

Breskin v Moronto

2018 NY Slip Op 34598(U)

May 23, 2018

Supreme Court, Kings County

Docket Number: Index No. 503972/2014

Judge: Johnny L. Baynes

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This opinion is uncorrected and not selected for official publication.

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At an IAS Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse thereof, at 360 Adams Street, Brooklyn, NY 11201, on the 23rd day of May, 2018.

PRESENT:

HON. JOHNNY L. BAYNES,

JSC.

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503972/2014
Index No. ~~50397/14~~

STEPHEN BRESKIN and 1525 GREENE AVE,
LLC,

Plaintiffs,

-against-

DECISION AND ORDER

SATURNINA GOMEZ MORONTO,

Defendant,

-----X

Plaintiffs Stephen Breskin and 1525 Greene Ave, LLC (hereinafter "Plaintiffs") move by Notice of Motion dated, February 15, 2017, for an Order awarding plaintiffs attorneys' fees incurred through the current date; costs incurred in this action in the sum of three hundred (\$300.00) Dollars; and disbursements and expenses incurred in this action in the sum of Four Thousand Eight Hundred Five (\$4,805.11) Dollars and Eleven Cents; and by Order to Show Cause dated December 21, 2016, for an Order holding Defendant in contempt for violating the decision and Order of Justice Schack and for an Order conveying real property..

Defendant Saturnina Gomez Moronto (hereinafter "Defendant") cross-moves by Notice

of Cross-Motion dated April 17, 2017, for an Order relieving defendant from the decision and order of Hon. Arthur M. Schack, dated February 22, 2016, which granted plaintiffs' motion for summary judgment and which was reaffirmed by decision and order dated March 7, 2019; and denying plaintiff's request that defendant be held in contempt.

This case involves defendant's sale of the premises located at 1525 Greene Ave, Brooklyn, NY Block 3292, Lot 34 (hereinafter the "Premises"), to the plaintiffs pursuant to a contract of sale dated September, 2013. Defendant was directed to transfer the premises to plaintiffs by Order of Hon. Arthur M. Schack, now deceased, on February 22, 2016. Closing was ordered to be held by March 23, 2016. No closing was held at that time. Thereafter, Judge Schack reaffirmed his Order "on the merits", by Order dated March 7, 2016. Judge Schack directed that

specific performance of the contract must be completed on or before 4/16/16. At the closing \$100,000 shall be held in escrow for possible attorney's fee by [sic]. The \$100,000 shall be held in his escrow account by Peter M. Zirbes, Esq.

Order of Hon. Arthur M. Schack, March 7, 2016

Subsequent to Judge Schack's Order confirming his decision on the merits, defendant filed an appeal with the Appellate Division, Second Department and sought a stay of the provisions directing tender of the premises. The Appellate Division declined to grant a stay pending determination of the appeal. Despite there being no stay in place, defendant failed and refused to turn over the premises. For this failure, plaintiff seeks both an Order directing tender of the property and a finding of contempt.

The Court declines at this time to find Plaintiff in contempt, particularly without a hearing ascertaining the intent of the defendant. However, the Defendant must tender the

property. There is no cognizable basis to overturn Judge Schack's directives in this case. And had the Appellate Division chosen to do so, it could have granted a stay. The Court has no choice but to decline to grant Defendant's motion.

With respect to Plaintiff's request for counsel fees, costs and expenses, the Court will grant \$5,000.00 which it believes to be the reasonable cost of this motion as and for counsel fees. That sum may be taken from the funds held in escrow by Mr. Zirbes. The Court will also grant costs as requested by plaintiff, in the sum of \$300.00 and the undisputed disbursements and expenses incurred in this action in the sum of \$4,805.11. Defendant is directed to close on the premises on June 15, 2018 at 10 a.m. at the offices of Plaintiffs' attorney. If defendant fails to tender the premises at that time on that date, the Court will entertain a request to appoint a receiver for the purpose of tendering the premises for her.

WHEREFORE, it is hereby

ORDERED AND ADJUDGED that Plaintiff's request to hold Defendant in contempt is denied at this time; and it is further

ORDERED AND ADJUDGED that Plaintiffs are granted attorneys' fees in the sum of \$5,000, costs in the sum of \$300.00; and expenses and disbursements in the sum of \$4,805.11 and that said sums are to be paid to counsel for Plaintiffs from the escrow sums held in this matter; and it is further

ORDERED AND ADJUDGED that Defendant's Cross-Motion for relief from the multiple Orders of Hon. Arthur M. Schack is hereby denied in all respects; and it is further


ORDERED AND ADJUDGED that Defendant is to tender the premises at 10 a.m. on June 15, 2018, at 10 a.m., at the offices of Plaintiffs' attorneys; and it is further

ORDERED AND ADJUDGED that Plaintiffs' counsel shall serve a copy of this Order

by overnight mail upon the attorneys for Defendants no later than May 30, 2018.

The foregoing constitutes the Decision and Order of the Court

ENTER



JOHNNY L. BAYNES, JSC



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