

Julius Yudell Trust v Gilbert

2014 NY Slip Op 31987(U)

July 25, 2014

Supreme Court, New York County

Docket Number: 152937/2013

Judge: Shirley Werner Kornreich

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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JULIUS YUDELL TRUST, Martin D. Yudell & Michael
Beder as Trustees of the JULIUS YUDELL TRUST, THE
WEISER FAMILY 1992 IRREVOCABLE TRUST &
Susan Finley, Wendy W. Chayet & Stanley Weiser as
Trustee of THE WEISER TRUST,

Plaintiffs,

v.

Index No.: 152937/2013

JERROLD GILBERT, a/k/a, JERROLD GILBERT, ESQ.,

Defendant.

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TRUST UNDER THE WILL OF IRENE F. PSATY, by
Jerrold Gilbert as Trustee, & MERJER LLC,

v.

Index No.: 651180/2013

WENDY W. CHAYET, SUSAN W. FINLEY, STANLEY
WEISER, THE WEISER FAMILY 1992 IRREVOCABLE
TRUST, by Susan Finley, Wendy W. Chayet & Stanley
Weiser, as Trustees, THE TRUST UNDER
THE JULIUS YUDELL AGREEMENT DATED AUG. 1,
1974, by Martin D. Yudell & Micahel Beder as Trustees,
WEISER FAMILY 1 LLC & MICHAEL BEDER,

Defendants.

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TRUST UNDER THE WILL OF IRENE F. PSATY, by
Jerrold Gilber as a Trustee, MERJER LLC &
JERROLD GILBERT,

Plaintiffs,

v.

Index No.: 653352/2013

DAVID EINBINDER, ROBERT STEINBERG,
ALLISON BRENNAN, FIRST DEVELOPMENT CORP.,
WENDY W. CHAYET, SUSAN W. FINLEY, STANLEY
WEISER, THE WEISER FAMILY 1992 IRREVOCABLE

Motion seq. No.: 002

TRUST, by Susan W. Finley, Wendy W. Chayet & Stanley Weiser as Trustees, MARTIN D. YUDELL, MICHAEL BEDER, LESLEIE BEDER & THE TRUST UNDER THE JULIUS YUDELL AGREEMENT DATED AUG. 1, 1974, by Martin D. Yudell & Micahel Beder as Trustees,

Defendants.

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KORNREICH, SHIRLEY WERNER, J.:

Jerrold Gilbert brings this motion seeking an order of contempt against plaintiffs (Plaintiffs) in the action brought under Index No. 152937/2013 (First Action) and against defendants (Defendants) in the action brought under Index No. 653352/2013 (Third Action). Gilbert alleges that Plaintiffs violated this court's order of July 17, 2013 directing that he remain as manager of Baldwin Harbor Shopping Center (Baldwin). In the Third Action, he alleges that Defendants violated this court's October 30, 2013 order in that case directing that Defendants not interfere with his management of Baldwin.

Plaintiffs, Defendants and defendants (Defendants2) under the action brought under Index No. 651180/2013 (Second Action) cross-move for an order: directing Mr. Gilbert to turn over all records pertaining to Baldwin to the new management company and to transfer its bank accounts; to stay discovery for six months in the First Action; for declarations that the Weiser Family 1 LLC (Weiser LLC) is the current owner of 33 1/3 membership interest in Baldwin; that the Trust under the will of Irene F. Psaty (Psaty Trust) and Merjer LLC (Merjer) collectively own 33 1/3 interest in Baldwin; that the joint venture partners, pursuant to the joint venture agreement (JVA), may transfer their interest to family members, trusts and companies; to dismiss Action 3 as moot; and sanctions.

I. Background

Gilbert was the manager of Baldwin since 1990. He was employed under a management contract which was automatically renewable for a two-year period unless written notice of termination was given sixty days prior to expiration. The most recent contract renewal was to expire on December 31, 2013. Gilbert also was the trustee of the Psaty Trust and the husband of one of the Psaty daughters. Because the contract was still in effect at the time Gilbert sought the July injunction, the court directed that Gilbert was to remain as manager on July 17, 2013. Similarly, on October 30, 2013, the court directed that Defendants not interfere with Gilbert's management of Baldwin.

II. Contempt

When seeking civil contempt, the moving party must establish, by clear and convincing evidence, that “there was a lawful court order in effect that clearly expressed an unequivocal mandate, that the person who allegedly violated the order had actual knowledge of its terms, and that his or her actions or failure to act defeated, impaired, impeded or prejudiced a right of the moving party.” *Matte of Paul A. v Shaundell LL.*, 117 AD3d 1346, 1348 (3d Dept 2014); *see Hayes v Barroga-Hayes*, 117 AD3d 794, 796 (2d Dept 2014) (civil contempt requires lawful court order with clear, unequivocal mandate in effect; that order disobeyed by party with knowledge of order; and that movant is prejudiced). Here, movants failed in their proof.

The instant motion was brought on July 16, 2014. Movants had been present when the court issued its previous 2013 orders after a lengthy hearing on the record. They and their counsel were fully aware of the court's reasoning and that the court made clear that its orders were based upon the fact that the management contract was still in effect. A sixty day notice was served on that manager by the joint venture prior to expiration of the contract. Thus, when the instant application for contempt was made, the management contract no longer was in effect. In

other words, there no longer existed a clear, unequivocal mandate requiring that Gilbert remain manager. Moreover, since Plaintiffs and Defendants also were present at the July 2013 and October 2013 proceedings, movants failed to establish by clear and convincing evidence that Plaintiffs and Defendants knowingly violated a mandate of the court. Finally, movants have failed to demonstrate prejudice since Gilbert no longer has a contract to remain manager of Baldwin. The motion for contempt is denied.

III. Cross-Motion

A. Baldwin and Bank Records

The court has granted cross-movants request that all of the Baldwin records be turned over to the new management company. The JVA is to bear the costs of the transfer, the current records are to be kept in a place accessible to all of the joint venturers and made available for inspection by them upon request during reasonable business hours. Also, the Baldwin bank accounts are to be transferred to new management or to the name of the joint venture, as requested by the joint venture.

B. Remaining Requests

The First Action is brought by Gilbert as manager of Baldwin. Additionally, the parties have stipulated to join the subject three actions for discovery. The court denies the request for a stay of discovery in the matter given the facts that Gilbert no longer is the manager of Baldwin pursuant to contract and that discovery is proceeding on all three cases upon stipulation by all of the parties (including movants) that all three actions involve common questions of law and fact.

As to the remaining requests, they are intertwined with the ultimate decisions in the actions. Other than the court's rulings on the record that each one-third, joint venturer has but one vote (that is, there are 3 votes all told) and that the JVA controls and speaks to the issue of

permissible transfer of shares to family members, the court declines to further rule on the requests. Accordingly, it is

ORDERED that Jerrold Gilbert's motion for contempt is denied in all respects; and it is further

ORDERED that the cross-motion to transfer the records and bank accounts of Baldwin Harbor Shopping Center is granted; and it is further

ORDERED that each one-third venture has one vote under the Joint Venture Agreement; and it is further

ORDERED that a stay of discovery in the action under Index Number 152937/2013 is denied; and it is further

ORDERED that the remainder of the cross-motion is denied.

Dated: July 25, 2014

ENTER:



SHIRLEY WEBNER KORNREICH
J.S.C