

Hopkins v Coniglio
2013 NY Slip Op 32787(U)
October 29, 2013
Sup Ct, New York County
Docket Number: 153034/2013
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 153034/2013
HOPKINS, GRACE
vs.
CONIGLIO, STEVEN
SEQUENCE NUMBER : 001
SUMMARY JUDGEMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed order.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 10/29/13

hec, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE:MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE
- DO NOT POST FIDUCIARY APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
GRACE HOPKINS and APRIL KINGSLEY,

Plaintiffs,

-against-

STEVEN CONIGLIO, MARY D'ASTUGUES, as
Executrix of the Estate of BESS SCHUYLER, deceased
and WEST 16TH SPORTS CHIROPRACTIC, P.C., a
New York professional corporation,

Defendants.
-----X

DECISION AND
ORDER
Index No. 153034/2013

Mot. Seq. 001

HON. ANIL C. SINGH, J.:

Plaintiffs move for an order granting default judgment against defendants Steven Coniglio and Sports Chiropractic, P.C. (The "Defaulting Defendants"), amending the caption, severing the counterclaims of Mary D'Astugues, and appointing a temporary receiver of the real property located at 246 West 16th Street, New York, New York (the "Property").

Defendant, Mary D'Astugues, has consented to the motion via a stipulation between her attorney and Plaintiff's attorney.

The motion to amend the caption is granted for good cause shown. The counterclaims are severed. That branch of the motion seeking a temporary receiver is denied as plaintiff has been granted a default judgment mootng the requirement for a temporary receiver.

ORDERED that Plaintiffs' motion for a default judgment is granted, in part, on default; and it is further

ORDERED that that branch of Plaintiffs' motion which seeks the appointment of a temporary receiver is denied; and it is further

ORDERED that that branch of Plaintiffs' motion which seeks attorneys' fees is denied; and it is

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further

ORDERED that Defendant, Steven Coniglio, shall, within sixty (60) days, provide an accounting of all rents and proceeds collected from the Property and the payment of any expenses related to the property; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

1. On the First Cause of Action, the rights and interests of the parties in this action to the Property;
2. On the First Cause of Action, the issue of whether the Property can be partitioned without prejudice to the parties or if the Property should be sold;
3. On the First Cause of Action, if it is determined that the property should be sold, the fair market value of the property;
4. On the Second Cause of Action, as the measure of Plaintiffs’ damages, the amount of the reasonable rental value for the use and occupancy of the space occupied by Sports Chiropractic, P.C. (“Chiropractic Space”) from December 2004, to the date of the hearing owed to Plaintiffs;
5. On the Third Cause of Action, as the measure of Plaintiffs’ damages, the amount of the reasonable rental value for the use and occupancy of the Chiropractic Space from December 2004, to the date of the hearing owed to Plaintiffs;
6. On the Fourth Cause of Action, as the measure of Plaintiffs’ damages, the value of the use and occupancy, from December 2004, to the date of the hearing, of the Chiropractic Space owed to Plaintiffs; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited further than set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M) for placement at the earliest possible date upon the calendar of the Special Referee's Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (Which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties or, if unrepresented, the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320(a)) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that, unless otherwise directed by this Court in any Order that may be issued together with this Order of Reference to Hear and Report, any other issues presented in Plaintiffs' motion shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this Court thereon; it is further

ORDERED that that portion of Plaintiffs' motion which seeks to sever the counterclaims of

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defendant Mary D'Astugues is granted; and it is further

ORDERED that the action shall bear the following caption:

GRACE HOPKINS and APRIL KINGSLEY,

Plaintiffs,

-against-

STEVEN CONIGLIO, MARY D'ASTUGUES, as
Trustee under Trust Indenture dated February 26, 2002
made by Bess Schuyler, as Settlor, for the benefit of
Bess Schuyler, as Beneficiary, and
WEST 16TH SPORTS CHIROPRACTIC, P.C., a
New York professional corporation

Defendants.

And it is further

ORDERED that, within 20 days from entry of this order, counsel for the moving party shall serve a copy of this order with notice of entry upon all parties hereto and upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 148), who are directed to mark the court's records to reflect the change in caption.

The foregoing constitutes the decision and order of the court.

Date:

10/29/13
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**