

**Freedman v Hason**

2013 NY Slip Op 34110(U)

January 30, 2013

Supreme Court, Nassau County

Docket Number: 602343/12

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

**ORIGINAL**

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

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TRIAL/IAS, PART 1  
NASSAU COUNTY

MARK FREEDMAN,

INDEX No. 602343/12

Plaintiff,

MOTION DATE: Dec. 10, 2012

Motion Sequence # 001

-against-

URI HASON,

Defendant.

\_\_\_\_\_

The following papers read on this motion:

- Order to Show Cause..... X
- Affirmation in Opposition..... X
- Affirmation in Further Support..... X
- Reply Affirmation..... X
- Memorandum in Opposition..... X

Motion by plaintiff Mark Freedman for a preliminary injunction is **granted** in part and **denied** in part.

This is an action for breach of contract. In 2006, plaintiff Mark Freedman purchased membership interests in a group of companies managed by defendant Uri Hason. More specifically, Freedman purchased a 50 % interest in 399 West John, LLC; a 55.5 % interest in Hunting Hill Estates, LLC; a 36 % interest in Pinewood Terrace, LLC; a 30 % interest in The Knolls at Pinewood, LLC; a 50 % interest in Pinewood Development Inc; and a 40 % interest in Islandia Partnership, LLC. 399 West John owns an office building, and the other companies are involved in real estate development projects.

**FREEDMAN v HASON****Index no. 602343/12**

On November 23, 2010, the parties entered into an agreement whereby Hason was to repurchase Freedman's interests in 399 West John, Hunting Hill, Pinewood Terrace, Pinewood Development, and Islandia Partnership for \$1,400,000. The agreement further provided that Hason was to cause Pinewood Terrace to make current payments on a \$600,000 loan to the parties made by State Bank of Long Island. Hason was also to make current payments on a \$5,578,752 loan made by Hudson Valley Bank to the Knolls. Additionally, Hason was to pay Freedman \$50,000 upon the sale of ten condominium units of Pinewood Terrace. As collateral security for Hason's obligations under the contract, Hason agreed to pledge his interests in those companies which had executed mortgages personally guaranteed by Freedman. Although Freedman retained his 30 % membership interest in the Knolls, he agreed not to exercise any management rights in that company.

The parties entered into an amendment agreement on January 20, 2011, apparently the date of the closing. The amendment provided that \$1,300,000 of the purchase price was to be paid by bank check at the closing, and \$100,000 was to be paid by promissory note payable one year after the closing.

On January 20, 2011, the parties also entered into a "subordinated pledge and escrow agreement" whereby Hason purported to pledge his interests in 399 West John, Hunting Hill, and Pinewood Terrace to Freedman as collateral security for Hason's obligations under the contract. However, Hason delivered the certificates representing his interests to an escrow agent; Tashlik, Kreutzer, Goldwyn & Crandell, PC. The certificate for Hunting Hill was returned to Hason after Freedman's guarantee of the Hunting Hill loan was cancelled.

Hason failed to make payments on the State Bank of Long Island loan. On September 19, 2012, State Bank's successor, Valley National Bank entered a judgment against Freedman and Hason. Hason failed to have The Knolls remain current on the loan from Hudson Valley Bank.

This action was commenced on November 19, 2012. The first cause of action is on the \$100,000 promissory note. The second cause of action is for breach of the November 2010 agreement by failing to make loan payments, as well as the \$50,000 payment to Freedman. The third cause of action is for foreclosure on Hason's membership interests in 399 West John Street and Pinewood Terrace. The fourth cause of action is for indemnity with respect to the State Bank loan. The fifth cause of action is for inspection of the books and records of the "restricted entities," i.e. the companies which held properties subject to mortgages and Pinewood Terrace with respect to the State Bank loan. The sixth cause of

**FREEDMAN v HASON****Index no. 602343/12**

action is for breach of the duty of good faith and fair dealing. The seventh cause of action is for an accounting with respect to Pinewood Terrace and The Knolls. The eighth cause of action is for unjust enrichment. The ninth cause of action is for attorney's fees pursuant to a provision in the promissory note. In the tenth cause of action, plaintiff seeks an injunction restraining Hason from commingling funds, diverting assets, wasting corporate assets, or misappropriating corporate funds. The eleventh cause of action is for fraud with respect to Hason's intentions to perform the various agreements. The twelfth and thirteenth causes of action are for misappropriation or waste of pledged assets. The fourteenth cause of action is for breach of fiduciary duty.

By order to show cause dated November 27, 2012, plaintiff moves for a preliminary injunction directing the escrow agent to deliver Hason's interest in Pinewood Terrace to plaintiff. Plaintiff also seeks to restrain defendant from transferring his ownership interest in Pinewood Terrace or from transferring the real property owned by Pinewood Terrace. Finally, plaintiff seeks to restrain defendant from transferring Pinewood Terrace's bank accounts. In the order to show cause, the court temporarily restrained defendant from transferring any rights with respect to the property owned by Pinewood Terrace, exercising any voting rights on behalf of Pinewood Terrace, or transferring any funds previously transferred to himself from that company. Plaintiff has withdrawn his application for an order of attachment.

In opposition to the motion, defendant alleges that he has been attempting to refinance the \$600,000 loan now held by Valley National Bank. Although defendant does not claim to be current with respect to the \$5,578,752 Hudson Valley Bank loan, he asserts that the bank continues to fund the Knolls project.

A pledge is a bailment or deposit of personal property to a creditor as security for some debt or obligation (Black's Law Dictionary, 6<sup>th</sup> Ed.). Since plaintiff did not take possession of the Pinewood Terrace certificate, the subordinated pledge and escrow agreement did not give rise to a pledge of Hason's interest in the company.

Nevertheless, a security agreement is generally effective according to its terms as between the parties (UCC § 9-201[a]). Subject to the rules governing perfection of security interests, a security agreement is generally effective as against creditors and purchasers of the collateral (Id). The arrangement whereby Hason transferred his Pinewood Terrace certificate to the escrow agent was clearly intended to create a security interest securing

**FREEDMAN v HASON**

**Index no. 602343/12**

Hason's obligations to Freedman under the terms of the contract. Thus, the escrow is effective, as between Freedman and Hason, subject to the rights of creditors of either party.

Despite the evidence that Hason is in default under the contract, the court declines to direct the escrow agent to turn over the Pinewood Terrace certificates to Freedman, because the security interest in favor of plaintiff appears to be unperfected. Nevertheless, plaintiff's motion for a preliminary injunction is **granted** to the extent of restraining defendant from transferring his ownership interest in Pinewood Terrace, LLC and restraining defendant from transferring any real property owned directly or indirectly by that company.

Plaintiff's motion for a preliminary injunction is **denied** to the extent that plaintiff seeks to restrain defendant from transferring funds held by Pinewood Terrace or by defendant. The granting of the latter relief would be inconsistent with plaintiff's withdrawal of his motion for an order of attachment.

A Preliminary Conference has been scheduled for April 4, 2013 at 9:30 a.m. in Chambers of the undersigned. Please be advised that counsel appearing for the Preliminary Conference **shall** be fully versed in the factual background and their client's schedule for the purpose of setting **firm** deposition dates.

So ordered.

Dated     **JAN 30** 2013    

*Stephen J. Bucaria*  
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J.S.C.

**ENTERED**  
FEB 01 2013  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE