

Yerushalmy v Resles
2013 NY Slip Op 30037(U)
January 4, 2013
Supreme Court, New York County
Docket Number: 604415/06
Judge: Barbara R. Kapnick
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BARBARA R. KAPNICK

PART 39

Index Number : 604415/2006

YERUSHALMY, OREN

vs.

RESLES, OFER

SEQUENCE NUMBER : 011

COMPEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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 IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

JAN 11 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/4/13

BARBARA R. KAPNICK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

-----X

OREN YERUSHALMY,

Plaintiff/Judgment Creditor,

- against -

OFER RESLES,

Defendant/Judgment Debtor.

-----X

BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 604415/06
Motion Seq. No. 011

FILED

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NEW YORK
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Plaintiff/Judgment Creditor Oren Yerushalmy ("Yerushalmy") moves herein for an order: 1) compelling defendant/judgment debtor Ofer Resles ("Resles") to enforce and close on an option he holds for the purchase of a penthouse apartment at 556 Third Avenue in Manhattan, with funds supplied by or on behalf of Yerushalmy; 2) enjoining Resles from transferring, selling or in any way encumbering the subject penthouse or his rights thereto, or residing in it, without further order of this Court; and 3) directing that Resles maintain the penthouse as vacant.

Yerushalmy alleges that, pursuant to an agreement between Resles and 554-556 Third Avenue LLC ("554 LLC") and 554-556 Manager LLC, Resles is entitled to purchase the duplex condominium penthouse apartment at 556 Third Avenue. Yerushalmy proposes that, since Resles does not have the funds but allegedly has the option to purchase the subject penthouse, he will provide the funding to exercise the option, then turn around and sell the apartment, the

profits from which will be used to satisfy the judgment he holds against Resles.

In opposition, Resles states that he no longer has an option to purchase the apartment, since it now belongs to a corporate entity over which he has no control and of which he is not a shareholder. Specifically, in 2005 and 2007 Resles issued two promissory notes, one to plaintiff here and one to non-party 554 LLC. Both notes were collateralized by shares he holds in a company known as Oxford Capital LLC ("Oxford"). After plaintiff obtained the judgment against Resles on the note, the Court directed Resles to transfer any shares in Oxford to plaintiff; 554 LLC then deemed the transfer to be a default of the note Resles had issued to it and scheduled a public auction of his interest in Oxford on December 17, 2009 to recoup the amount owed on the note.

According to Resles, with the help of plaintiff's counsel, Oxford and Resles commenced an action for declaratory judgment against 554 LLC, in which the Hon. Shirley Kornreich granted an injunction staying the auction. The action was subsequently settled, allegedly with the encouragement of plaintiff and his attorney, pursuant to certain documents executed on July 9, 2010 (the "July 2010 Letter Agreement"). The settlement provided that Resles was not in default of the note with 554 LLC and the option

to purchase was given to the new tenant, SNY Capital Group, Inc. ("SNY"). Resles states that he only signed the lease on *behalf of* SNY and states that he is not a shareholder of that company.

Resles argues that plaintiff and his attorney were aware of the terms of the July 2010 Letter Agreement at the time it was executed and never objected to it. Resles submits several email communications between himself and plaintiff and plaintiff's counsel, including emails to which the proposed July 2010 Letter Agreement drafts were annexed, containing the option language. Resles contends that plaintiff was concerned with preventing 554 LLC from auctioning off the Oxford shares and encouraged the settlement.

In addition, Resles argues that even if he still had the option to purchase the property, it is doubtful that the purchase would yield funds from which Yerushalmy could expect to satisfy his judgment, because there was an extension agreement executed at the same time as the July 2010 Letter Agreement, between Resles, 554 LLC and agreed to by SNY regarding his note with 554 LLC (the "July 2010 Extension Agreement"), which provided that the \$300,000 owed to 554 LLC will be payable upon expiration of the Lease on August 31, 2016. SNY cannot exercise the option without paying the principal and interest due on the note on top of the \$3,432,000.00

[* 5]

purchase price as defined in the Agreement, making the purchase price at minimum \$3,940,254.00, without factoring in City, State, transfer, mansion and possibly capital gains taxes or a broker's fee.

Resles further asserts that since it is SNY's option that is at issue in the instant application, SNY, a non-party to this action, must first be given the opportunity to be heard. There is also no dispute that Resles currently resides in the apartment with his wife and children and the rent paid is approximately \$7000/month.

Finally, Resles points out that plaintiff cited to no statutory or case law authority for the remedy he seeks, and argues that the Court has no basis to order him to exercise an option, even if he did have it, to purchase an apartment using plaintiff's funds so that plaintiff can then try to sell it to attempt to recover a profit sufficient to satisfy the judgment against Resles. Of course, Resles also offers no statutory or case law authority in opposition to the relief plaintiff seeks.

At a deposition of Resles held on October 11, 2011, months after the papers were originally submitted, Resles testified that he did not, in fact, ever transfer the option. Rather, he claimed

that he simply designated SNY to enter into a new lease option for the penthouse apartment, but that he still controls the option. Yerushalmy contends that by executing on the option, it will allow the shares of 554 LLC to be freed up from any encumbrances and he will then have the shares from which he can at least begin to satisfy his outstanding judgment against Resles.

CPLR 5201(b) provides in relevant part that "[a] money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, . . ." The judgment debtor has offered a myriad of reasons and excuses over the past year-and-a-half, as to why this motion should be denied. Still, the plaintiff has a judgment from June 19, 2008 in the amount of \$1,645,201.78 with four-and-a-half years accrued interest, toward which not a penny has been paid.


This Court sees no legal reason why the judgment debtor should not be compelled to enforce and close on the option he holds for the purchase of Penthouse F at 556 Third Avenue in Manhattan with funds supplied by or on behalf of the plaintiff/judgment creditor Oren Yerushalmy, and thus he is directed to do so within 60 days of the date of this Order. It is Yerushalmy's risk to assume that

there may little or no funds at the end of the transaction with which to satisfy, wholly or in part, his judgment.

Resles is further enjoined, pending the closing of his option as directed above, from in any other manner transferring, selling or encumbering the subject penthouse or his rights thereto. Resles may, however, continue to reside in the apartment with his wife and children until the sale of the apartment.

This constitutes the decision and order of this Court.

Date: January 4, 2013


BARBARA R. KAPNICK
J.S.C.

**BARBARA R. KAPNICK
J.S.C.**

FILED

JAN 11 2013

NEW YORK
COUNTY CLERK'S OFFICE