

**Borah, Goldstein, Altschuler, Nahins & Goidel, P.C.
v Trustman**

2011 NY Slip Op 34112(U)

June 30, 2011

Sup Ct, New York County

Docket Number: 650082/2011

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN
J.S.C.
Justice

PART 11

Borah, Golobstein,
Altschuler, Et Al.

INDEX NO. 650082/11
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

Alan Trusman, Et Al.

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

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the annexed decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: June 30, 2011

[Signature]
HON. JOAN A. MADDEN
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
BORAH, GOLDSTEIN, ALTSCHULER, NAHINS &
GOIDEL, P.C.,

INDEX NO. 650082/11

Plaintiff,

-against-

ALAN TRUSTMAN, CALEB URRY and
64-68 WOOSTER LLC,

Defendants.

-----X
JOAN A. MADDEN, J.:

In this stakeholder’s interpleader action, plaintiff law firm (the “Borah firm”) moves for an order staying or tolling the release of the monies it is holding in escrow, pending the determination of the rights of defendants Caleb Urry and Alan Trustman to said monies. Plaintiff also moves for an order compelling defendant Trustman to produce such proof as he may have of the purchase and installation of improvements in the 2nd floor loft in the building known as 64-68 Wooster Street, New York, New York. Defendant Urry opposes the motion and cross-moves for an order pursuant to CPLR 3211 dismissing the complaint and an order directing plaintiff to disburse the remainder of the monies to him. Defendant Trustman does not oppose the motion to the extent plaintiff seeks a stay of its obligation to disburse monies held in escrow; Trustman agrees that a stay should be imposed pending the Housing Court’s determination of his claims in the landlord/tenant case. Defendant 64-68 Wooster LLC (“Wooster”) submits no papers in response to the motion.

The following facts are not disputed unless otherwise noted. Defendant Wooster is the owner of loft premises located at 64-68 Wooster Street. In or about December 2007, Wooster’s

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predecessor-in-interest commenced a holdover proceeding in Housing Court, naming Trustman as respondent/tenant and Caleb Urry and Justine A. Urry as respondents/undertenants. The petition alleged that Trustman was the tenant of record and not using the apartment as his primary residence. Trustman did not appear and defaulted. Caleb Urry appeared and answered, asserting, *inter alia*, that Trustman was not the tenant, and he was entitled to succession rights as the son of Michelle Urry, the legal tenant under the Loft Law, who passed away in October 2006.

After several years of litigation, including discovery, in March 2010, Wooster and Caleb Urry executed a Stipulation of Settlement, which provided, *inter alia*, for Urry to vacate and surrender possession of the premises, in exchange for the receipt of a “buy-out” payment totaling \$710,000.¹ The Borah firm executed the stipulation both as attorney for Wooster and as escrow agent for the purposes of holding the “buy-out amount” pending Urry’s compliance with his obligations under the stipulation, including his vacating the premises on or before January 11, 2011.

Notwithstanding Trustman’s default, the stipulation included a factual recitation that “Alan Trustman vacated the Premises on or about November 1, 2006, and did not resume occupancy prior to the service of the predicate notice in this proceeding, which service occurred on or about October 19, 2007.” The stipulation also stated that “Caleb Urry (the ‘Respondent’) appeared in this proceeding and interposed an answer claiming that he was entitled to statutory protection in the Premises due to succession, as such is defined by the Loft Board’s Rules and

¹The parties executed a separate Supplement to the Stipulation of Settlement, stating “[t]hat in addition to the \$710,000.00 reflected in Paragraph 2 of the Stipulation, Petitioner [Wooster] will give Respondent [Caleb Urry] an additional \$25,000.00 in gifts to be paid today and January 3, 2011.”

Regulations.”

The stipulation provided that “the parties to this Stipulation have resolved that petitioner will purchase Respondent’s occupancy rights and improvements and recover vacant possession of the premises.” With respect to the pending holdover proceeding, the stipulation provided that:

upon the payment of the first \$175,000.00 of the Buy-Out Amount, this proceeding may be restored to the Court’s calendar and:

a. A Final Judgment of Possession shall be entered against Respondent [Caleb Urry] with warrant to issue forthwith and execution stayed up to and including the Vacate Date; the warrant may not be served unless and until the remainder of the Buy-Out Amount is escrowed or paid to Respondent if surrender is per Paragraph 5(b) or 5(c), *supra*;

b. An inquest be had with respect to Alan Trustman and Justine A. Urry’s a/k/a Justine Rosenthal’s possessory rights, if any;

c. In the context of the inquest, Respondent agrees to appear and testify truthfully with respect to the rights and occupancies of Alan Trustman and Justine A. Urry and to provide such documentary proof as he has concerning Alan Trustman’s residences;

d. That respondent states that the truths to which he will testify are as follows:

- (I) Alan Trustman vacated the Premises in or about November, 2006, and has never resumed occupancy of the Premises;
- (ii) That Alan Trustman has resided in Florida since vacating the Premises;
- (iii) That Justine A. Urry is Respondent’s wife and has only occupied the Premises as of November 1, 2006, having moved into the Premises on or about that date and having vacated her apartment at 88 Lexington Avenue as of that date;
- (iv) That since taking occupancy, Justice A. Urry has primarily resided in Washington, D.C. for business purposes.

In accordance with the foregoing provisions, in or about July 2010, Wooster made a motion seeking an order entering judgment against Caleb Urry, and an order restoring the case to the calendar for an inquest against Trustman and Justine Urry. Although Trustman had not previously appeared in the proceeding, he appeared in opposition to Wooster’s motion, by making a cross-motion to vacate his default and for leave to serve a late answer, including cross-

claims against co-respondent Caleb Urry. The cross-motion also sought to stay any relief sought by Wooster with respect to Caleb or Justine Urry in accordance with any stipulation of settlement, pending the determination of Trustman's defenses in the proceeding, and for leave to conduct discovery. The parties have advised that neither the motion nor the cross-motion has been decided as of the date of this decision.

On December 20, 2010, Trustman's counsel wrote a letter to Wooster's counsel, plaintiff herein, "once again advis[ing] of Trustman's claim to the Rights and Fixtures in, to and at the Premises, as well as his rights and interest in and to any and all payments made, pursuant to Multiple Dwelling Law §§ 286(6) and (12), in exchange for such Rights and Fixtures, including but in no case limited to, the 'Buy Out Amount' under the Stipulation, as to which Caleb Urry had no Rights or Fixtures to 'sell.'" The letter also "advised that the 'Buy Out Amount' under the Stipulation, and/or any and all remaining portion thereof, should continue to be held by the Borah Firm, and should not be released to Caleb Urry (notwithstanding any demand may by Caleb Urry for same, or any purported 'surrender' of the Premises and Fixtures by Urry), or any third party, unless and until Trustman's claim to the Rights and Fixtures in, to and at the Premises have been determined by a court of competent jurisdiction." Moreover, "escrow agent" is "further advised that, in the event that the Borah Firm shall hereafter release the 'Buy Out Amount' under the Stipulation, and/or any portion thereof, Trustman intends to hold Escrow Agent fully liable in damages for any and all such actions taken that are contrary to his interest in the Rights and Fixtures in, to and at the Premises, irrespective of whether such actions are claimed to have been authorized by the Stipulation."

On or about January 5, 2011, the Borah firm, as escrow agent, moved by order to show cause for leave to intervene in the holdover proceeding for the limited purpose of seeking a determination as to its obligation to disperse monies pursuant to the stipulation, and alternatively to provide Wooster and the escrow agent with sufficient time to commence an interpleader action in Supreme Court to enable a determination of claims to the escrowed funds. The Housing Court denied that motion by a short form order dated January 10, 2011, stating in its entirety, as follows: "Petitioner's motion is denied without prejudice to the petitioner's right to commence an interpleader proceeding in Supreme Court."

On or about January 12, 2011, the Borah firm, as escrow agent, commenced the instant interpleader action by securing an order to show cause, seeking to stay or toll the release of the monies held in escrow, pending a determination of the rights of defendants Urry and Trustman to said monies, and to compel Trustman to produce proof of purchase and installation of improvements in the premises. Defendant Trustman agrees that the disbursement of the monies held in escrow pursuant to the stipulation of settlement, should be stayed pending the Housing Court's determination of his claims in the landlord/tenant proceeding. Defendant Urry opposes the motion and cross-moves to dismiss the complaint. Defendant Wooster takes no position with respect to the motion.

An interpleader action is equitable in nature. See Manufacturers & Traders Trust Co. v. Reliable Insurance Co., 8 NY3d 583, 588 (2007). The interpleader statute, CPLR 1006, provides in pertinent part, as follows: "A stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or

more claimants.” CPLR 1006(f). As explained in the Practice Commentaries to CPLR 1006, “[i]nterpleader enables a person facing multiple liability as a result of conflicting claims to join the adverse claimants in one action for a determination of all the parties’ rights and obligations.” Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C1006:1 at 7; see Mahon, Mahon, Kerins & O’Brien, LLC v. Moskoff, ___ AD3d ___, 2011 WL 2279629 (2nd Dept 2011); Credito Italiano, New York Branch v. Cellulose Converting Equipments, S.R.L., 173 AD2d 350 (1st Dept 1991).

Here, as a result of Trustman’s assertion in the Housing Court proceeding that he has possessory rights in the premises and a right to be reimbursed for the improvements and fixtures he installed, it can not be reasonably disputed that plaintiff law firm, as escrow agent, may be potentially subjected to conflicting claims as to the monies held in escrow. In cross-moving to dismiss the complaint, Urry simply focuses on the merits of Trustman’s claims. However, in view of Trustman’s pending motion in Housing Court to vacate his default and serve a late answer, any issue as to the merits of Trustman’s claims cannot be resolved as a matter of law at this time. Thus, in order to maintain the status quo, the court in the exercise of its discretion pursuant to CPLR 1006, is granting plaintiff’s motion to the extent of staying plaintiff’s obligations under the stipulation of settlement to release of the monies being held in escrow, pending the Housing Court’s determination of Wooster’s motion and Trustman’s cross-motion. In the event Trustman is permitted to answer, the stay shall continue until the Housing Court determines Trustman’s defenses and cross-claims, if any. The balance of plaintiff’s motion for discovery, is denied as premature. Once issue has been joined and the parties are prepared to proceed with discovery, plaintiff may renew its request for “proof” as to Trustman’s purchase

and installation of improvements.

Accordingly, it is

ORDERED that the motion is granted only to the extent that plaintiff's obligation to release the monies being held in escrow shall be stayed pending the Housing Court's determination of Wooster's motion and Trustman's cross-motion, and in the event Trustman is permitted to answer, the stay shall continue until the Housing Court determines his defenses and cross-claims, if any; and it is further

ORDERED that the cross-motion to dismiss is denied; and it is further


ORDERED that defendants shall serve and file answers within 20 days of the date of this decision and order; and it is further

ORDERED that the parties shall appear for a preliminary conference on August 18, 2011 at 9:30 a.m., Part 11, Room 351, 60 Centre Street.

The court is notifying the parties by mailing copies of this decision and order.

DATED: June 20, 2011

ENTER:



J.S.C.