

<b>QIC, LLC v Steinbronn</b>
2010 NY Slip Op 33747(U)
December 9, 2010
Sup Ct, Queens County
Docket Number: 20210/10
Judge: Janice A. Taylor
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15  
Justice

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QIC, LLC,

Petitioner(s),

Index No.:20210/10

Motion Date:10/12/10

- against -

Motion Cal. No.: 24

Motion Seq. No: 1

RICHARD A. STEINBRONN,

Respondent(s).

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The following papers numbered 1 - 13 read on this motion by the petitioner for an order discharging the Notice of Pendency; and a cross-motion by the respondent for an order directing the petitioner to exchange discovery.

	<u>Papers</u> <u>Numbered</u>
Order to Show Cause-Affirmation-Exhibits-Service.....	1 - 4
Notice of Cross-Motion-Affirmation-Exhibits-Service..	5 - 8
Affirmation in Further Support-Exhibits-Service.....	9 - 11
Memorandum of Law-Service.....	12 - 13

Upon the foregoing papers it is **ORDERED** that the motion and cross-motion are considered together and decided as follows:

This is a special proceeding seeking the discharge of a Notice of Pendency filed by the respondent on or about July 9, 2010. This action was commenced on August 10, 2010 by filing of the instant Order to Show Cause with petition.

It is undisputed that the parties in this action are also parties to an action brought in the Superior Court of the District of Columbia ("Superior Court action"). In that action, respondent Richard A. Steinbronn's ("Steinbronn") complaint alleges, *inter*

*alia*<sup>1</sup>, wrongful termination, theft, tortious interference, conversion and invasion of privacy by several defendants, including petitioner QIC, LLC. On or about July 10, 2010, Steinbronn filed a Notice of Pendency against petitioner's property, located at 8-33 40<sup>th</sup> Avenue in the County of Queens, City and State of New York, with the Queens County Clerk.

It is first noted that respondent's cross-motion for an order compelling the exchange of discovery in the Superior Court action must be denied as this court has no authority over disclosure in that case. It is also noted that respondent has failed to allege that any discovery demands have been served in this special proceeding. Accordingly, respondent's cross-motion is denied in its entirety.

Petitioner now moves, pursuant to CPLR §6514, to cancel the filed Notice of Pendency and for sanctions against the respondent. CPLR §6501 mandates that a Notice of Pendency may only be filed in an action of the court of this state or of the United States where the judgment demanded would affect title to, or the possession, use or enjoyment of real property (See, *CPLR §6501; American Automobile Insurance Company of St. Louis v. Sansone, et. al*, 206 Ad2d 445 [2d Dept. 1994]). In consideration of a motion to dismiss a *lis pendens*, the court is limited to a review of the pleadings on their face to determine whether an action falls within the scope of CPLR §6501 (See, *5303 Realty Corp. v. O & Y Equity Corp., et al*, 64 NY2d 313 [1984]).

By order dated July 7, 2010, the Honorable A. Franklin Burgess, Jr., Judge of the Superior Court of the District of Columbia dismissed all of Steinbronn's claims contained in "Count One" of the complaint as well as Steinbronn's claims for theft and tortious interference. Judge Burgess ruled that Steinbronn could proceed with this claims for conversion and invasion of privacy. It is well-settled that the filing of a *lis pendens* is inappropriate where the underlying action lies in tort and is not an action to determine a claim of title to property (See, *5303 Realty Corp., supra; In re Sakow*, 97 NY2d 436 [2002]); *Weidel v. Kaba Realty, LLC, et al.*, 36 Ad3d 796 [2d Dept. 2007]).

In the instant action, it is clear that plaintiff's claims for conversion and invasion of property do not seek a judgment which would affect title to the petitioner's property. Accordingly,

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<sup>1</sup>It is noted that the copy of the complaint filed with the Superior Court of the District of Columbia annexed to this motion has been redacted. Thus, this court cannot ascertain what allegations were contained in "Count 1" of the complaint. However, as all of these allegations were dismissed by Judge Burgess, they are not relevant to this motion.

petitioner's application, pursuant to CPLR §6514, for cancellation of the Notice of Pendency is granted. It is,

**ORDERED**, that the Queens County Clerk is directed to cancel the Notice of Pendency, filed on or about July 10, 2010, affecting title to the property located at 8-33 40<sup>th</sup> Avenue in the County of Queens, City and State of New York.

That portion of petitioner's application which seeks reimbursement of costs and sanctions against the respondent are denied as the movant has failed to prove that this relief is warranted. The foregoing constitutes the decision, judgment and order of this court.

Dated: December 9, 2010

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**JANICE A. TAYLOR, J.S.C.**

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