contempt of court for violating the "permanent injunctions" set forth in the Orders of this Court dated September 29, 2009 and April 6, 2010, and the Order of Justice William Rebolini dated October 29, 2010.

Initially, the Court finds that the branch of respondent's motion seeking contempt is procedurally defective, as the motion does not contain the mandatory statutory warnings on its face in compliance with Judiciary Law § 756. In any event, a review of the aforementioned Orders reveals that none contain permanent injunctions, and therefore no party can be held in contempt for violating injunctions that do not exist. Moreover, as discussed, respondent admitted that she had not complied with the conditions for a stay set forth in the Order of April 6, 2010.

The Court has received opposition to the instant application from petitioner, non-party Suffolk County Sheriff, and non-party LJ Equities, LLC. Notably, LJ Equities, LLC indicates that after learning of the protracted and tortured history of this matter "over a few thousand dollars in legal fees," it offered numerous times to return the Premises to respondent in return for being made whole, i.e., a return of the amount paid for the Premises plus any ancillary costs incurred in connection therewith. LJ Equities, LLC alleges that respondent has "steadfastly refused."

Upon yet another review of this record, the Court finds no basis to hold any party in contempt of any prior Orders, or to vacate the Sheriff's deed, or to set aside the Sheriff's sale held on June 15, 2010, or to enjoin the transfer of title to the Premises, or to restore title to the Premises to respondent, or to direct the production of documents sought by respondent,¹ or to grant an "order of

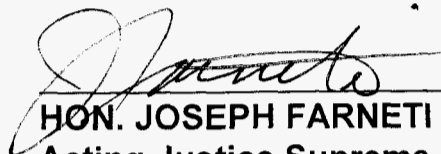
¹ By her voluminous submissions, both current and prior, the Court is satisfied that respondent is already in possession of all relevant documents herein, from the judgment entered against her in 1990, through the letter from the Sheriff's Department, dated August 19, 2010, which enclosed a check made payable to respondent in the amount of \$107,479.02.

protection” protecting the Premises from being sold “illegally and contemptuously.”

Accordingly, respondent's motion is **DENIED** in its entirety.

The foregoing constitutes the decision and Order of the Court.

Dated: November 23, 2010


HON. JOSEPH FARNETI
Acting Justice Supreme Court

FINAL DISPOSITION NON-FINAL DISPOSITION