

**Dormitory Auth. of the State of N.Y. v M.T.P. 59 St.,
LLC**

2011 NY Slip Op 31548(U)

May 17, 2011

Sup Ct, NY County

Docket Number: 103416-11

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE
Justice

PART 10

Dormitory Authority

INDEX NO. 103416/11

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

UTP 59

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

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

*Motion decided in accordance with
annexed decision + order.*

FILED

MAY 19 2011

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: 5/17/11

J. GISCHE
HON. JUDITH J. GISCHE *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 10**

-----x
Dormitory Authority of the State of
New York,

Plaintiff (s),

-against-

DECISION/ORDER
Index No.: 103416-11
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische JSC

M.T.P. 59 St., LLC, MTP 3330 Broadway
Corp., MTP 57, LLC, MTP Operating Corp.,
29 Operating Corp., MTP Global Group, LLC.,
Chelsea MTP Operating, LLC, David Vital,
Pernilla Andren-Avital, and "John Doe
Entities" 1 through 20,

Defendant (s).

FILED
MAY 19 2011

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-----x
*Recitation, as required by CPLR 2219 [a], of the papers considered in review of this
(these) motion(s):*

Papers	Numbered
DASNY OSC (attachment) w/CSVIII affirm, exhs, AOS	1

Upon the foregoing papers, the decision and order of the court is as follows:

This is an action to set aside fraudulent conveyances by M.T.P. 59 St., LLC ("MTP 59") and to impose liability for a judgment previously obtained against MTP 59 on the other named defendants. Presently before the court is plaintiff's ("DASNY") motion, brought on by order to show cause, for an order of attachment against defendants David Avital ("Avital") and Pernilla Andren-Avital ("Andren"). Pursuant to this court's order dated March 29, 2011, the court granted DASNY a temporary restraining order, restraining Avital and Andren from transferring or paying any of their assets (Order, March 29, 2011, Gische J.) ("TRO"). This motion is before the court on default, although there is due proof of service on each defendant in the manner

directed by the court.

On a motion for an order of attachment, the plaintiff must show, by affidavit and other evidence that: 1) there is a cause of action, 2) it is probable that the plaintiff will succeed on the merits, 3) one or more grounds for attachment provided in section 6201 exist, and 4) the amount demanded from the defendant exceeds all counterclaims known to the plaintiff. Pursuant to CPLR § 6201 an order of attachment may be granted when: "1) the defendant is a non-domiciliary residing without the state, OR is a foreign corporation not qualified to do business in the state; OR ... 3) the defendant, with the intent to defraud its creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed or, or encumbered or secreted property, or removed it from the state or is about to do any of these acts; ..."

Plaintiff obtained a money judgment against MTP 59 in a separate action that was also assigned to this court. In its decision after trial, this court directed entry of a money judgment against MTP 59 in the principal amount of \$320,000, plus interest and costs. That judgment has not been paid. Plaintiff contends that MTP 59, under Avital's direction, is transferring assets to related entities and/or individuals named as defendants in this action. Therefore, plaintiff seeks an order enjoining Avital and Andren from making any further transfers, payments, etc., because such actions are thwarting plaintiff's ability to satisfy the judgment.

Plaintiff has pleaded facts to support an order of attachment under CPLR § 6201 [1] against Avital and Andren because neither Avital nor Andren are residents of the State of New York. They both live in New Jersey. Because Avital is also the controlling member of the judgment/debtor (Avital), plaintiff has also pleaded facts to support an

order of attachment under CPLR § 6201 [3] as against Avital. There are, however, no facts to support a order of attachment under CPLR § 6201 [3] as against Andren. Consequently, the motion is granted as to both these defendants, but on slightly different bases as to each one of them. Since plaintiff is a public benefit corporation, the bond requirement is not applicable (Dormitory Authority Act, N.Y. Public Auth. Law §§ 1675 - 1694).

The court order granting plaintiff's motion follows. However, if a more complete Order of Attachment is required, plaintiff may settle same directly to the court on three (3) days' notice to Avital and Andren.

In accordance with the foregoing,

It is hereby

ORDERED that the motion by the Dormitory Authority of the State of New York (DASNY) is granted on default, despite due proof of service filed with the court; and it is further

ORDERED that pending further order or Judgment of the court, defendants David Avital and Pernilla Andren-Avital are hereby restrained and prohibited from transferring, encumbering, or paying any assets of defendants, or any personal property in which said defendants have an interest, or any debt owed to said defendants to the extent of \$387,143.36; and it is further

ORDERED that because plaintiff is a public benefit corporation duly organized and existing under the Dormitory Authority Act, N.Y. Public Auth. Law §§ 1675 - 1694, it is

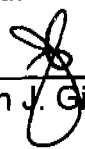
exempt from having to post a bond as otherwise required under CPLR § 2512; and it is further

ORDERED that if a more complete Order of Attachment is required, plaintiff may
psettle same directly to the court on three (3) days' notice to Avital and Andren.

ORDERED that any relief otherwise requested but not expressly addressed is
hereby denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
May 17, 2011

So Ordered:


Hon. Judith J. Gische, JSC

FILED
MAY 19 2011
NEW YORK
COUNTY CLERK'S OFFICE