

Vanderbilt Brookland LLC v Vanderbilt Myrtle Inc.

2014 NY Slip Op 30912(U)

April 3, 2014

Supreme Court, Kings County

Docket Number: 500522/2014

Judge: Lawrence S. Knipel

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At a Part Comm-4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of March, 2014

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

VANDERBILT BROOKLAND LLC,

Plaintiff,

- against -

Index No. 500522/14

VANDERBILT MYRTLE INC.,

Defendant.

-----X

The following papers numbered 1 to 9 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

1 - 3

Opposing Affidavits (Affirmations) _____

4 - 5

Reply Affidavits (Affirmations) _____

6 - 7

Sur- Reply Affidavit (Affirmation) _____

8 - 9

Other Papers _____

Upon the foregoing papers, in motion sequence number 1, plaintiff Vanderbilt Brookland LLC (Brookland) moves for an order: (1) enjoining and restraining defendant Vanderbilt Myrtle Inc. (Vanderbilt Myrtle) from: (i) selling, assigning, conveying or transferring to any person or entity other than plaintiff, or hypothecating any rights under a Purchase of Sale Agreement dated December 4, 2013 between Cumberland Farms, Inc. (Cumberland), as seller, and defendant, as purchaser (the Property Sale Contract), for the

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property located at 140 Vanderbilt Avenue in Brooklyn (the Property); (ii) transferring the Property, or any interest therein, to any person or entity other than plaintiff; (iii) impeding, interfering with, or hindering plaintiff's exercise and enjoyment of its rights under the separate written contract between Vanderbilt Myrtle and Brookland pertaining to the Property, without limitation, including plaintiff's rights to acquire sole ownership of the Property and to conduct pre-purchase environmental and title investigation pursuant to said contract; and (2) mandating and directing defendant timely, diligently and effectively to: (i) take, pursue and complete all steps necessary to effectuate plaintiff's rights under the Vanderbilt Contract including, without limitation, the right to acquire sole ownership of the Property; (ii) record in the Office of the New York City Register the true and complete copies of the Property Sale Contract and the Vanderbilt Contract; and (iii) execute and deliver to plaintiff the assignment instrument referred to herein, or other suitable instrument to effect an assignment of the Property Sale Contract to plaintiff.

Facts and Procedural Background

Plaintiff commenced this action seeking to obtain a judgment declaring the parties' rights with respect to the Property Sale Contract, enjoining defendant from conveying or transferring any rights or interest in the Property to any person or entity other than plaintiff and specific performance of the contract.

Defendant is the tenant of the Property pursuant to a Retail Motor Fuel Outlet Lease with Gulf Oil Limited Partnership, on behalf of Cumberland, as landlord. The Property is

used as a gas station. When Cumberland decided to sell the Property, it offered Vanderbilt Myrtle the right of first refusal on September 24, 2013, as is required pursuant to the Federal Petroleum Marketing Practice Act. On November 6, 2013, Vanderbilt Myrtle elected to exercise that right. On December 4, 2013, Cumberland and Vanderbilt Myrtle executed the Property Sale Contract, pursuant to which Cumberland agreed to sell the Property to defendant for \$10,000,000. As is relevant to the instant dispute, the Property Sale Contract requires Vanderbilt Myrtle to deposit \$1,000,000 with First American Title Company (First American) upon execution of the agreement and to close no later than July 30, 2014. The Property Sale Contract also provides a Due Diligence Period in which Vanderbilt Myrtle is entitled to perform environmental testing in accordance with an attached rider, to complete a title examination and to give Cumberland notice of any title defects, which period concluded upon Vanderbilt Myrtle's waiver of certain rights with respect to the environmental status of the Property or before the 60th day following the execution of the Contract.

In a written agreement dated November 2013,¹ Brookland agreed to be bound by the terms and conditions set forth in the Property Sale Contract (the Vanderbilt Contract). The Vanderbilt Contract further provides that Vanderbilt Myrtle agrees to sell 5% of its issued stock to Brookland for \$500,000, with \$50,000 payable upon the signing of the contract,

¹ The copy of the contract annexed to plaintiff's moving papers does indicate the day on which it was executed and the text of plaintiff's affidavit states that the contract was dated December 2013.

\$100,000 payable when Vanderbilt Myrtle vacates the Property and the remaining \$250,000 payable at the closing. The Vanderbilt Contract also required plaintiff to tender and pay the \$1,000,000 non-refundable deposit payable to Cumberland under the Property Sale Contract. Cumberland had no objection to this agreement.

Plaintiff's Contentions

Plaintiff alleges that on November 25, 2013, it made the first payment of \$50,000 required under the Vanderbilt Contract to Vanderbilt Myrtle. Thereafter, on December 10, 2013, Brookland remitted \$1,000,000, representing the contract deposit due under the Property Sale Contract, to First American, as escrow agent, pursuant to a written escrow agreement. Plaintiff goes on to allege that after receiving these sums of money, Vanderbilt Myrtle stonewalled all of its attempts to acquire title to the Property. More specifically, defendant has not permitted plaintiff to have access to the Property to conduct environmental testing and has provided no information with regard to its communications with Cumberland. On January 9, 2014, when Boaz Gilad, a member of Brookland, met with John Tsao, the principal of Vanderbilt Myrtle, Mr. Tsao informed Mr. Gilad that Vanderbilt Myrtle had decided that it would not proceed with the sale. This oral repudiation was confirmed in a letter dated January 14, 2014 from Vanderbilt Myrtle's attorney to plaintiff; a \$50,000 bank check, representing a refund of plaintiff's initial payment under the Vanderbilt Contract, accompanied the letter.

Plaintiff argues that Vanderbilt Myrtle has no right to rescind, terminate or cancel the

Vanderbilt Contract, since the contract became irrevocable, pursuant to its terms, once defendant exercised its right to purchase the Property. Moreover, plaintiff has already tendered the \$1,000,000 nonrefundable deposit to Cumberland that was due under the Property Sale Contract. More significantly, defendant offers no reason for the termination. Plaintiff accordingly seeks to compel defendant's performance of its contract. Plaintiff concludes by asserting that in view of defendant's conduct in repudiating the Vanderbilt Contract, it needs immediate injunctive relief to prevent defendant from transferring or conveying the Property to anyone else.

Defendant's Contentions

Defendant argues that upon information and belief, plaintiff did not tender the \$1,000,000 deposit due under the Property Sale Contract. Thus, since plaintiff is in default under the Vanderbilt Contract, defendant's obligations under the contract are vitiated. Defendant further avers that plaintiff did not provide notice of compliance as is required pursuant to paragraph 2(a) of the Property Sale Contract and further asserts that plaintiff never advised Mr. Tsao of the tender of the deposit, either orally or in writing, so that defendant was not aware that the deposit had been tendered until it received plaintiff's motion papers. Defendant accordingly instructed its counsel to return the \$50,000 payment that had been tendered to it by plaintiff. Vanderbilt Myrtle further contends that its position is supported by the fact that plaintiff never made any of the standard protestations that would accompany the tender of a \$1,000,000 deposit. Defendant therefore concludes that the

temporary restraining order obtained by plaintiff should be vacated and its motion for a preliminary restraining order should be denied.

Plaintiff's Reply

In further support of its motion, plaintiff submits an affidavit from James Thanasules, the Vice President and Agency Counsel for First American, in which he alleges that on December 10, 2013, First American received a wire transfer in the amount of \$1,000,000 from Gilad Enterprises, LLC (Gilad), representing the deposit due under the Property Sale Contract. It was his understanding that Gilad made the deposit on behalf of, and at the request of, Brookland. More specifically, Mr. Thanasules explains that Gilad wired the money into First American's Direct Operating Account, account number 302314000. After receiving the deposit, First American determined that the funds should be held in its Agency Account, account number 305117000. First American accordingly made the internal transfer and it continues to hold the funds in that account.

Plaintiff also submits an affidavit from Mr. Gilad wherein he opines that the source of funds used to make the deposit should be irrelevant, since the deposit was made on behalf of Brookland. He explains, however, that Brookland had just been formed for the purpose of purchasing the Property and did not yet have an account with sufficient funds to make the payment. Accordingly, to avoid any delay, Mr. Gilad wired the funds from Gilad. Mr. Gilad further points out that it was Gilad who paid the \$50,000 down payment due under the Vanderbilt Contract. He also asserts that although Mr. Tsao now claims that he was unaware

that the deposit had been tendered until plaintiff served its moving papers, Mr. Tsao told him when they met on January 9, 2014 that defendant intended to break its contract, but that he did not need to worry, since he would get back the \$1,000,000 when the deal closed. Mr. Gilad further contends that defendant's assertion that it was unaware that the \$1,000,000 deposit had been tendered is also undermined by the fact that Cumberland did not seek to terminate the Property Sale Contract, which it could have been expected to do if the deposit had not been received. Mr. Gilad thus concludes by reiterating plaintiff's contention that defendant has no basis upon which to terminate the Property Sale Contract.

Defendant's Sur-Reply

In an affirmation submitted by counsel, Vanderbilt Myrtle argues that plaintiff fails to present evidence in admissible form to establish that its payment of \$1,000,000 to First American was made in connection with the transaction at issue herein. More specifically, defendant argues that the deposit, if it was tendered, was made in connection with an unrelated transaction, since the money was not wired to account number 3051170000, the account specified in First American's "Incoming Wire Instructions (New York - Agency)." Defendant also argues that plaintiff's Exhibit G, a copy of its wire confirmation, lacks probative value because it is not certified or authenticated and it does not comply with the best evidence rule.

Defendant goes on to argue that the transfer violates numerous provisions of the Uniform Commercial Code. More specifically, defendant contends that for the purposes of

analyzing the subject transaction, First American is a bank, citing to UCC § 4-A-105(2), and that it, and not Cumberland, is the beneficiary. Defendant further asserts that the wire transfer does not comply with UCC § 4-a-404(1), which requires a beneficiary bank to pay the amount of the order to the beneficiary. Defendant goes on to contend that Mr. Thanasules fails to address the issues of when First American determined that the \$1,000,000 was deposited in the wrong account or if or when it gave notice to the intended beneficiary. Further, defendant claims that since Cumberland is not named in the notice of confirmation as the beneficiary and the money was placed in an account that was not associated with this transaction, plaintiff fails to establish that the \$1,000,000 deposit was, in fact, paid. Defendant also asserts that First American should not have accepted the transfer pursuant to UCC § 4-A-207(1), since the identification of the beneficiary refers to a nonexistent or unidentifiable person or account.

Mr. Tsao submits an affidavit in which he alleges that at his meeting with Mr. Gilad, referenced above, Mr. Gilad asked him what would become of his \$1,000,000. Mr. Tsao explains that since he had no information demonstrating that a payment had been made, he responded by telling Mr. Gilad that he could get the money back. He goes on to contend that he believed that since plaintiff requested that the escrow agent be changed from the Houston, Texas office of First American to the New York City office, plaintiff had a relationship with the agent. That made him more vigilant, so that he noted that the down payment references an account that is unrelated to the purchase at issue herein and no deal name appears on the

confirmation, as was requested in the Wiring Instructions.

The Property Sale Contract

The paragraph of the Property Sale Contract that requires the payment of the deposit in issue herein provides that:

“Upon the full execution and delivery of this Agreement, Purchaser shall deposit One Million Dollars (\$1,000,000) in escrow (the ‘Deposit’) with First American at its office located at 633 Third Avenue, New York, New York 10017 (the ‘Escrow Agent’). Escrow Agent shall hold the Deposit in an interest-bearing account pursuant to the terms of Section 16² and all interest obtained thereon shall be deemed included within the definition of the Deposit. Contemporaneously with its delivery of this Agreement, Purchaser shall provide Escrow Agent with an executed W-9 and completed standard investment form in order to establish said interest bearing account. Except as otherwise provided herein, the Deposit shall be credited against the Purchase Price at closing.”

(Property Sale Contract, para 2[a], p 1) (emphasis in original).

Discussion

It is well settled that “[p]reliminary injunctive relief is a drastic remedy which will not be granted “unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant”” (Abinanti v Pascale, 41 AD3d 395, 396 [2d Dept 2007], quoting Peterson v

² It appears that the parties intended to refer to Section 15 of the Property Sale Contract, since that is the paragraph that addresses the escrow amount and the escrow agent’s powers. The details contained therein pertain to the escrow agent’s responsibilities in the event that disputes arise under the performance of the Property Sale Contract and are not relevant to a determination of the issues now before the court.

Corbin, 275 AD2d 35, 37 [2d Dept 2000], quoting *Nalitt v City of New York*, 138 AD2d 580, 581 [2d Dept 1998]). “To prevail on a motion for a preliminary injunction, the moving party must establish: (1) the likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of the equities favors the moving party’s position” (*Reuschenberg v Town of Huntington*, 16 AD3d 568, 569 [2d Dept 2005], citing CPLR 6301; *South Amherst, Ltd. v H.B. Singer, LLC*, 13 AD3d 515 [2d Dept 2004]; *Ryan v Dowicz*, 306 AD2d 396 [2d Dept 2003]).

“The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual” (*Perpignan v Persaud*, 91 AD3d 622, 622 [2d Dept 2012], quoting *Ruiz v Meloney*, 26 AD3d 485, 486 [2d Dept 2006]). Stated differently, “the purpose of interlocutory relief is not to determine the ultimate rights of the parties but to maintain the status quo until a full hearing on the merits can be held” (*2914 Third Sportswear Realty v Acadia 2914 Third Ave., LLC*, 93 AD3d 573 [1st Dept 2012]), citing *Gambar Enters. v Kelly Servs.*, 69 AD2d 297, 306 [4th Dept 1979]). The determination to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (*see e.g. Coinmach v Alley Pond Owners Corp.*, 25 AD3d 642, 643 [2d Dept 2006]; *Weinreb Mgt., LLC v KB Mgt.*, 22 AD3d 571, 572 [2d Dept 2005]).

Likelihood of Success

To demonstrate the likelihood of success, conclusive proof is not required (*see e.g. Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604-605 [2d Dept 2004], citing *Terrell v*

Terrell, 279 AD2d 301, 303 [2d Dept 2001]). In this regard, it has been held that “[w]here . . . the denial of a preliminary injunction would disturb the status quo and render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be reduced” (*North Fork Preserve v Kaplan*, 31 AD3d 403, 406 [2d Dept 2006], citing *State of New York v City of New York*, 275 AD2d 740 [2d Dept 2000]; accord *Masjid Usman v Beech 140, LLC*, 68 AD3d 942 [2d Dept 2009]).

Turning to the merits of plaintiff’s claim, it is clear that “[b]efore specific performance of a contract for the sale of real property may be granted, a buyer must demonstrate that he or she was ready, willing, and able to perform on the original law day, or, if time was not of the essence, on a subsequent date fixed by the parties or within a reasonable time thereafter” (*Paglia v Pisanello*, 15 AD3d 373, 373 [2d Dept 2005], citing *Nuzzi Family Ltd. Liab. Co. v Nature Conservancy*, 304 AD2d 631, 632 [2d Dept 2003]). Plaintiff’s ability to close has not been disputed herein, since defendant argues only that plaintiff did not properly tender the \$1,000,000 deposit required under the Property Sale Contract.

As discussed above, plaintiff establishes that it entered into the Vanderbilt Contract with Vanderbilt Myrtle, pursuant to which it assumed the obligations under the Property Sale Contract. Plaintiff also establishes that it made the first payment of \$50,000 due under the Vanderbilt Contract, as is conclusively evidenced by defendant’s action in returning a check in that amount to plaintiff along with its letter terminating the contract. This letter also

serves to conclusively establish that defendant has no intention of abiding by the terms of its agreement with plaintiff. Plaintiff has also made a prima facie showing that it tendered the \$1,000,000 to First American, as is required pursuant to paragraph 2(a) of the Property Sale Contract.

The arguments presented by defendant are insufficient to refute plaintiff's showing. In the first instance, defendant's argument is predicated upon its contention that plaintiff breached the Property Sale Contract by not wiring the \$1,000,000 deposit into the account specified in the wiring instructions sent to it by First American. In resolving this issue, it must be recognized that "the construction of an unambiguous contract is a question of law for the court to pass on, and . . . circumstances extrinsic to the agreement or varying interpretations of the contract provisions will not be considered, where . . . the intention of the parties can be gathered from the instrument itself" (*Maysek & Moran v S.G. Warburg & Co.*, 284 AD2d 203, 204 [1st Dept 2001], quoting *Lake Constr. & Dev. v City of New York*, 211 AD2d 514, 515 [1st Dept 1995]). Further, it is a fundamental principle of contract construction that unambiguous contracts must be interpreted in accordance with their plain meaning (see *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]; *Two Guys from Harrison-N.Y. v S.F.R. Realty Assoc.*, 63 NY2d 396, 403 [1984]; *Ambac Assur. UK Ltd. v J.P. Morgan Inv. Mgt.*, 88 AD3d 1, 9 [1st Dept 2011]). It is equally well settled that "the court should not, under the guise of interpretation make a new contract for the parties" (*Iacobacci v McAleavey*, 222 AD2d 406, 407 [2d Dept 1995]).

Herein, paragraph 2(a) of the Property Sale Contract states only that the money in issue should be deposited with First American; it does not reference any particular account number. The court will not, therefore, find that plaintiff breached the Property Sale Contract when it wired the deposit into First American's Direct Operating Account, instead of into its Agency Account. Moreover, as is established by the affidavit submitted by Mr. Thanasules, which is based upon his personal knowledge and review of the file, First American received the deposit and had no difficulty determining the transaction pursuant to which it was received.

The court further finds that defendant's references to alleged violations of the UCC are not properly raised in its sur-reply, since the arguments were not previously raised by either party and plaintiff was not given an opportunity to address the issues (*see generally Qi Sheng Lu v World Wide Travel of Greater N.Y., Ltd.*, 111 AD3d 690, 690 [2d Dept 2013]; *Sally v Keyspan Energy Corp.*, 106 AD3d 894, 896 [2d Dept 2013]; *GJF Constr. v Cosmopolitan Decorating Co.*, 35 AD3d 535, 535 [2d Dept 2006]). Even if the court were to consider the arguments, they are found to be lacking in merit. More specifically, the wire confirmation clearly identifies First American as the beneficiary, and not as a bank involved in the transaction, so that defendant's assertion that First American did not comply with the requirements pertaining to a bank are without merit. The court also declines to find that First American, as the recipient of a wire transfer, is obligated to introduce evidence to establish that the transfer was properly made, in compliance with controlling law, when there is no

dispute that the funds were received by the proper party. Further, the affidavit submitted by Mr. Thanasules establishes that First American was aware that the money was tendered pursuant to the escrow agreement executed in connection with the subject Property. In this regard, it must also be noted that in accordance with paragraph 2(a) of the Property Sale Contract, First American acted as the escrow agent for Cumberland, and not for defendant. From this it follows, as argued by plaintiff, that if Cumberland did not receive the requisite \$1,000,000 deposit, it could be expected to have raised the objection to either plaintiff or defendant and there is no evidence that either party was so notified.

Irreparable Injury

Plaintiff also establishes that it will suffer irreparable injury if a preliminary injunction does not issue. In addressing this issue, it is first noted that “the equitable remedy of specific performance is routinely awarded in contract actions involving real property, on the premise that each parcel of real property is unique” (*EMF Gen. Contr. v Bisbee*, 6 AD3d 45, 52 [1st Dept 2004], *lv dismissed* 3 NY3d 656 [2004], *lv denied* 3 NY3d 607 [2004], citing 3 Dobbs, Remedies § 12.11 [3], at 299 [Practitioner’s 2d ed]). It has also been held that there is no adequate remedy at law when an action is premised upon a contract for the sale of real property (*see e.g. Lezell v Forde*, 26 Misc 3d 435, 441 [Sup Ct, New York County, 2009], citing *Delisi v Mastros*, 5 Misc 3d 1024 [A] [Sup Ct, Queens County 2004], quoting 96 NY Jur 2d, Specific Performance § 69). From this it follows that plaintiff will be irreparably injured if it is not permitted to culminate its deal to purchase the contracted for Property.

Balancing of the Equities

Under the circumstances presented herein, the court also finds that a balancing of the equities favors plaintiff. In so holding, it is first noted that plaintiff has already tendered deposits totaling \$1,050,000. Moreover, having rejected defendant's contention that plaintiff failed to tender the deposit called for under the Property Sale Contract, defendant offers no reason for its decision to terminate the Property Sale Contract (*see generally Gresser v Princi*, 128 AD2d 752, 753 [2d Dept 1987]; *Anasae Realty v Firestone*, 103 AD2d 707, 707-708 [1st Dept 1984]).

Relief Granted

“[T]he function of a provisional remedy is ‘not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits’” (*Lehey v Goldburt*, 90 AD3d 410, 411 [1st Dept 2011], quoting *Residential Bd. of Mgrs. of Columbia Condominium v Alden*, 178 AD2d 121, 122 [1st Dept 1991]; accord *Pamela Equities v 270 Park Ave. Café*, 62 AD3d 620, 621 [1st Dept 2009]; *SHS Baisley, LLC v Res Land*, 18 AD3d 727, 728 [2d Dept 2005]). Accordingly, plaintiff is granted a preliminary injunction enjoining defendant from transferring the Property to anyone other than plaintiff. The remaining demands for relief, as they pertain to compelling defendant to allow it to take all steps necessary to carry out the contract and executing an assignment, are not necessary to maintain the status quo, but are instead seeking to determine the ultimate rights of the parties. Plaintiff also offers no authority to support its request to direct defendant to file a

copy of the Property Sale Contract and the Vanderbilt Contract with the City Register; plaintiff, however, may take whatever steps it believes necessary to protect its right to purchase the Property.

Undertaking

CPLR 6312(b) provides, in relevant part, that:

“[P]rior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction . . .”

“While fixing the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court, CPLR 6312(b) clearly and unequivocally requires the party seeking an injunction to give an undertaking” (*Livas v Mitzner*, 303 AD2d 381, 383 [2d Dept 2003], citing *Schwartz v Gruber*, 261 AD2d 526 [2d Dept 1999]). Thus, although neither of the parties addresses the issue, if it is to be granted a preliminary injunction, plaintiff must be ordered to post an undertaking (*see e.g. Butt v Malik*, 106 AD3d 849, 850 [2d Dept 2013], citing *Winzelberg v 1319 50th Realty*, 52 AD3d 700, 702 [2008]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d at 605; *Hightower v Reid*, 5 AD3d 440, 441 [2004]), since it has been held that the absence of an undertaking renders the preliminary injunction voidable (*see Olechna v Town of Smithtown*, 51 AD2d 1036 [2d Dept 1976]). The sum fixed by the court for the undertaking must be sufficient to compensate the party being enjoined for the damages and costs sustained by them as a result of the issuance

of the preliminary injunction in the event that it is later determined that the requester was not entitled to injunctive relief (*Carter v Konstantatos*, 156 AD2d 632 [2d Dept 1989]).

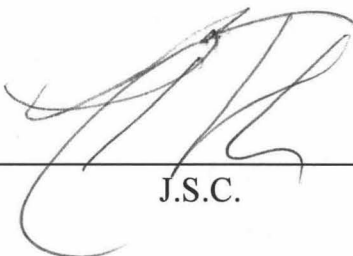
Accordingly, since plaintiff has already tendered a \$50,000 deposit under the Vanderbilt Contract and deposited another \$1,000,000 in escrow pursuant to the Property Sale Contract, and there is no argument made that plaintiff may be financially unable to close, the court fixes the undertaking in the amount of \$50,000, unless agreed otherwise between the parties.

Conclusion

Plaintiff's motion is granted to the extent of enjoining and restraining defendant from: (i) selling, assigning, conveying or transferring to any person or entity other than plaintiff, or hypothecating its rights under the assignment to it of the Property Sale Contract, for the property located at 140 Vanderbilt Avenue in Brooklyn (the Property); and (ii) transferring the Property, or any interest therein, to any person or entity other than plaintiff.

Settle order providing that plaintiff post an undertaking in the amount of \$50,000, unless agreed otherwise between the parties.

ENTER:



J.S.C.

HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE

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