

Goodstein v Enbar

2018 NY Slip Op 32849(U)

November 5, 2018

Supreme Court, New York County

Docket Number: 654114/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X INDEX NO. 654114/2016

FRED GOODSTEIN and MICHELE GOODSTEIN,

Plaintiffs,

MOTION SEQ. NO. 005

- v -

ADAM ENBAR, LINDA ENBAR, MAGNUM REALTY HOLDINGS LLC, and MAGNUM REAL ESTATE SERVICES, INC.,

Defendants.

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 93, 94, 99

were read on this motion to/for LEAVE TO INTERVENE

Upon the foregoing documents, it is ordered that the motion is decided as follows.

In this fraudulent conveyance action, proposed plaintiff-intervenor Casa Property Management LLC (Casa) moves: 1) to vacate a freeze on an escrow account opened in the name of defendant Magnum Realty Holdings LLC (MRH) or, in the alternative; 2) to all allow Casa to intervene as a third-party plaintiff; and 3) for such other relief as this Court deems just and proper. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is granted, in part, as follows.

The factual background of this case is set forth in detail in this Court's order dated March 13, 2017 (deciding motion sequence numbers 001 and 002). Additional facts are set forth herein as necessary.

Casa retained MRH as a real estate broker so that MRH could assist Casa in renting out residential units. During the summer of 2016, MRH rented out 4 units for Casa. When the units

were rented out, two of the new tenants tendered to MRH an entire year's rent in advance. The other two tenants tendered to MRH security deposits and the first month of rent. The monies tendered to MRH were to be deposited into MRH's escrow account to be held for Casa. There is currently \$93,779.30 in the escrow account.

Casa now moves to vacate the freeze on the escrow account so that it can recover the money to which it claims it is legally entitled. Plaintiffs oppose the motion, arguing that Casa has failed to establish that it is entitled to the funds in the escrow account. They further assert that Casa's application seeking intervention is untimely.

Given that Casa has moved, as a nonparty, to unfreeze the money in the escrow account, this Court declines to grant it such relief. However, this Court grants that branch of Casa's motion which seeks to intervene in this matter so that the parties can be afforded the opportunity to litigate in this action the question of which party is entitled to the funds in the escrow account.

Upon a timely motion, a party is permitted to intervene in an action as of right when "the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment". See CPLR 1012 (a)(2). Additionally, the court, in its discretion, may permit a party to intervene "when the person's claim or defense and the main action have a common question of law or fact". See CPLR 1013. In exercising its discretion under CPLR 1013, "the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party". See *Wells Fargo Bank, N.A. v. McLean*, 70 AD3d 676; see also, CPLR 1013. In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party. See, e.g., *Yuppie Puppy Pet Products, Inc. v. Street Smart Realty, LLC*, 77 AD3d 197. Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either instance, where the intervenor has a real and substantial interest in the outcome of the proceedings." See *Wells Fargo Bank, N.A. v. McLean*, *supra*.

Charles Rutenberg LLC v Wallace, 60 Misc 3d 1218(A), 2018 NY Slip Op 51167(U), *2-3 (Sup Ct, New York County 2018).

Here, Casa is entitled to intervene as a matter of right pursuant to CPLR 1012 since its rights are not adequately represented by the parties herein and it could be bound by a judgment issued in this matter. Even assuming that Casa were not entitled to intervene as of right, this Court finds, in its discretion, that Casa is entitled to permissive intervention pursuant to CPLR 1013 because plaintiffs' attorney has not persuaded this Court that Casa's intervention would delay the determination of this action or prejudice the rights of any party. Although plaintiffs' counsel argues that Casa should commence a separate action against MRH, intervention by Casa would be in the interest of judicial economy since it would allow plaintiffs and Casa to resolve the issues relating to the escrow account in this matter without the need for any additional proceedings.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of the motion by Casa Property Management LLC for leave to intervene as a third-party plaintiff is granted; and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that the third-party complaint, in the proposed form annexed to the moving papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that all parties shall answer the third-party complaint or otherwise respond thereto within 30 days from the date of said service; and it is further

ORDERED that Casa Property Management LLC is directed to purchase a third-party index number; and it is further

ORDERED that this action shall now bear the following caption under Supreme Court, New York County Index Number 654114/16:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

FRED GOODSTEIN AND MICHELLE GOODSTEIN,
Plaintiffs,

-against-

ADAM ENBAR, LINDA ENBAR, MAGNUM REALTY
HOLDINGS, LLC and MAGNUM REAL ESTATE
SERVICES, INC.,
Defendants.

CASA PROPERTY MANAGEMENT LLC,
Third-Party Plaintiff,

-against-

FRED GOODSTEIN, MICHELLE GOODSTEIN, and
MAGNUM REALTY HOLDINGS, LLC,
Third-Party Defendants.

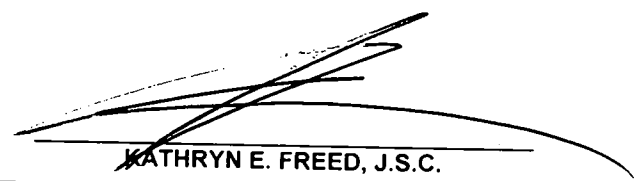
And it is further

ORDERED that movant shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that all parties shall appear by their counsel for a status conference in this matter on December 12, 2018 at 2:30 p.m. at 80 Centre Street, Room 280; and it is further

ORDERED that this constitutes the decision and order of the court.

11/5/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: