

<b>Hudson 418 Riv. Rd., LLC v Safiya Consultants Inc.</b>
2018 NY Slip Op 31194(U)
May 24, 2018
Supreme Court, Kings County
Docket Number: 510351/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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HUDSON 418 RIVER ROAD, LLC,

Plaintiff,

Decision and order

- against -

Index No. 510351/18

SAFIYA CONSULTANTS INC., ABIED CONSTRUCTION  
INC., BROOKLYN BROADWAY MASJID & ISLAMIC  
CENTER, S.M. G HOSSAIN, MOHAMMAD ULLAH,  
BIJOY CONSTRUCTION CORP., MD A ALI, ASHRAF  
ALI PE PC., MICAH KWASNIK, ALI H. DAFALLA,  
IMAM ABDEL HAFID DIEMIL, MOHAMMAD AHMED,  
GULZAR HOSSEIN, HARBOR VIEW ABSTRACT INC.,

Defendants,

May 24, 2018

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PRESENT: HON. LEON RUCHELSMAN

2018 MAY 31 AM 9:10

KINGS COUNTY CLERK  
FILED

The plaintiff has moved seeking a preliminary injunction pursuant to CPLR §6301 preventing the defendants from further engaging in any construction on property located at 986 Gates Avenue in Kings County. The defendants oppose the motion arguing it has no merit and has cross-moved seeking to vacate a temporary restraining order. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

Property located at 986 gates Avenue in Kings County was owned by Kobas and Solih Realty LLC. On March 13, 2014 the owner entered into a contract to sell half the ownership interest to defendant Brooklyn Broadway Masjid and Islamic Center [hereinafter 'the Masjid']. It is alleged the Masjid did not pay the agreed upon price and that due to the naivete

of Mr. Amin Kobas, the principal of the owner, the sale was effectuated in any event. Further, it is alleged the Masjid assumed management of the entire building. Indeed, in the beginning of November 2017 defendant Gulzan Hossain acting as president of the Masjid and Siraj Ahmed the secretary of the Masjid signed a letter called a 'Letter of Reassignment' wherein they acknowledged that any agreement made with the tenant Sunshine Express Deli without the consent of Amin Kobas was "invalid" and sought to appoint defendants Imam Abdel Hafid Diemil and Ali Dafalla in dealing with Mr. Kobas. The letter further acknowledged that the Masjid was no longer the manager of the building, implying they had acted as the manager up to that point. Moreover, the building sustained a fire in the early spring of 2017 and the Fire Department issued an order deeming the structure non-compliant and hence required extensive renovations. The Masjid filed permits with the Department of Buildings wherein they seek to alter the use and occupancy of the building and to increase the area of the Masjid. It is alleged that these permits have been sought without the consent of the plaintiff, the successor of Kobas & Solih Realty who owns at least half the property. The plaintiff has filed the instant lawsuit seeking to rescind the contract on the grounds it was fraudulently induced. They

have further sued for breach of contract a violation of the partnership law and tortious interference. They have filed the instant order to show cause seeking an injunction that no further work may be done at the location until the ownership interests and other pertinent issues are resolved.

#### Conclusions of Law

It is well established that "the party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Housing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005], see also, Alexandru v. Pappas, 68 AD3d 690, 890 NYS2d 593 [2d Dept., 2009], Ricca v. Ouzounian, 51 AD3d 997, 859 NYS2d 238 [2d Dept., 2008]). The Second Department has noted that "the remedy of granting a preliminary injunction is a drastic one which should be used sparingly" (Town of Smithtown v. Carlson, 204 AD2d 537, 614 NYS2d 18 [2d Dept., 1994], Schneider Leasing Plus, Inc. v. Stallone, 172 AD2d 739, 569 NYS2d 836 [2d Dept., 1991], Fischer v. Deitsch, 168 AD2d 599, 569 NYS2d [2d Dept., 1990]). Thus, the Second Department has been clear that the party seeking the drastic remedy of a preliminary injunction has the

burden of proving each of the above noted elements "by clear and convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010], Berkoski v. Board of Trustees of the Incorporated Village of Southampton, 67 AD3d 840, 889 NYS2d 623 [2d Dept., 2009], Ginsburg v. Ock-A-Bock Community Assn., Inc., 34 AD3d 637, 825 NYS2d 119 [2d Dept., 2006]).

Regarding the first prong, for the plaintiff to establish a likelihood of success on the merits, he typically must establish a prima facie case or cause of action (McLaughlin, Piven, Vogel, Inc., v. W. J. Nolan & Co., 114 AD2d 165, 498 NYS2d 146 [2d Dept., 1986]). In this case the plaintiff has presented sufficient grounds to demonstrate such cause of action and a likelihood of success on the merits. The plaintiff has presented an 'Asset Purchase and Stock Sale Agreement' which evidences that plaintiff purchased the share of ownership from Kobas and Solih Realty. The agreement does note the half allegedly owned by the Masjid is disputed and that the plaintiff as purchaser maintains the right to institute a lawsuit seeking to recover the ownership interests of the Masjid. That agreement is signed by Amin Kobas on behalf of the seller and by Ernest Kabala on behalf of the plaintiff. In addition, the agreement is notarized. Thus, the plaintiff is the lawful owner of at least half the

property and at most the Masjid is half owner of the property.

Indeed, this lawsuit seeks to adjudicate the Masjid's ownership interests in the property. The Masjid argues in conclusory fashion that the Asset Purchase Agreement "does not grant to Plaintiff the rights which it seeks to enforce at the Premises" and that the agreement "clearly shows that Plaintiff lacks standing to maintain this suit and, as such, Plaintiff cannot demonstrate a likelihood of success on the merits" (see, Affirmation in Support of Cross-Motion, ¶¶ 75, 76).

However, the Masjid does not explain why the plaintiff lacks rights in the property, in what way the Asset Purchase Agreement denies the plaintiff both ownership and standing to pursue this lawsuit and to seek an injunction and how that agreement undermines any claims of likelihood of success on the merits.

On the contrary, the Asset Purchase Agreement clearly confers at least half ownership to the plaintiff. Considering the current ownership interests of each party the plaintiff's assertion that the Masjid has sought building permits without its input is serious indeed. Moreover, the Masjid has not presented any evidence it has sole authority to manage the property as it sees fit. Therefore, the plaintiff has

established a likelihood of success on the merits seeking to stay the building permits procured by the Masjid.

To establish the second prong of irreparable harm it must be demonstrated that monetary damages are insufficient (Autoone Insurance Company v. Manhattan Heights Medical P.C., 24 Misc3d 1229(A), 899 NYS2d 57 [Supreme Court Queens County 2009]). The Masjid argues there are other remedies available to plaintiff, namely the plaintiff could "withdraw its objection to renovation of the Premises by Defendant, and contest the alleged impropriety of such unilateral renovation without any input by Plaintiff during the course of litigation, thereby remedying any purported injury" (supra, at ¶ 82). However, that suggested remedy is circular. The plaintiff is seeking the injunction because it believes monetary damages are insufficient. The course of the litigation will resolve the issue of ownership, thus, asking the plaintiff to wait until the litigation runs its course is simply another way of saying the harm is not irreparable without explaining why that is true. The plaintiff's claims are rooted in the ownership of the property and its unwillingness to agree to the use changes proposed by the Masjid. Any changes approved prior to the conclusion of the lawsuit will cause irreparable harm to the plaintiff who will

be required to suffer those use changes. Therefore, the second prong has been satisfied.

Regarding the third and final prong, namely the balancing of the equities, it is true that this is a subjective test. The Second Department has stated that in balancing the equities, it "must be shown that the irreparable injury to be sustained... more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction" (McLaughlin, supra). The harm caused to the plaintiff is readily apparent. On the other hand, any harm caused to the defendant through the imposition of the injunction is hard to quantify and difficult to assess. This is particularly true where there is no specific harm to which the defendant can point other than vague complaints about delay. Therefore, considering the equities in this particular case it is clear that the balance of the equities favors the plaintiff.

Therefore, based on the foregoing, the motion of the plaintiff seeking an injunction is granted. The cross-motion of the masjid is denied.

So ordered.

ENTER:

DATED: May 24, 2018  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC

2018 MAY 31 AM 9:14  
KINGS COUNTY CLERK  
FILED