

Born to Build, LLC v Saleh
2011 NY Slip Op 34195(U)
September 14, 2011
Supreme Court, Nassau County
Docket Number: 002345/2011
Judge: Ira B. Warshawsky
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ORIGINAL

SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. IRA B. WARSHAWSKY,
Justice.**

TRIAL/IAS PART 7

BORN TO BUILD, LLC,

Plaintiff,

INDEX NO.: 002345/2011

MOTION DATE: 7/8/11

- against -

SEQUENCE NO.: 04

IBRAHIM SALEH, a/k/a Abraham Saleh, a/k/a Kamel Saleh, a/k/a Kamel Y. Saleh, a/k/a Kamel Youssef Saleh, a/k/a Yaakoub Saleh, a/k/a Yaakoub Y. Saleh, a/k/a Yaakoub Youssef Saleh, 1141 REALTY, LLC, KARIM BIN TALEB, a/k/a Karim Bentelab, BORN TO BUILD CONSTRUCTION CORP., SARITA VASWANI, BANCO POPULAR OF NORTH AMERICA, EDMUND A. NAHAS, ZRAICK, HAHAS & RICH, and JOHN DOES 1 — 10 (such parties being persons or entities who have possession of plaintiff's tools and equipment, or who own or control the places where such tools and equipment are stored),

Defendants.

The following documents were read on this motion:

- Order to Show Cause on behalf of Kamel Saleh to Vacate Levies on Real Property 1.
- Amended Order to Correct Addresses of Properties Subject to Liens 2.
- Affirmation of Vano Haroutunian in Support of Motion 3.
- Supplemental Affirmation of Vano Haroutunian 4.
- Memorandum of Law of Non-Party Kamel Saleh To Void Levies 5.
- Affidavit of Kamel Saleh in Support of Order to Show Cause 6.
- Notarized Affidavit of Kamel Saleh 7.

Affirmation of Gene R. Kazlow in Opposition to Order to Show Cause	8.
Affirmation of Vano Haroutunian in Further Support of O.S.C.	9.
Reply Affirmation of Daniele Dermesproprian, Esq.	10.
Affidavit of Rafiq Chaudry (Tenant)	11.
Affidavit of Omar Lopez (Tenant)	12.
Affidavit of Danijela Nikolic (Tenant)	13.
Affidavit of Melissa Lopez (Tenant)	14.
Affidavit of Mohammed Rabee (Tenant)	15.
Affidavit of Carlos Padro (Tenant)	16.
Affidavit of Ryan Harvey (Tenant)	17.
Affidavit of Bryan Lent (Tenant)	18.
Affidavit of Anthony Fusco (Tenant)	19.
Affidavit of Michael Ropelewski (Tenant)	20.
Affidavit of Fathey Hashem (Tenant)	21.

PRELIMINARY STATEMENT

This is a motion by a non-party, Kamel Saleh, to vacate liens which have been placed upon three properties, which are, or were, owned by three separate entities of which he is the principal. The contention is that the properties, 354 E. 116th St., New York, New York, 30-63 Steinway Street, Long Island City, are owned by Prime Property Group, LLC, 33-06 31st St., LLC, respectively, and that 23-62 Steinway St., Astoria, previously owned by 35-29 31st St., LLC, was sold in an arm's length transaction in September, 2010. Movant asserts that he is not Ibrahim Saleh, the defendant in the action, against whom plaintiff has obtained a judgment, despite the plaintiff identifying Ibrahim as also being known as Kamel Y. Saleh, or Kamel Youssef Saleh.

BACKGROUND

Plaintiff entered a Judgment in the amount of \$3,563,307.58 against Ibrahim Saleh. It contends that, despite the statement of Kamel Saleh that he and his brother, Ibrahim are distinct individuals, there remain serious contentions that Ibrahim, either under his own name, or that of his brother, is the actual or beneficial owner of the properties in question, and that the judgment creditor has the right to seize his interest in these properties. Plaintiff also asserts that Ibrahim exercises complete domination and control over the

entities which own the properties, and they are nothing but a facade for his actual or beneficial ownership.

Plaintiff has filed levies on 354 E. 116th Street, New York, New York, 30-63 Steinway Street, Astoria, New York, and 23-62 Steinway Street, Long Island City, New York. Movant has provided deeds to the three properties which reflect the following transactions:

354 E. 116th Street, New York, New York (Block 1687, Lot 130)

By Deed dated April 12, 2005 Ibrahim H. Hussein, a/k/a Ibrahim Hussein, a/k/a Ibrahim Housseini conveyed title to Prime Property Group, LLC, located at 38-11 220th Street, Bayside, New York, which is the residence address of Kamel Saleh. Ibrahim Saleh's last know residence was 39-16 220th Street, Bayside, New York.

30-63 Steinway Street, Astoria, New York (Block 680, Lot 21)

Ringroad, Inc., c/o Bielowsky, 160 E. 65th St., New York, New York, conveyed title to this property by deed dated April 13, 2006, to 33-06 31st St., LLC, with an address at 36-51 31st Street, Queens, New York

23-62 Steinway Street (Block 803, Lot 71)

A.P.L. Realty Corp. conveyed title to 35-29 31st Street, LLC, located at 36-51 31st Street, Long Island City, New York by deed dated February 28, 2006. Movant claims that this property was conveyed in an arm's length transaction in 2010.

The issue presented by this motion is whether or not the liens have been validly filed, and that depends upon whether the judgment debtor, Ibrahim Saleh owns an interest in Prime Property Group, LLC, 33-06 31st St., LLC, or 35-29 31st Street, LLC; or, if he does not have a documented ownership interest, whether he, by virtue of his relationship with his brother, maintains a controlling interest in them.

The record is replete with what amount to hearsay statements allegedly made by Ibrahim, that he was the owner of the one or more of the premises, by tenants that they have dealt only with Kamel Saleh as their landlord, and statements by others that they

have known Ibrahim to use other names, including Kamel, in his dealings.

The issue is, then, one of fact, which is impossible of determination based upon documents alone. Plaintiff is directed to initiate a telephone conference among the parties and the Court on September 21, 2011, at 2:30 P.M., for the purpose of schedule a fact-finding hearing concerning the relationship of Ibrahim Saleh, if any, to the limited liability companies which hold title to the properties upon which liens have been filed, and whether or not title to 23-62 Steinway Street was conveyed prior to the filing of a judgment in this action.

The temporary restraining order contained in the Order of this Court dated June 9, 2011 remains in full force in effect, including the restraint against executing on the levies imposed upon counsel for plaintiff and Hon. Martin A. Bienstock, a Marshal of the City of New York.

This constitutes the Decision and Order of the Court.

Dated: September 14, 2011


J.S.C.

ENTERED
SEP 23 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE