

Tribeca Space Mgrs., Inc. v Tribeca Mews Ltd.
2015 NY Slip Op 32433(U)
December 23, 2015
Supreme Court, New York County
Docket Number: 653292/13
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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TRIBECA SPACE MANAGERS, INC.,

Index No. 653292/13

Plaintiff,

-against-

TRIBECA MEWS LTD., HAROLD THURMAN,
BRAD THURMAN, AND 25 MYRENTCO LLC,,

Defendants.
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JENNIFER G. SCHECTER, J.:

Plaintiff Tribeca Space Managers, Inc. (Tribeca Space) moves for a pre-judgment order of attachment, directing a levy "upon such property in which the defendants have an interest and upon such debts owing to the defendants" (Order to Show Cause at 1). Its motion is denied.

Background

Tribeca Space, an incorporated association of the owners of units in a building located at 25 Murray Street in Manhattan (Building), commenced this action against defendants in September 2013. It alleges that Tribeca Mews Ltd. (Tribeca Mews), the sponsor of the condominium, and its principals and its/their affiliate 25 Myrentco LLC (Myrentco) (collectively Defendants) breached agreements and fiduciary obligations based on, among other things, construction defects and failure to procure a permanent certificate of occupancy (PCO). Tribeca Space also alleges that Defendants engaged in fraudulent conveyances to render Tribeca Mews insolvent and defeat any potential recovery by plaintiff. Specifically,

Tribeca Space alleges that in July 2011 Tribeca Mews transferred seven of 10 remaining condominium units to Myrentco for no consideration (Affirmation in Support [Supp], Ex B at ¶¶ 28-30, 49-58). In late 2012, Myrentco sold one of the units--PH 10A--for the sum of \$1,781,937.00 (Memorandum in Support [Mem] at 6). Tribeca Space also alleges that Tribeca Mews sold its last three units to residential buyers in 2012 (Supp, Ex B at ¶ 31) leaving "the property remaining in [Tribeca Mews'] hands after the conveyance an unreasonably small capital" (*id.* at ¶ 56).

Now, more than two years after commencement of the action, more than four years after Tribeca Mews transferred units to Myrentco and several years after Tribeca Mews sold its last units to residential buyers, Tribeca Space seeks an order directing pre-judgment attachment of six condominiums owned by Myrentco (Supp at ¶ 2).

Tribeca Space urges that it is entitled to attach Myrentco's property. It contends, among other things, that it has a probability of success on the merits as there has been no PCO despite occupancy of the Building since 2008 and because numerous Building Code violations and construction defects persist (Supp at ¶ 9; August 3, 2015 Vivenzio Affidavit at ¶ 6).

Tribeca Space also maintains that it has established that Tribeca Mews, "in 2011, transferred for no consideration the only assets that it had remaining in the Building"--the unsold condominium units--to Myrentco, a related entity, to defraud plaintiff and ensure that it had no assets from which it could receive recompense (Supp at ¶¶ 12-15). Tribeca Space argues that there are "objective facts"--"badges of fraud" that give rise to an inference that when Tribeca Mews transferred the units to Myrentco, it did so intending to defraud its creditors. Tribeca Space points to the facts that there was no consideration given by Myrentco, there is a close relationship between Tribeca Mews and Myrentco (which share the same principals), Tribeca Mews' principals continue to control the units through Myrentco and "since the moving papers evidence that [Tribeca Mews] no longer owns any units in the Building, it certainly is reasonably inferable that [Tribeca Mews] is insolvent" as a result of its dispossession of the 10 units it owned through transfer of seven units to Myrentco and three units to residential buyers (Mem at 8).

Tribeca Space asserts, moreover, that Tribeca Mews' transfer of the units to Myrentco has left it unable to satisfy any judgment against it and/or "deposit the requisite funds with its attorney due to its failure to have obtained the PCO" (Supp at ¶ 15).

In opposition, Defendants detail work that has been performed in an effort to ensure that Tribeca Mews fulfills its obligations (Affirmation in Opposition [Opp] at ¶¶ 5-6). Defendants point out that in August 2015, the Department of Buildings issued the renewal of the temporary certificate of occupancy (*id.* at ¶ 4). Defendants also submit proof that in 2008 Tribeca Mews did in fact post a \$7,500 escrow deposit with its attorney as required to cover the then anticipated costs of obtaining the PCO (*id.* at ¶ 9, Ex I).

Analysis

"Attachment is a 'harsh' remedy, and is construed narrowly in favor of the party against whom the remedy is invoked. Whether to grant a motion for an order of attachment rests within the discretion of the court" (*VisionChina Media Inc. v Shareholder Representative Servs, LLC*, 109 AD3d 49, 59 [1st Dept 2013] [citations omitted]).

Under the circumstances, Tribeca Space has not established entitlement to prejudgment attachment. Though it is true that, more than four years ago, Tribeca Mews transferred seven condominium units to Myrentco, that the principals of the entities on each side of the transaction are the same and that monetary consideration was not exchanged, the Court is not convinced that there was any

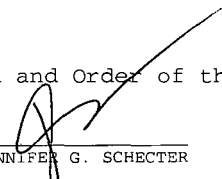
intent to defraud. Significantly, the transfer was not made in secret. Myrentco, moreover, sold one of the seven units it received and there is no allegation of any impropriety or irregularity in that sale (see Mem at 6). Nor is there any proof of irregularity or impropriety related to Tribeca Mews' sale of three units to residential buyers in 2012. Nor is there any proof that Tribeca Mews improperly divested itself of the proceeds from those sales. Nor is there any evidence that either Tribeca Mews or Myrentco is in danger of insolvency.

Most convincing, however, is that years have passed since this action was commenced and there is no evidence whatsoever that since the inception of this case Tribeca Mews or Myrentco has transferred any assets in an attempt to defeat plaintiff's ability to recover. Based on all of these facts, plaintiff has not demonstrated that defendants "assigned, disposed of, encumbered or secreted property" with the intent to defraud creditors or frustrate the enforcement of a judgment (see CPLR 6201[3]). The "harsh remedy" of a prejudgment attachment is unwarranted, particularly given plaintiff's long delay in seeking the provisional remedy.

Accordingly, it is ORDERED that plaintiff's motion is denied.

This constitutes the Decision and Order of the Court.

Dated: December 23, 2015


HON. JENNIFER G. SCHECTER