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| <b>Cortazar v Tomasino</b>   |
| 2014 NY Slip Op 34067(U)   |
| May 20, 2014   |
| Supreme Court, Queens County   |
| Docket Number: Index No. 701692/14   |
| Judge: Leonard Livote  |
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**SHORT FORM ORDER**

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote  
Acting Supreme Court Justice

IAS TERM, PART 33

**ORIGINAL**

-----x  
James Cortazar individually and  
derivatively on behalf of Jackson  
Bounty, LLC, and Cojam Realty, Inc.  
Plaintiff,

Index No: 701692/14

Motion Date: 05/02/14

-- against --

Seq. No: 2

Vincent Tomasino, Jr., George Leckler,  
Brian Scalcione, Vincent Cortazar,  
Dongsung Lim, Jackson Bounty LLC,  
Cojam Realty Inc., 27-51 Jackson Ave  
Corp., 27-51 Jackson Avenue Holding,  
Inc., Goo Young Inc., A-Plus Construction  
Corporation, and Manhasset Properties, Inc.  
Defendants.

**FILED**  
MAY 28 2014  
COUNTY CLERK  
QUEENS COUNTY

-----x

The following papers numbered 1 to 22 read on this motion by  
plaintiff for a preliminary injunction.

|  | <u>PAPERS<br/>NUMBERED</u> |
|--|----------------------------|
| Notice of Motion, Affirmation, Affidavits<br>and Exhibits..... | 1-3, 4-6,<br>9-11, 13      |
| Answering Affirmations, Affidavits and<br>Exhibits.....        | 7-8, 12,                   |
| Reply Affirmations, Affidavits and<br>Exhibits.....            | 14, 16-18, 19-<br>21       |
| Other....(Exhibits).....                                       | 22                         |

Upon the foregoing papers, the motion for a preliminary  
injunction is denied.

Background

Plaintiff James Cortazar, is a principal of Cojam Realty.  
Cojam Realty is the former owner of the premises located at 27-49  
Jackson Avenue, Long Island City, New York ("Parcel 1"). On  
October 1, 2009, plaintiff entered into a contract which resulted

in the formation of Jackson Bounty, LLC. The owners of Jackson Bounty are defendant Vincent Tomasino, Jr. ("Tomasino"), a 60% owner, plaintiff, a 10% owner, George Leckler, a 10% owner, Brian Scalcione, a 10% owner, and Vincent Cortazar, a 10% owner. Pursuant to the contract, Parcel 1 was transferred to Jackson Bounty. Jackson Bounty also took title to an adjoining property located at 27-51 Jackson Avenue, Long Island City, New York ("Parcel 2"). The purpose of Jackson Bounty was to demolish the existing structures and develop a 44 unit condominium on the site.

The contract contemplated that defendant Tomasino would pay the fees to obtain the necessary plans and permits and that he would also obtain financing for the project. The contract also provided that, in the event that the permits or financing were not obtained within 24 months, the properties would be sold unless there was an agreement otherwise. On March 7, 2014, having failed to obtain the necessary financing, Tomasino entered Jackson Bounty into a contract to sell both parcels.

Plaintiff then commenced the instant action. The gravamen of this case is that the contract should be rescinded because Tomasino did not take commercially reasonable steps to secure financing. By this motion, plaintiff seeks a preliminary injunction preventing the sale of the properties. Tomasino and Jackson Bounty cross-move to dismiss the complaint. Defendants George Leckler and Brian Scalcione cross-move separately to dismiss the action.

#### Discussion

In order "to prevail on a motion for a preliminary injunction, the movant must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position" (*Apa Sec., Inc. v. Apa*, 37 A.D.3d 502, 503, [2d Dept 2008]).


With respect to the first factor, although the plaintiff has presented evidence in support of his claims, the evidence is not clear and convincing and does not establish a likelihood of success on the merits. Furthermore, plaintiff has demonstrated that his interest in Parcel 1 was as an investment. Thus, he may be fully compensated by money damages. Finally, the equities balance in favor of the defendants. The possibility that the properties would be sold in this manner was contemplated by the contract and agreed to by the plaintiff. Therefore, it is

appropriate that the assets of Jackson Bounty be divided in accordance with the existing agreement rather than the plaintiff's unilateral demand.

Accordingly, the motion for a preliminary injunction is denied and stay contained in the Order to Show Cause dated April 28, 2014, is vacated. Decision is reserved on the cross-motions.

This constitutes the Order of the Court.

Dated: May 20, 2014

  
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Leonard Livote, A.J.S.C.