

**Reiser v Sutton Manor Apts., Inc.**

2018 NY Slip Op 30874(U)

May 9, 2018

Supreme Court, New York County

Docket Number: 157686/2016

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 12

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STUART REISER, as ADMINISTRATOR C.T.A. of  
THE ESTATE OF SELMA H. LEDERER, deceased,

INDEX NO. 157686/2016

MOTION DATE \_\_\_\_\_

Petitioner,

MOTION SEQ. NO. 1, 4

- v -

SUTTON MANOR APARTMENTS, INC., JAMES  
B. LEDERER, and JEREMY LEDERER,

**DECISION, ORDER,  
AND JUDGMENT**

Respondents.

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The following e-filed documents, listed by NYSCEF document number 2, 12, 16, 28, 29, 33, 38, 42, 46  
were read on this application to enforce foreign judgment

HON. BARBARA JAFFE:

By notice of petition and petition (sequence one), petitioner moves pursuant to CPLR 5225(b) and 5227 for orders: (1) directing that respondent Sutton Manor Apartments, Inc. (Sutton) issue to petitioner a stock certificate for the shares associated with apartment 11D at 430 East 56<sup>th</sup> Street, New York, New York (Unit); (2) directing that Sutton issue and execute a new proprietary lease between it and petitioner for the unit to recognize the Estate as the unit's owner; (3) that upon issuance of the new stock certificate, declaring that the shares issued to respondent James B. Lederer and the proprietary lease between Sutton and Lederer are redeemed and cancelled of record; and (4) directing that James relinquish possession of the unit and remove all personal property from it within 14 days of service of the final judgment granting the relief requested in the petition, and upon his failure to do so, issuing a warrant of removal authorizing

the Sheriff of New York County or his designated agent or a marshal to remove forthwith any occupants in the unit who do not voluntarily relinquish possession of the Unit, and thereupon causing the Estate to be placed in possession of the unit. Petitioner also requests authorization to dispose of any personal property located in or about the unit after the removal and/or eviction of its occupants and of any of James's property not removed from the unit and/or to continue to store such property in the unit pending its disposal, and relief from any obligation to either move or store any remaining personal property. James opposes the petition.

By notice of motion (sequence four), James moves for an order staying the proceeding pending the completion of appeals and/or transferring the proceeding to the New York County Surrogate's Court, dismissing petitioner Reiser from his role as the Estate administrator, and granting recognition as proper parties to Jessica Lederer and Jimmy Lederer. Petitioner opposes.

#### I. PERTINENT BACKGROUND

##### A. New Jersey proceedings

On July 21, 2006, Selma H. Lederer (decedent) died in New Jersey, and in 2007, her grandchildren Michelle Lederer and Mark Lederer commenced a probate action in the Superior Court of New Jersey, Bergen County, Chancery Division, Probate Part, on behalf of themselves and the decedent's estate, and against James and their first cousins, Jeremy Lederer and Jessica Lederer (collectively, judgment debtors). (NYSCEF 1).

The parties in the probate action agreed to a private arbitration, and, as pertinent here, that the arbitrator's award would be "final and binding upon the parties without appeal or review except as permitted by the applicable New Jersey Law." (NYSCEF 18).

After several orders issued by the arbitrator were confirmed by the probate court, on September 12, 2014, the court entered a judgment against the judgment debtors. As pertinent here, the 2014 judgment provides that

a lien is hereby entered in favor of the Estate on the cooperative shares and the proprietary lease held by any of the [judgment debtors] in the following cooperative apartment buildings located in New York, New York:

- (i) 214 W. 16<sup>th</sup> Street, Unit 4S, New York, New York;
- (ii) 448 E. 88<sup>th</sup> Street, Apartment 3C, New York, New York;
- (iii) 420 Central Park West, Apartment 6H, New York, New York; and,
- (iv) 430 East 56<sup>th</sup> Street, Unit 4D, New York, New York (Sutton Manor apartment).

As such, the Estate, through [petitioner], is hereby authorized to take such steps as may be necessary in the State of New York to perfect and/or enforce any such liens. Additionally, the [judgment debtors] are hereby directed to turn over the share certificates and the proprietary lease for each of the said cooperative units and/or apartment to [petitioner] . . .

(NYSCEF 1). The court also granted a judgment against the judgment debtors for approximately \$750,000, declared that the decedent's March 21, 1997 Last Will and Testament is the legally valid and binding will, and denied the judgment debtors' cross motion to vacate the award. (*Id.*).

On February 3, 2015, the probate court issued a Judgment and Order in Aid of Litigant's Rights, and granted various relief related to the 2014 order, including entering a judgment against James for approximately \$5 million, and held all of the judgment debtors in contempt for failing to comply with September 2014 order and judgment, as well as other orders. (*Id.*). By order dated February 12, 2016, the court corrected a clerical error in the prior orders whereby the Sutton Manor apartment was erroneously described as apartment 4D, rather than 11D. (NYSCEF 1).

After the judgment debtors appealed the 2014 and 2015 judgments and orders, on or about March 16, 2017, the Superior Court of New Jersey, Appellate Division, affirmed them. As part of its decision, the Court rejected the judgment debtors' argument therein that the lower court should not have appointed petitioner as the administrator as he had a conflict of interest. (NYSCEF 18).

It is undisputed that to date, the appellate decision has not been appealed.

#### B. New York proceedings

On March 17, 2015, petitioner filed a copy of the 2014 judgment with this court (index number 152604/15), and on April 28, 2015, filed a copy of the 2015 judgment (index number 154233/15, thereby domesticating both judgments pursuant to CPLR 5402 (NYSCEF 1).

After petitioner commenced the instant proceeding, James moved by order to show cause to stay the proceeding pending appeals of the 2014 and 2015 judgment and orders. By decision and order dated January 10, 2017, the petition was held in abeyance and the proceeding stayed pending a decision on the appeals; the parties were directed to advise of the outcome, and James was directed to appear or answer the petition pending the outcome. (NYSCEF 16).

After the appeals were denied in New Jersey, in June 2017 James filed an answer and then an amended answer. (NYSCEF 39, 40).

By stipulation dated June 6, 2017, petitioner settled its action against Sutton, and Sutton agreed to comply with the New Jersey orders related to the Sutton Manor apartment by transferring ownership of the apartment via the issuance of a new stock certificate for the shares appurtenant thereto and entering into a new proprietary lease for the apartment between petitioner and/or his designee and Sutton. (NYSCEF 28).

Petitioner then filed, on or about September 19, 2017, an amended notice of petition and petition, and for the first time, named Jeremy as a respondent as he allegedly resides in the Sutton Manor apartment with James. (NYSCEF 37). On October 2, 2017, James filed answers, and a few days later, Jeremy filed an amended affidavit in opposition to the amended petition. (NYSCEF 39-41, 42). On December 18, 2017, James filed an answer on behalf of Jessica Lederer; however, it is neither signed by her nor notarized. (NYSCEF 45).

On December 20, 2017, James's son, Jimmy Lederer, filed an unsigned and unnotarized answer (NYSCEF 48), and on January 2 and 9, 2018, James filed two different unnotarized "*pro se* answer, crossclaim/counterclaims." (NYSCEF 49, 50). On January 18, 2018, James filed a motion to stay the proceeding. (NYSCEF 52).

## II. ANALYSIS

### A. Validity of petitioner's judgments

Pursuant to the full faith and credit clause of the U.S. Constitution, "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." (*V.L. v E.L.*, 136 S Ct 1017, 1020 [2016]; *Greschler v Greschler*, 51 NY2d 368 [1980]). Where the judgment on its face appears to be a "record of a court of general jurisdiction," personal and subject matter jurisdiction are presumed unless disproved by extrinsic evidence, or the record. (*Id.*). Thus, "New York courts are required to enforce judgments rendered in other states," and "[t]he constitutional requirement of full faith and credit precludes any inquiry into the merits of the judgment, the logic or consistency of the decision underlying it, or the validity of the principles on which it is based." (*Cadle Co. v Tri-Angle Assocs.*, 18 AD3d 100 [1<sup>st</sup> Dept 2005]). An

authenticated foreign judgment may be filed in this state, and must be treated in the same manner as a New York state judgment, and may be enforced or satisfied as such. (CPLR 5402).

A party that has appeared in a foreign action may not attack the validity of a foreign judgment in a collateral proceeding unless it shows that the judgment was procured by fraud or that recognition of the judgment would violate a strong public policy of New York. (*Basile v Cai Master Allocation Fund, Ltd.*, 131 AD3d 660 [2d Dept 2015]).

Here, petitioner establishes that the 2014 and 2015 judgments are valid and enforceable judgments. And, as the appeals have been denied, the judgments are also final and enforceable here. (*See e.g., First Am. Title Ins. Co. v Kenderian*, 157 AD3d 891 [2d Dept 2018] [as foreign judgment was properly filed with county clerk, court entitled to treat it as judgment of supreme court of this state, and thus properly directed turnover of funds in enforcement and/or satisfaction of judgment]).

James misplaces reliance on a decision in another action, in which Mark Lederer and Michelle Lederer sued one Frank Leanza for legal malpractice, claiming that the 2014 and 2015 judgments have been thereby overturned, reversed, vacated, and/or are no longer valid. He does not, however, demonstrate that the judgments at issue here were addressed in that action. In any event, it appears that after the malpractice action was dismissed (NYSCEF 34), and the case was settled out of court. (NYSCEF 53).

Nor does James establish that any other actions or appeals pend which would impact petitioner's judgments. To the extent that he submits evidence of an appeal of an August 2016 order, which, in any event, does not relate to the validity of the judgment, that appeal was dismissed. (*Id.*).

James's other many and varied challenges to the judgments and orders mainly address the merits of the decisions and orders and petitioner's alleged actions connected therewith, and have either been addressed by the probate and appellate courts and rejected, or should have been raised there, and may not be raised here as they would constitute an improper collateral attack on the foreign judgments. (*See Robinson v Robinson*, 120 AD2d 415 [1<sup>st</sup> Dept 1986], *app dismissed* 68 NY2d 804 ["a party who has properly appeared in a foreign action is ordinarily precluded from attacking the resulting judgment by bringing a collateral New York proceeding"]). Lederer's claim that the foreign judgments were procured by fraud is conclusory and unsupported by any evidence. (NYSCEF 27, 54). Additionally, by choosing to participate in arbitration in the probate court, the judgment debtors agreed that the arbitration award would be final and binding without appeal or review.

James's challenge to petitioner's appointment as the administrator of the estate and his claims relating to petitioner's actions are not properly before me. As I did not appoint petitioner, any claims regarding the appointment and the manner in which he has administered the estate must be argued to the appointing court.

Petitioner submitted evidence that he served Jeremy with the amended petition and petition on August 11, 2017 (NYSCEF 38), and despite the numerous answers filed by James on behalf of himself and his relatives between October 2017 and February 2018, none is signed by Jeremy. Thus, any claim that he was not properly served with the amended pleadings is waived. (CPLR 3211[e]). In any event, there is no sworn affidavit from Jeremy controverting the allegations set forth in the affidavit of service; his affidavit in opposition to the amended petition does not mention service on him.

Any challenges and/or motions made by non-parties such as Jeremy and Jessica to this proceeding are not considered absent any effort to seek leave to intervene. (*See e.g., Hope v Perales*, 82 NY2d 680 [1993] [absent order of intervention, non-parties to action lacked capacity to challenge court's order]; *Grella v Mid-America Realty Investors Ltd. Partnership*, 199 AD2d 18 [1<sup>st</sup> Dept 1993] [court should not have considered motion made by non-party who never sought leave to intervene]).

### B. Enforcement of judgments

As the judgments are valid, the enforcement mechanisms of CPLR article 52 are available to petitioner. Given petitioner's settlement with Sutton, it appears that he has received the relief he requested against Sutton, and to the extent he did not, he is entitled to it.

However, petitioner cites no statute, rule, or caselaw permitting, on the submitted papers, the issuance of an order directing that James surrender possession of the apartment. The amended petition contains no cause of action for an ejectment or a writ of assistance. Moreover, CPLR 5225(b), which petitioner cites in the amended petition, pertains to the turnover of property that is not in possession of the judgment debtor but rather in the possession of a third party, and is thus inapplicable. CPLR 5227, which pertains to a proceeding against any person who is or will become indebted to the judgment debtor, is also inapplicable.

### III. MOTION FOR STAY

James submits no evidence that any appeals pend in New Jersey related to the judgments and orders or the Sutton Manor apartment, and petitioner denies that any appeals remain. Absent any pending appeal in New Jersey, there is no basis for staying this action. James also fails to establish a ground upon which to transfer this matter to surrogate's court. To the extent he seeks any other relief, it is denied in its entirety for the reasons set forth above.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is granted in part, as specified above, and otherwise denied (sequence one); it is further

ORDERED, that the motion for a stay is denied (sequence four); and it is further

ORDERED, that petitioner is directed to submit a proposed judgment as to Sutton forthwith.

5/9/2018

DATE

  
BARBARA JAFFE, J.S.C.  
HON. BARBARA JAFFE

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: