

Freedman v Hason
2016 NY Slip Op 32610(U)
August 22, 2016
Supreme Court, Nassau County
Docket Number: 602343/12
Judge: Stephen A. Bucaria
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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

MARK FREEDMAN Individually and
derivatively On behalf of Pinewood
Terrace, LLC,

TRIAL/IAS, PART 1
NASSAU COUNTY

Plaintiff,

INDEX No. 602343/12

MOTION DATE: 7/21/16

Motion Sequence 008

-against-

URI HASON,

Defendant.

The following papers read on this motion:

Notice of Motion.....X
Affirmation in Support.....XX

Motion by defendant Uri Hason for an order lifting the restraining notice issued by Fidelity National Title Company, and directing the escrowee Simon Rothkrug to release the escrowed funds to plaintiff Mark Freedman, is **denied**.

This is an action for breach of contract. In 2006, plaintiff Mark Freedman purchased membership interests in a group of real estate companies owned by defendant Uri Hason. The membership interests included a 50% interest in 399 West John, LLC; a 55.5 % interest in Hunting Hill Estates, LLC; a 36% interest in Pinewood Terrace, LLC; a 30% interest in The Knolls at Pinewood, LLC; a 50% interest in Pinewood Development Inc.; and a 40% interest in Islandia Partnership, LLC. 399 West John owns an office building, and the other companies are involved in various real estate development projects.

FREEDMAN v HASON**Index No. 602343/12**

On October 27, 2010, Hason, acting through Pinewood Terrace, LLC, entered into a confession of judgment on behalf of Northwood Village, LLC, which was owned by Pinewood. Northwood Village held title to a number of lots in Patchogue. The confession of judgment was in favor of Unique Designs by Uzi, Ltd. and was in the amount of \$347,845.15. On November 10, 2010, Unique entered judgment in Suffolk County pursuant to the confession of judgment (Chicago Title's ex A). Although the judgment correctly named Northwood Village, LLC as the defendant in the caption, the decretal paragraph incorrectly referred to the judgment debtor as "Northwood Estates, LLC." However, both the caption and the decretal paragraph correctly showed the judgment debtor's address as 399 West John Street in Hicksville.

On November 23, 2010, Freedman and Hason entered into the agreement which formed the basis of the present action. Pursuant to the agreement, Hason was to repurchase Freedman's interests in 399 West John, Hunting Hill, Pinewood Terrace, Pinewood Development, and Islandia Partnership for \$1,400,000. The agreement further provided that Pinewood Terrace was to continue to make payments on a \$600,000 loan from State Bank of Long Island, and the Knolls was to continue to make payments on a \$5,578,752 loan from Hudson Valley Bank. Additionally, Freedman was to receive \$50,000 upon the sale of ten condominium units of Pinewood Terrace. Although Freedman retained his 30% membership interest in the Knolls, he agreed not to exercise any management rights in that company.

The parties entered into an amendment agreement on January 20, 2011, apparently the date of the closing. The amendment provided that \$1,300,000 of the purchase price was to be paid by bank check at the closing. The balance of the purchase price was to be paid by a \$100,000 promissory note dated January 20, 2011 and payable one year after the closing. The note carried interest at the rate of 7% and contained a provision for attorney's fees.

This action was commenced on November 19, 2012. The first cause of action is on the \$100,000 promissory note. Plaintiff also asserted various other claims, including breach of the November 2010 agreement by failing to make loan payments, as well as the \$50,000 payment to Freedman, breach of the duty of good faith and fair dealing, an accounting with respect to Pinewood Terrace and The Knolls, breach of fiduciary duty, and waste of corporate assets.

By order dated January 30, 2013, plaintiff's motion for a preliminary injunction was granted to the extent of restraining defendant from transferring his ownership interest in Pinewood Terrace, LLC and restraining defendant from transferring any real property owned directly or indirectly by that company. By order dated May 29, 2013, the court granted plaintiff partial summary judgment to the extent of liability on his first cause of action.

FREEDMAN v HASON**Index No. 602343/12**

On September 4, 2014, Hason, acting through Pinewood Terrace, LLC, sold 18 lots owned by Northwood Village LLC to Terrace Lane LLC, in violation of the preliminary injunction. The purchase price was \$725,000. \$365,000 was to be paid into escrow with Jonathan Fisher, Esq. (defendant's attorney). Additionally, an assignment was to be delivered in escrow with Simon Rothkrug (purchaser's attorney) of the proceeds of the sale of 2 Pinewood Terrace, a condominium in Patchogue, up to \$360,000.

By order dated December 11, 2014, Supreme Court, Suffolk County amended Unique Design's judgment to refer to Northwood Village, LLC as the judgment debtor in the decretal paragraph. The amended judgment was entered in Suffolk County on December 26, 2014.

On January 29, 2015, Northwood Village sold 2 Terrace Lane in Patchogue (not one of the lots previously conveyed) to Angelo Sottile, a bona fide purchaser, for \$405,000. The judgment against Northwood Village was not revealed in the course of the title search. On September 8, 2015, the amended judgment was assigned to Chicago Title Insurance Company. On November 12, 2015, Chicago Title, as judgment creditor, served restraining notices on Hason, Northwood Village, and Pinewood Terrace.

On February 16, 2016, Freedman and Hason entered into a "settlement agreement and mutual release of claims," settling the present action. The settlement agreement provides that Hason shall pay Freedman the sum of \$725,000 "to be paid from funds held in escrow." The agreement further provides that the payment was to be made by "Jonathan Fisher, Esq. and Simon Rothkrug, Esq. in immediately available funds...." As noted, Fisher is Hason's attorney, and Rothkrug is the attorney for Terrace Lane, the purchaser in the September 4, 2014 transaction.

By order dated April 11, 2016, defendant Hason's motion for an order directing Rothkrug to release the "escrowed funds," i.e. the proceeds of the sale of the 2 Pinewood Terrace condominium, to Freedman was denied, with leave to renew upon proper papers showing that Chicago Title's judgment did not create a lien on the property. Although a restraining notice operates as an injunction against transfer of the property, it does not give the judgment creditor a lien on the defendant's property or priority over other judgment creditors (CPLR § 5222[b]); see also practice commentary C5222:4,8). Thus, Chicago Title did not acquire any lien upon the escrowed funds by serving its restraining notice on November 12, 2015.

Nevertheless, Chicago Title may have acquired a lien upon Northwood Village's property when the Unique Designs judgment was docketed against Northwood Village or Northwood Estates. CPLR § 5203 provides that no transfer of an interest of the judgment

debtor in real property is effective against the judgment creditor from the time of the docketing of the judgment with the clerk of the county in which the property is located. A judgment is “docketed” by making an entry in the proper docket book “under the surname of the judgment debtor” (CPLR 5018[c]). The entry shall consist of, among other information, the name and last known address of the judgment debtor (Id). If the judgment is docketed under the judgment debtor’s correct surname, the docketing creates a lien on the debtor’s real property, although the first name shown on the docket is a “commonly known derivative” of the first name of the title holder (**Soressi v SWF, LP**, 81 AD3d 1143 [3d Dept. 2011]). With respect to judgments against corporate entities, it is less clear whether docketing under a variation of the title holder’s name will create a lien on the title holder’s real property.

As the party seeking relief, it was Hason’s burden to proffer evidence demonstrating that Chicago Title’s judgment did not create a lien on the real property (**Soressi v SWF, LP**, supra, 81 AD3d at 1144). Since Hason did not offer the actual docket, or any evidence as to the title search, Hason had not established that the docketing of Chicago Title’s judgment did not create a lien against the property (See, **Flagstar Bank v New York**, 114 AD3d 138, 145 [2d Dept. 2013]). Nevertheless, the court noted that the docket apparently showed the correct address of the property.

By order to show cause dated June 22, 2016, defendant Hason renews his motion to lift the restraining notice and for an order directing Rothkrug to release the escrowed funds, i.e., the proceeds of the sale of the 2 Pinewood Terrace condominium, to plaintiff Mark Freedman. Hason submits an affidavit from the abstract company which performed the title search for Angelo Sottile, the purchaser of 2 Terrace Lane. The abstract company states that because of the “normal delays” on the part of the Suffolk County Clerk “in verifying and posting the information,” the amended judgment against Northwood Village was not discoverable. In opposition, Chicago Title argues that the judgment was a lien on the property at the time that it was conveyed by Northwood Village to Angelo Sottile. Alternatively, Chicago Title argues that it has a valid, enforceable claim upon the “traceable proceeds” held by Rothkrug. Chicago Title notes that both Northwood Village and Hason, who signed the confession of judgment, had actual knowledge of the judgment at all times.

The amended judgment against Northwood Village, LLC was docketed in Suffolk County on December 26, 2014. Thus, the transfer of 2 Terrace Lane on January 29, 2015, was not effective as against Chicago Title, the judgment creditor (CPLR § 5203). The adequacy of the title search is irrelevant to the validity of the judgment lien. Accordingly, defendant Hason’s motion to direct the escrowee Simon Rothkrug to release the escrowed

FREEDMAN v HASON**Index No. 602343/12**

funds to plaintiff Mark Friedman is **denied**. The escrowee is directed to pay the funds to non-party Chicago Title.

As the court held in its prior order, the availability of the escrow was not a condition precedent to defendant's obligation to pay pursuant to the settlement agreement (NY Jur2d Contracts § 287). Accordingly, the underlying matter having been settled, plaintiff Mark Freedman may enter judgment with the clerk against defendant Uri Hason in the amount of \$725,000, less any amounts paid pursuant to the settlement agreement, with interest from February 16, 2016.

So ordered.

Date: **AUG 22 2016**


J.S.C.

XXX

ENTERED

AUG 24 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE