

**H.H. Benfield Elec. Supply Co., Inc. v SMC Elec.
Contr. Inc.**

2014 NY Slip Op 31640(U)

June 27, 2014

Supreme Court, New York County

Docket Number: 111934/2009

Judge: Ellen M. Coin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. ELLEN M. COIN

PART 63

H.H. BENFIELD ELECTRIC SUPPLY COMPANY,
INC. d/b/a BENFIELD ELECTRIC CO.,

Plaintiff,

-against-

SMC ELECTRICAL CONTRACTING INC.
and GEORGE E. KAZANTZIS,

Defendants.

INDEX NO. 111934/2009
MOTION DATE Apr.16,2014
MOTION SEQ. NO. 002
E-FILED

The following papers, numbered 1, were read on this motion:

<u>Papers</u>	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits	1
Answering Affidavits-Exhibits	2
Reply Affidavits	3
Cross-Motion X No	

On January 15, 2010, judgment was entered in this court against defendants, jointly and severally, in the amount of \$658,017.49. Thereafter, in February 2010, the parties entered into a Stipulation of Settlement providing for defendant SMC Electrical Contracting, Inc. (SMC) to pay the judgment in installments. As security for the payments, defendant Kazantzis pledged his interest in his cooperative apartment, including his shares of stock in the cooperative corporation and proprietary lease. He also agreed that during the pendency of SMC's repayment obligations under the Stipulation of Settlement, or while any part of the judgment remained unsatisfied, he would not sell, transfer or otherwise encumber his interest in the apartment.

Plaintiff-judgment creditor H.H. Benfield Electric Supply Company, Inc. (Benfield) alleges, and Kazantzis concedes, that it perfected its security interest in Kazantzis' apartment by filing a UCC-1 Financing Statement and UCC Financing Statement Co-operative Addendum with the Office of the City Registrar on March 25, 2010.

SMC filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, which was converted in January 2013 to a Chapter 7 filing.

On August 15, 2012, Kazantzis filed a petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

By order dated November 7, 2013, the United States Bankruptcy Court granted Benfield relief from the automatic stay "for the purpose of continuing the foreclosure proceedings with respect to the cooperative apartment [of Kazantzis] and continuing the foreclosure sale of the Apartment..." (Ex D to the Affirmation of Bernard Kobroff dated April 10, 2014).

By Order to Show Cause dated April 7, 2014, Kazantzis moved to stay the auction sale of his apartment. Sadly, his contentions fail to support his application.

First, Kazantzis argues that after filing the UCC-1 Financing Statement and Financing Statement Cooperative Addendum, Benfield "took no further steps to perfect its judgment." He argues that the Cooperative Apartment's Board did not execute the documents necessary for perfection.

Next he argues that Benfield has failed to execute on the property by delivering an execution to the sheriff.

Further, he argues that there is a security agreement on the shares to the cooperative in favor of Evangelos and Evanthia Kazantzis entered into on August 24, 2006. Thus, he argues that any lien of Benfield is subordinate to the 2006 security interest.

He argues that there was a failure of consideration as to the Stipulation of Settlement in that he received no value from the transaction underlying the judgment. Finally, he contends that Benfield has already been partially or fully reimbursed for the judgment by its own employee theft insurance carrier.

As plaintiff notes, Kazantzis' arguments regarding (1) perfection of Benfield's judgment with the Board of the cooperative apartment and (2) execution on the judgment fall because Benfield does not seek to execute on the judgment, but rather to pursue its rights as a secured creditor pursuant to the Stipulation of Settlement.

Contrary to Kazantzis' contention, Benfield does not require any documents to be executed by the cooperative corporation, since the contemplated sale is not a voluntary transaction, but a foreclosure on a security interest. (See *e.g. House v Lalor*, 119

Misc2d 193 [Sup Ct, New York County 1983]).

Similarly, the consideration for the Stipulation of Settlement is apparent, as the Stipulation provided, in the first instance, for SMC to pay the underlying judgment. Had it done so, Benfield was required to issue a satisfaction of the judgment and Kazantzis would not have had to pay anything in satisfaction of the judgment. (Stipulation of Settlement, ¶14).

To the extent that Kazantzis argues that there is a lien on the apartment superior to that of Benfield's, his argument is unavailing. A security interest in individual units of a real estate cooperative is only perfected by filing pursuant to UCC Article 9. (UCC §9-310[d]). Benfield shows that it filed its security interest on March 25, 2010 (Ex C to Kobroff Aff). The filing of Evangelos and Evanthia Kazantzis in the cooperative apartment was made on November 19, 2013 (Ex E to Kobroff Aff). Having been first to file, Benfield has priority over the Kazantzises.


Benfield has established that it served Notification of Disposition of Collateral by substituted service upon Kazantzis on March 6, 2014, more than thirty days before the April 8, 2014 auction that was the subject of the Notification. (UCC §9-612(b), requiring notice sent after default and 10 days or more before the earliest time of disposition set forth in the notification). Accordingly, Benfield's notice was timely. Moreover, the Notification was in the form prescribed by UCC §9-613(c).

In light of the foregoing, it is hereby

ORDERED that the motion of defendant George E. Kazantzis for an order staying the auction of the 108 shares of stock of the 209 East 56th St. Apartment Corp. and the proprietary lease to Apartment 5G at 209 East 56th Street, New York, New York 10022 is denied; and it is further

ORDERED that the stay entered on April 7, 2014 is vacated.
This is the decision and order of the Court.

Dated: June 27, 2014



Ellen M. Coin, A.J.S.C.

Case disposed