

Wenger v L.A. Wenger Contr., Co.

2013 NY Slip Op 30574(U)

March 21, 2013

Sup Ct, Suffolk County

Docket Number: 31701-2008

Judge: Emily Pines

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

COM

Present: **HON. EMILY PINES**
J. S. C.

Orig. Motion Date: 02-14-2013
Return Date: 02-26-2013
Motion seq. # 011 MD

_____ X Action # 1
31701-2008

DAVID WENGER,

Petitioner,

-against-

L.A. WENGER CONTRACTING, CO., AND LOUIS WENGER,

Respondents.

_____ X
Action # 2
2149-2009

DAVID WENGER,

Petitioner,

-against-

RAILROAD REALTY GROUP, INC., ECS REALTY INC., GDS REALTY GROUP, INC., WOODGLEN REALTY LLC, AND LOUIS WENGER,

Respondents.

_____ X

Defendants in this action move, by Order To Show Cause (motion sequence # 011), seeking to stay this proceeding until the submission by their counsel of a response to the Report of the Court's appointed Receiver, submitted on October 2, 2012. Petitioner's counsel opposes the stay application, based upon its argument that it has been well over two years since this Court issued a trial decision in this matter and that the delay has been largely occasioned by Respondents. This Court issued an Order approving the Report of the Receiver on December 10, 2012. The subject motion was made returnable in February 14, 2013.

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As set forth in the papers in opposition to the current motion, the delay occasioned in this matter by the Respondents has been ongoing; and this Court has repeatedly given those parties every opportunity to participate in the post trial process which necessarily involved the valuation and division of substantial real property based upon the Court's determination after trial that Petitioner was a 31% owner of Respondent corporations and that, following valuation and accounting, he was to be distributed properties in accordance with the parties' respective ownership interests.

Following the Court's trial Decision and Order, the Receiver made a document request to Respondents to aid in an appraisal of the values of the real properties involved. When no information was received by March, 2011, this Court held a conference on March 20, 2011 to get the information flowing in a timely matter. Respondents' counsel did not appear at the conference, and this Court then issued an Order on June 10, 2011 instructing the Receiver to take possession of certain of the properties, collect the rents so generated and pay appropriate expenses. The Court attempted to hold another conference to secure the Respondents' cooperation; yet Respondents continued to fail to provide information. The Court then issued another Order on April 23, 2012 requiring the Respondents, yet again, to produce documentation to permit the Receiver to complete his assigned tasks. Finally, as Respondents submitted no accounting of their own to the Receiver, Petitioner submitted its accounting on August 15, 2012. Thereafter, Respondents' counsel submitted handwritten comments on Petitioner's submission to the Receiver on August 26, 2012. The Receiver clearly reviewed the entire panoply of information provided and issued a detailed 40 page Report on October 2, 2012. That Report and an Order to Show Cause seeking the Court's approval thereof, was submitted to this Court on October 10, 2012 with some minor revisions on October 12, 2012.

This Court signed the Order to Show Cause on October 15, 2012, making the return date November 8, 2012. Based on these time periods, both counsel had over three weeks to submit objections to the Receiver's Report from the time it was provided to them. Petitioner's counsel submitted his Affirmation in connection with the Receiver's Report on November 5, 2012. On

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November 6, 2012, Respondents' counsel contacted the Receiver to request more time to respond to the Receiver's Report and asked the Receiver to make the request. That the same day Respondents' counsel stated via e-mail that he needed an additional week or two. Following the Receiver's communication with the Court, the Receiver informed Respondents' counsel that his request was granted and he would be afforded an extra week to provide his position concerning the Report. Yet, Respondents' counsel obviously ignored this e-mail, since he contacted the Receiver again on November 15, 2012, asking when the adjourn date of the motion had been set. The Receiver informed him of the one week adjournment and advised Respondents' counsel to get his papers into the Court immediately. By that time, Respondents' counsel had been in possession of the Report for over one month. Again on November 29, 2012 Respondents' counsel sought more time to submit his opposition papers. The Receiver responded by stating that he had spoken to the Court's law Clerk and that the Court wanted to set up a conference; however, he reiterated that Respondents' counsel should get his papers into the Court immediately. No papers with any opposition from Respondents were forthcoming.

Hearing nothing from Respondents by December 10, 2012, this Court issued its Order approving the Receiver's Report. Respondents' motion to request a stay of the Order was submitted to this Court on January 22, 2013, made returnable February 14, 2013, by which date this Court received papers in response from both Petitioner's counsel and the Receiver.

A review of the post trial history of this case sets forth a more than sufficient basis to deny the Respondents' current motion for a stay. This is most significantly supported by the fact that as of the date of this writing in March 2013, over five months after the date of the Receiver's Report, this Court has yet to receive any papers by Respondents setting forth their bases for opposition to the Report of the Receiver, which was both thorough and well reasoned. The request is, therefore, denied.

Accordingly, for the reasons as set forth above, the Respondents' motion for a stay of this proceeding is denied. The Receiver is directed to proceed with dispatch to complete the steps

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necessary to finalize the actions necessary to implement this Court's Order of December 10, 2010. This constitutes the **DECISION** and **ORDER** of the Court.

Dated: March 21, 2013
Riverhead, New York



EMILY PINES
J. S. C.

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