

Laffey v Laffey

2017 NY Slip Op 33099(U)

January 12, 2017

Supreme Court, Nassau County

Docket Number: 609953/16

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

EMMETT LAFFEY,

TRIAL/IAS, PART 1
NASSAU COUNTY

Plaintiff,

INDEX No. 609953/16

MOTION DATE: 01/12/2017

Motion Sequence 001

-against-

PHILIP LAFFEY, MARK LAFFEY,
U.S.1 LAFFEY REAL ESTATE CORP.,
d/b/a Laffey Fine Homes, U.S.1. LAFFEY
REAL ESTATE OF BELLEROSE, INC.,
d/b/a Laffey Fine Homes,
LAFFEY FINE HOMES OF NEW YORK LLC,
d/b/a Laffey Fine Homes and d/b/a Laffey Real
Estate, LAFFEY REAL ESTATE LLC,
d/b/a Laffey Real Estate, LAFFEY ASSOCIATES,
LLC, EREALTY TITLE AGENCY CORP.,
ETITLE LAND SERVICE, LLC, TCG GROUP LLC,
d/b/a Kylemore Development Co., 55 NORTHERN
BLVD., LLC, and 1 MAIN ST. HUNTINGTON, LLC.,

Defendant.

The following papers read on this motion:

Notice of Motion.....X
Affirmation in Support.....X
Affidavit in Opposition.....X

Motion by plaintiff Emmett Laffey for the appointment of a receiver of defendants U.S. 1 Laffey Real Estate Corp.; U.S. 1 Laffey Real Estate of Bellerose, Inc.; Laffey Fine Homes of New York LLC; Laffey Real Estate LLC; Laffey Associates LLC; ERealty Title

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Agency Corp; ETitle Land Services, LLC; TCG Group LLC; and 55 Northern Blvd., LLC is granted to the extent indicated below.

This is an action for breach of fiduciary duty. Plaintiff Emmett Laffey and defendants Philip and Mark Laffey are brothers. Their father, Thomas Laffey, was a real estate broker who operated several offices in Queens and Nassau. In 1991, Thomas Laffey transferred a real estate brokerage company to each of his three sons. Emmett Laffey was given a real estate brokerage office in Williston Park. Philip was given a real estate brokerage in New Hyde Park, and Mark Laffey was given a real estate brokerage in East Norwich. The three offices competed against each other.

In 1996, Thomas Laffey transferred his remaining office, which was located in Bellerose, to his sons in equal one-third shares. Over the years, the parties opened eleven additional jointly-owned real estate offices in Great Neck, Huntington, Jackson Heights, Little Neck, Manhasset, Northport, Port Washington, Syosset, Westbury, and two offices in Greenvale. The jointly-owned brokerages were owned by defendant U.S. 1 Laffey Real Estate Corp.

In 2012, Philip and Mark Laffey, or companies which they controlled, commenced an action against Emmet Laffey in Supreme Court, Nassau County, alleging that Emmet was improperly competing with one of the jointly owned companies (Index No 7703/12). The action was assigned to Justice Driscoll. By short form order dated January 28, 2013, Justice Driscoll granted Emmet Laffey's motion for the appointment of a temporary receiver to oversee the business and property of U.S. 1 Laffey Real Estate Corp; Laffey Associates, LLC; Erealty Title Agency Corp; and 55 Northern BLVD, LLC. James Donald Leonard, Esq. was appointed receiver with authority to manage and operate the entities and to make distributions to the members and shareholders. Receiver Leonard was directed to pay an equal salary and/or compensation to the principals, i.e. the Laffey brothers. The action was consolidated with two other related actions, Index No 13360/12 and Index No 15523/12.

On August 24, 2015, Justice Driscoll issued his decision after trial. Justice Driscoll held that, despite the "irreconcilable conflict," of the brothers owing both competing and jointly-held businesses, Emmet Laffey did not compete improperly by forming a competing business, Laffey Fine Homes International, and transferring 77 listings and a top-producing broker to one of his own companies. Although cause did not exist to remove Emmett Laffey as an officer or director of any company, the court held that Emmet was properly removed without cause as a member of Laffey Associates, LLC and an officer and/or director of ERealty Title Agency Corp. Justice Driscoll found that U.S. 1 Laffey Real Estate Corp. was dissolved by proclamation on June 30, 2004 but was "resurrected" as the corporate name of

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the parent Laffey company on September 11, 2012. Justice Driscoll denied any injunctive relief to Mark and Philip Laffey and denied damages relief to any of the parties. The receiver was discharged in November 2015.

The present action was commenced on December 19, 2016. Emmett Laffey alleges that Philip and Mark Laffey formed their own company, defendant Laffey Fine Homes of New York, LLC, and transferred the cash, telephone numbers, website, office furnishings and equipment, computer systems, brokerage licenses, and real estate listings of U.S. 1 Laffey Real Estate Corp. to their new company. Emmett alleges that Laffey Fine Homes of New York has taken real estate commissions of over \$17 million dollars that belong to U.S. 1 Laffey Real Estate Corp.

Emmett Laffey further alleges that Philip and Mark Laffey formed their own title company, defendant ETitle Land Services, LLC. Emmett alleges that defendants similarly transferred the assets of the jointly owned title company, defendant ERealty Title Agency Corp., to their new title company. Finally, Emmett Laffey alleges that defendants took over the jointly owned management company, defendant 55 Northern Blvd., LLC. 55 Northern Blvd. is the managing company for the jointly owned company, defendant TCG Group, LLC, which owns the property located at 55 Northern Blvd. in Greenvale.

In his first cause of action, plaintiff Emmett Laffey requests a declaratory judgment that Laffey Fine Homes of New York, LLC is the successor in interest to U.S. 1 Laffey Real Estate Corp. and that Emmett owns a one-third interest in Laffey Fine Homes of New York, LLC. In the second cause of action, plaintiff asserts a claim for breach of fiduciary duty based upon defendants' alleged transfer of the assets U.S. 1 Laffey Real Estate to Laffey Fine Homes of New York. In the third cause of action, plaintiff seeks an accounting with respect to all of the Laffey companies.

In the fourth cause of action, plaintiff asserts a claim against Philip and Mark Laffey for breach of fiduciary duty with respect Laffey Associates, LLC. In the fifth cause of action, plaintiff seeks an accounting with respect to Laffey Associates, LLC since November 2015.

In the sixth cause of action, plaintiff requests a declaratory judgment that ETitle Land Services, LLC is a successor in interest to ERealty Title Agency Corp. and that Emmett owns a one-third membership interest in ETitle Land Services. In the seventh cause of action, plaintiff asserts a claim for breach of fiduciary duty based upon defendants' alleged transfer of the assets of ERealty Title Agency Corp. to ETitle Land Services. In the eighth cause of action, plaintiff seeks an accounting with respect to ETitle Land Services and ERealty Title Agency Corp.

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In the ninth cause of action, plaintiff asserts a claim for breach of fiduciary duty based upon defendants' alleged diversion of rents payable to 55 Northern Blvd., LLC. In the tenth cause of action, plaintiff seeks an accounting with respect to 55 Northern Blvd., LLC.

In the eleventh cause of action, plaintiff seeks a permanent injunction enjoining Philip and Mark Laffey from evicting or ejecting him from the premises at 55 Northern Blvd. In the twelfth cause of action, plaintiff seeks a declaratory judgment that Emmett owns a one-third interest in 1 Main St. Huntington, LLC, which owns the property located at 1 East Main Street in Huntington. In the thirteenth cause of action, plaintiff asserts a claim for diversion of corporate opportunity with regard to the purchase of the property at 1 East Main Street. Plaintiff alleges that the purchase of the property was a corporate opportunity properly belonging to U.S. 1 Laffey Real Estate Corp.

The court notes that plaintiff does not seek judicial dissolution of any of the jointly-owned companies, including U.S. 1 Laffey Real Estate Corp, Laffey Associates, LLC, TCG Group LLC, ERealty Title Agency Corp., or 55 Northern Blvd., LLC.

By order to show cause dated December 20, 2016, plaintiff moves for the appointment of a receiver with respect to both jointly-owned companies, 1 Laffey Real Estate Corp., Laffey Associates, LLC, TCG Group LLC, ERealty Title Agency Corp., and 55 Northern Blvd., LLC, as well as defendants' companies, Laffey Fine Homes of New York LLC, Laffey Real Estate LLC, and ETitle Land Services, LLC.

Plaintiff also seeks a preliminary injunction enjoining Philip and Mark Laffey from evicting him or forcing him out of the Laffey offices located at 55 Northern Blvd in Greenvale during the pendency of this action.

A party moving for the appointment of a temporary receiver must submit clear and convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interest (**Bd. of Managers v Nob Hill Condominium**, 100 AD3d 673 [2d Dept. 2012]). The appointment of a receiver is a drastic remedy; the court should exercise extreme caution in the appointment of receivers, which should never be made until a proper case has been clearly established (**Matter of Armienti & Brooks**, 309 AD2d 659 [1st Dept. 2003]). The use of corporate funds without authorization does not establish a risk of potential loss and may be addressed in the final accounting between the shareholders (**Matter of Harrison Realty Corp.**, 295 AD2d 220 [1st Dept. 2002]).

The parties have demonstrated that they are incapable of conducting the Laffey real estate brokerage business as equal one-third shareholders. Thus, as to the jointly-held companies, there is a danger of irreparable loss or waste of the business, if a receiver is not

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appointed. The court determines that the receivership must encompass Philip and Mark Laffey's new companies because of defendants' commingling of the assets of the jointly-held companies with their companies and in order to protect the viability and good will of the jointly-held companies.

Accordingly, plaintiff Emmett Laffey's motion for the appointment of a temporary receiver is granted as to the jointly-owned companies, 1 Laffey Real Estate Corp., Laffey Associates, LLC, TCG Group LLC, ERealty Title Agency Corp., and 55 Northern Blvd., LLC, as well as defendants' companies, Laffey Fine Homes of New York LLC, Laffey Real Estate LLC, and ETitle Land Services, LLC. John Spellman, Esq., fiduciary # 169893, 229 7th Street, Suite 100, Garden City, New York (516-592-6801) will be appointed receiver pursuant to a separate order, upon posting a bond of \$ 5 million. The receiver will be granted authority to manage and operate the aforesaid companies and to make distributions to the members and shareholders. The receiver will be directed to pay an equal salary and/or compensation to the principals, i.e. the Laffey brothers.

Plaintiff Emmett Laffey has established that he has been improperly excluded from the Laffey offices by defendants. Accordingly, plaintiff's motion for a preliminary injunction enjoining Philip and Mark Laffey from evicting him or forcing him out of the Laffey offices located at 55 Northern Blvd. in Greenvale during the pendency of this action is granted.

So ordered.

Date: 12 January 2017

Stephen A. Biscaron
J.S.C.