

26th LS Series LLC v Brooks
2016 NY Slip Op 31074(U)
June 8, 2016
Supreme Court, New York County
Docket Number: 651566/12
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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26TH LS SERIES LLC,

Plaintiff,

Index No. 651566/12

- against -

AUDRIE BROOKS, IRWIN BROOKS, GARY C.
SICKLER, THE AUDRIE BROOKS ILIT, THE
AUDRIE BROOKS LIT, BEDIS ZORMATI,
EDGAR MARIN, JAFFA GROUP LLC, and
ABDELRAHMAN FARAJ,

Defendants,

-----x
JAFFA GROUP LLC,

Third Party Plaintiff,

- against -

ALLAN SPIEGEL, STEVEN SPIEGEL, and HERMAN
SEGAL,

Third Party Defendants,

-----x
AUDRIE BROOKS ILIT,

Second Third Party Plaintiff,

- against -

ALAN SPIEGEL, STEVEN SPIEGEL, ALAN RUBENSTEIN,
DAVID GREENSPAN,

Second Third Party Defendants.

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Hon. C. E. Ramos, J.S.C.:

Defendants Bedis Zormati and Jaffa Group LLC move pursuant
to CPLR 1201 appointing Russell Neal Adler or such other
qualified individual as guardian ad litem for Irwin Brooks.

Background

In July 2008, Mrs. Audrie Brooks, as grantor, created two irrevocable life insurance trusts, the LIT and the ILIT (together, the Trusts) in the amounts of \$7 million. The beneficiary of the Trusts was her husband, Irwin Brooks. At that time, the trustee of the Trusts was defendant Gary Sickler.

In May 2012, 26th LS Series Ltd., commenced this action against defendants Sickler, the Brooks', the Trusts, and the insurance agents who wrote the policies, Bedis Zormati, Edgar Marin, and Abdelrahman Faraj.

In its summons and complaint, 26th LS Series Ltd. alleges that defendants Zormati, Sickler and Marin (Zormati defendants) devised a fraudulent scheme whereby they recruited elderly persons to apply for high-end life insurance policies and took loans to pay for the substantial premiums due for these policies, although never intending to pay for the loans. The life insurance policies served as collateral for the loans, and after the policies were issued and the loans were obtained from premium finance companies, the Zormati defendants defaulted under the terms of the loan agreements and, instead of surrendering the policies to the finance companies, attempted to fraudulently transfer ownership of the policies to shell companies which they control, in an effort to divest the finance companies of their security interest in the policies.

Specifically, Zormati, the writing agent of the policy, entered into a consulting agreement with non-party Newport Mesa Financial Corp. (Newport Mesa), pursuant to which Newport Mesa arranged financing for the one of the policies. In August 2008, the Brooks's, Sickler and the LIT entered into a credit agreement with HM Ruby Fund, L.P. whereby HM Ruby, L.P. loaned the ILIT \$570,058 to pay the premiums on the policy and any fees relating the origination of the credit agreement.

Simultaneously with the execution of the credit agreement, Sickler, on behalf of the ILIT, executed a promissory note to HM Ruby Fund, L.P. in the amount of \$464,610. In addition, the Brooks's signed guaranties wherein they personally guaranteed the repayment of all obligations and liabilities of the ILIT to HM Ruby Fund, L.P.

26th LS purports to be the assignee of HM Ruby Fund L.P.'s rights, title, and interests in the loan agreement, and continues to pay the premiums.

At some point, the Zormati defendants purported to sell the policies from the Trusts to defendant Jaffa Group for \$1.4 million. Copies of check produced in discovery in this action show that Sickler wrote a series of checks from the Trusts to Zormati and other companies controlled by Jaffa Group, thereby depleting \$700,000 from the Trusts' accounts (Exhibits C, D, E annexed to the Milito Aff.). One of the companies that Sickler

wrote a \$250,00 check to from the trusts' accounts is paying his legal fees; Zormati also pays Sickler's legal fees (Exhibit B, annexed to the Milito Aff.).

In this action, 26th LS seeks a declaration concerning its rights with respect to the policies, and an order setting aside the transfer of the policies to Jaffa Group attempted by defendants. The Zormati defendants challenge 26th LS's legal standing to bring this action.

This Court previously denied the Zormati defendants' motion for summary judgment to dismiss the complaint on this basis, as premature (1/16/15 Tr 29).

In January 2015, the Brookses purported to execute amendments to the Trusts. The amendments sought to change the beneficiary of the trusts to Single Spring, LLC and appoint a new trustee, Jack Wolcowitz, who is associated with the principal of Single Spring. Recently in this litigation, 26th LS, the Brookses and Wolcowitz, in his capacity as the purported new trustee, entered into a global settlement. In the settlement, Wolcowitz restructured the trusts' debts, and Mrs. Brooks agreed to name Single Spring as the new beneficiary of the Trusts in exchange for substantial monetary payment. Single Spring has already paid the Brookses in excess of \$200,000 and promised to purchase them a new home in their native Jamaica. Single Spring also agreed to pay the Brookses' legal fees in this action.

In August 2015, the Zormati defendants moved to hold the Brookses in contempt based upon the amendments to the Trusts on the basis of a 2012 order of this Court prohibiting any changes to the policies. This Court denied the motion for contempt (9/9/2015 Tr 46:12-19), and on its own motion, voided the amendments. The Brookses moved before this Court to amend the Trusts shortly thereafter, and the Zormati defendants and Jaffa, opposed (NYSCEF Doc No. 469).

This Court permitted Wolcowitz to intervene in the action and serve an intervenor complaint. With respect to the motion to approve the trust amendments, this Court decided to hold it in abeyance pending the examination before trial of Irwin Brooks.

Discussion

CPLR 1201 mandates three categories of persons who shall appear by a guardian ad litem: 1) certain infants; 2) certain adjudicated incompetents or conservatees; 3) or an individual who "is an adult incapable of adequately prosecuting or defending his [her] rights" (see generally *Urban Pathways v Lublin*, 227 AD2d 186 [1st Dept 1996]; *Matter of Nancy C. v Allison C.*, 57 AD3d 986, 987 [2d Dept 2008]). The capability of prosecuting or defending one's rights includes understanding the proceedings and the ability to assist counsel (*Matter of Barbara Anne B.*, 51 AD3d 1018 [2d Dept 2008]).

CPLR 1202 specifies the persons who have standing to seek

the appointment of a guardian ad litem. Even where no competence or capacity determinations have been made, the Court, "on its own initiative," has authority to appoint a guardian ad litem to protect the interests of a litigant where she does not appear able to adequately protect and assert her rights and interests (CPLR 1201 [a] [2]; see *Matter of Dery*, 86 Misc2d 416 [Sup Ct, NY County 1976]; *Kings 28 Assocs. v Raff*, 167 Misc2d 351 [Civil Ct, Kings County 1995]; see also *Matter of Berman*, 24 AD2d 432 [1st Dept 1965] [The power to appoint a guardian ad litem to appear for and represent an incompetent in a proceeding is among the Court's inherent powers in the matter of supervision over the person and property of the incompetent]; Vincent C. Alexander, *Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 1202* ["the court may always act sua sponte"]).

The Court has given due consideration to the motion, and concludes that appointment of a guardian ad litem for Irvin Brooks is appropriate. Mr. Brooks is 87 years old, resides in a nursing home, and has been diagnosed with dementia and Parkinson's disease. Although Mr. Brooks has private counsel and is assisted by close family members who help him communicate with counsel, the Court has reviewed the April 21, 2016 deposition transcript of Mr. Brooks's deposition. Legitimate concerns persist over his deteriorating physical and mental condition which necessarily impact his understanding of the nature and

purpose of this proceeding, and his ability to meaningfully assist counsel. The Court is not making any finding that Mr. Brooks is incompetent or incapacitated at this time. Rather, in order to put to rest any concerns or questions regarding Mr. Brooks's condition and insure that Mr. Brooks's rights and interests are sufficiently protected, the Court determines in its discretion that the appointment of a guardian ad litem is both appropriate and prudent (see *Sengstack v Sengstack*, 4 NY2d 502, 509-10 [1958]).

Accordingly, the motion to appoint a guardian ad litem for Irvin Brooks is GRANTED, and the Court will select an individual who is a qualified fiduciary in New York County to serve as guardian ad litem; and it is further

ORDERED that the costs and fees of the guardian ad litem shall be borne equally between 26th LS Series Ltd., Gary Sickler, Edgar Marin, Bedis Zormati, Jaffa Group LLC and Jack Wolcowitz, but in such a manner that the guardian ad litem shall have no knowledge of which parties are paying his or her fees; and it is further

ORDERED that the movant shall settle an order in the form approved by the Guardian and Fiduciary Support Office, room 158, tel. 646-386-3328.

Dated: June 8, 2016

ENTER:



J.S.C.

CHARLES E. RAMOS