

**Watson v Lampkin**

2011 NY Slip Op 30050(U)

January 6, 2011

Supreme Court, New York County

Docket Number: 114873/2008

Judge: Saliann Scarpulla

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

PRESENT: HON. SALIANN SCARPULLA  
*Justice*

PART 19

AUDREY WATSON

INDEX NO. 114873/2008

- v -

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

VINCENT SOLLAZZO LAMPKIN,  
SONBAR PROPERTIES, INC.

MOTION SEQ. NO. 004

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

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for leave to intervene and cross motion to amend.

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

PAPERS NUMBERED

1

Answering Affidavits — Exhibits (Memo) \_\_\_\_\_

Replying Affidavits (Reply Memo) \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers it is

ORDERED that this motion and cross motion are decided in accordance with the accompanying memorandum decision, *which disposes of Motion sequences no. 004 and 006.*

This constitutes the Decision and Order of the Court.

**FILED**

JAN 11 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/11/11

*Saliann Scarpulla*  
Saliann Scarpulla, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X  
AUDREY WATSON,

Plaintiff,

Index No.:114873/2008

- against-

**FILED**  
DECISION AND ORDER

VINCENT SOLLAZZO LAMPKIN and  
SONBAR PROPERTIES, INC.,

JAN 11 2011

Defendants.  
----- X

NEW YORK  
COUNTY CLERK'S OFFICE

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HON. SALIANN SCARPULLA, J.:

In this action involving a dispute as to ownership of real property between family members, plaintiff Audrey Watson ("Watson") moves for an order, pursuant to CPLR 6401, appointing her as receiver of 101 West 136th Street, New York, N.Y. (the "Property"). The Estate (the "Estate") of Lillian Lampkin ("Lillian") moves for leave to intervene pursuant to CPLR 1001(a). Defendant Vincent Sollazzo Lampkin ("Vincent") cross-moves to dismiss Watson's complaint based upon the failure to supply a bill of particulars, for an order quashing Watson's subpoena and for leave to serve an amended answer. The Court issued an interim order dated July 7, 2010 (the "Interim Order"), which resolved the discovery aspects of Vincent's cross-motion by directing him to serve

a detailed amended demand for a bill of particulars and directed him to respond to Watson's subpoena. The motions and the remainder of the cross-motion are consolidated for disposition and decided as noted below.

### **Parties' Allegations**

Watson contends that she and Vincent have owned the Property since October 27, 1998, and seeks a partition of the Property. She further alleges that Vincent has been managing the Property on his own since 1998, that he improperly diverted rents and failed to adequately maintain the Property.

Vincent contends that Ross Lampkin ("Ross"), Vincent's brother, previously owned the Property through a corporate entity, 101 W. 136 St. Realty, Inc. (the "Realty Company"). Vincent further contends that Taji Anderson ("Taji"), Lillian's niece, the transferor of the Property to Watson and Vincent, may not have properly obtained ownership of the Property from the Realty Company. Consequently, Vincent asserts that Taji's transfer of the Property to Watson and Vincent may not have been legitimate.

The Estate alleges that, after Ross's death in 1991, Lillian, as president of the Realty Company, transferred the Property to her niece, Taji, for no consideration, but that the Realty Company had previously been dissolved in 1988 for non-payment of taxes. The Estate contends that, because Lillian inherited all the stock of the Realty Company after Ross's death, the transfer of the Property to Taji was improper. It asserts that its interest in the Property may be adversely affected unless it is joined as a party to this action.

[\* 4]

The Court (Lehner, J.), by order dated October 2, 2009 (the “October 2009 Order”), denied Watson’s motion for summary judgment and for the appointment of a receiver without prejudice, denied Lillian’s motion for leave to intervene without prejudice to renew upon proof that either she was capable or had a guardian appointed for her and referred the matter of the ownership interest in the Property and an accounting to a referee to hear and report.

## **Discussion**

### **Appointment of a Receiver**

In the October 2009 Order, the Court denied appointment of a receiver, unless Vincent failed to obtain insurance coverage for the Property within ten days. The lack of insurance coverage would have had an impact on the Property, in the event that there were potential claims against the Property without insurance coverage. Vincent presented proof that he has obtained \$1 million insurance coverage, effective as of October 9, 2010. Since there is now protection against harm in the form of insurance coverage, the drastic remedy of appointing a receiver is not warranted. *Matter of Armienti & Brooks*, 309 A.D.2d 659 (1st Dept 2003). The court must exercise extreme caution before making such an appointment. *Matter of Armienti & Brooks*, 309 A.D.2d at 661; *Natoli v. Milazzo*, 35 A.D.3d 823 (2d Dept 2006). Accordingly, Watson’s motion for appointment of a receiver is denied.

### **Motion to Intervention**

The Estate seeks leave to intervene as a party to protect its interest in the Property. The relationship between Watson, Lillian and Vincent is familial and also involves the ownership and the proper management of the Property. Lillian's conduct as president of the Realty Company and the Estate's interest in the Property, which is asserted to be worth \$2 million, are at issue in this action. The transfer of the Property to Taji for no consideration raises concerns about the appropriateness of Lillian's conduct. Therefore, joinder of the Estate would assist in the resolution of all parties' interest in determination in the ownership of the Property. *See Merchants Bank of N.Y. v. Rosenberg*, 31 A.D.3d 507 (2d Dept 2006), *lv dismissed*, 7 N.Y.3d 922 (2006). The action is at a relatively early stage, so Watson will be not be prejudiced by delay. Accordingly, the Estate's motion for leave to intervene as a party is granted.

### **Motion to Amend**

Vincent seeks leave to serve an amended answer. Watson has opposed the portion of Vincent's cross-motion that seeks amendment, contending that the proposed amended answer lacks merit. She has not identified any prejudice or surprise from the proposed amendment.

Pursuant to CPLR 3025, leave to amend pleadings is freely granted in the absence of prejudice or surprise. *Fahey .v County of Ontario*, 44 N.Y.2d 934 (1978); *Murray v. City of New York*, 51 A.D.3d 502 (1st Dept 2008), *lv denied* 11N.Y.3d 703 (2008).

Watson alleges that, among other defects, the proposed amended answer lacks evidentiary

[\* 6]

support. A party objecting to such amendment must show prejudice or that the amendment is palpably insufficient. *Pasalic v. O'Sullivan*, 294 A.D.2d 103, 104 (1st Dept 2002). The claimed lack of evidentiary support does not establish that the proposed amendment "is clearly without merit." *Atherton v. 21 E. 92nd St. Corp.*, 149 A.D.2d 354, 356 (1st Dept 1989). Watson has not established either prejudice or the palpable insufficiency of Vincent's proposed amended answer, and, therefore, the portion of Vincent's cross-motion seeking leave to serve an amended answer is granted.

In accordance with the foregoing, it is

ORDERED that plaintiff Audrey Watson's motion for leave to appoint a receiver pursuant to CPLR 6401 is denied; and it is further

ORDERED that the motion of the Estate of Lillian Lampkin for leave to intervene as a party is granted and that said party is permitted to intervene as a party defendant; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding the Estate of Lillian Lampkin as a party and listing said party as the last named defendant in the caption; and it is further

ORDERED that the Estate of Lillian Lampkin serve its answer upon the attorneys for the plaintiff and the defendants, or move with respect to the complaint in the above-entitled action within 20 days from service of a copy of this order with notice of entry; and it is further

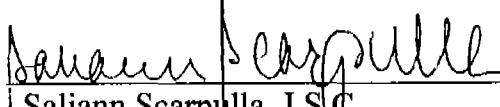
7  
ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that the portion of Vincent Sollazzo Lampkin's cross-motion that seeks leave to amend his answer is granted and the amended answer in the form annexed to said cross-motion is deemed served upon service of a copy of this order with notice of entry.

This constitutes the Decision and Order of the Court.

Dated: New York, New York  
January 6, 2011

ENTER:

  
Saliann Scarpulla, J.S.C.

**FILED**  
JAN 11 2011  
NEW YORK  
COUNTY CLERK'S OFFICE