

Gerard Owners Corp. v Roshodesh
2019 NY Slip Op 31534(U)
April 2, 2019
Supreme Court, Queens County
Docket Number: 719609/2018
Judge: Cheree A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

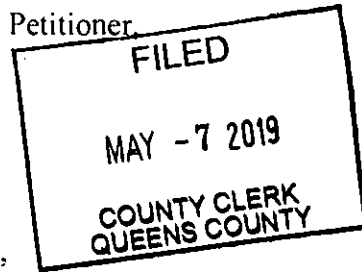
Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

GERARD OWNERS CORP.,

Index No. 719609/2018

-against-



Motion
Date: February 13, 2019

Motion Cal. No.:18

Motion Sequence No.: 1

FARAMARZ ROSHODESH,

Respondent.

The following efile papers numbered 1-11, 13-17 submitted and considered on this petition by Petitioner Gerard Owners Corp. seeks an Order pursuant to CPLR §5206(e) et seq. directing that respondent Faramarz Roshodesh's interest in shares of stock in a cooperative apartment corporation be sold by a Sheriff of Queens County and for such other further and related relief in order to enforce and satisfy certain judgments.

	<u>Papers Numbered</u>
Notice of Petition-Affidavits-Exhibits.....	EF 1-11
Affirmation in Opposition-Affidavits-Exhibits.....	EF 13-16
Reply Affirmation-Affidavits-Exhibits.....	EF 17

This is a special proceeding commenced pursuant to Civil Practice Law and Rules ("CPLR") §5206 brought to enforce a judgment under to compel the sale of shares of stock in a cooperative apartment corporation constituting a homestead exceeding a homestead \$10,000.00 in value in order to satisfy certain money judgments. Petitioner Gerard Owners Corp. seeks an Order pursuant to CPLR §5206(e) et seq. directing that respondent Faramarz Roshodesh's (hereinafter "Roshodesh") interest in the property as described in this petition be sold by a Sheriff of Queens County, and such other further and related relief.

According to the petition, petitioner is a domestic cooperative apartment corporation with a principal place of business at 70-25 Yellowstone Boulevard, Forest Hills, New York 11375.

Respondent is the proprietary lessee and owner of shares of stock appurtenant to Apartment 3V (the "Apartment") in the Building. Respondent is the former owner of shares of stock duly allocated to Apartment 3U in the co-op. The Apartment was recently sold at public auction to satisfy additional judgments obtained by petitioner against respondent. These parties have engaged in a series of litigation which have resulted in judgments in petitioner's favor against respondent. The total amount of judgments relative to the instant proceeding amount to \$203,698.51, plus post-judgment interest, fees, and damages which have continued to accrue. The subject property is respondent's homestead.

Civil Court Proceedings and Judgments related to the subject Apartment

By Decision dated November 17, 2017 in the action *Gerard Owners Corp. v Roshodesh*, New York City Civil Court, County of Kings, Index No. LT-021922-16-KI (the "3V Nonpayment Proceeding") the Civil Court awarded the sum of \$10,298.94 to petitioner based upon respondent's nonpayment of maintenance due to the Co-op for the Apartment through September 2017. Also on November 17, 2017 the Clerk of the New York City Civil Court, County of Kings entered a judgment of possession and for monetary damages in the amount of \$107,298.94 which also provided for a warrant of eviction. On or about May 8, 2018 a transcript of the Civil 3V Judgment, reflecting damages of \$107,298.94 and an additional \$40.00 in fees, for a total amount of \$107,338.94 was filed with the Kings County Clerk, and on or about May 11, 2018 a transcript of the Civil 3V judgment was entered by the County Clerk for Queens County in the amount of \$107,338.94.

After entry of the Civil 3V Judgment, respondent satisfied the principal amount of the Civil 3V Judgment to avoid eviction, however, the money judgment was only partially satisfied. The amount outstanding according to the petitioner is \$56,750.85.

Petitioner later moved for supplemental judgment for additional rent charges and attorneys' fees, which was granted on February 22, 2018 by the New York City Civil Court, County of Kings. Petitioner was awarded \$50,104.51 comprising \$22,855.56 in additional rent and \$27,218.95 in attorneys' fees. The Judgment was entered with the Clerk of the New York City Civil Court, County of Kings (Supplemental Civil 3V Judgment). On or about May 8, 2018 a transcript of the Supplemental Civil 3V Judgment reflecting \$50,104.51 in damages and an additional \$40 in fees for a total \$50,144.51 was filed with the Kings County Clerk, and on or about May 11, 2018 a transcript of the Supplemental Civil 3V Judgment was entered by the Queens County Clerk.

Queens Civil Court Proceedings and Judgment Concerning Apartment 3U

On or about February 14, 2017 in a separate action between the parties titled *Gerard Owners Corp. v Roshodesh*, New York City Civil Court, County of Queens, Index No. LT-63446/13 (the 3U Proceeding) the Civil Court issued a Decision and Order awarding the sum of \$39,707.40 to Petitioner based upon respondent's failure to pay maintenance for Apartment, as well as a Judgment of possession of the apartment. On April 19, 2018 the Civil Court issued a money judgment against

respondent for legal fees incurred through June 22, 2017 in the amount of \$63,265.50, which was entered with the Clerk of the Queens County Civil Court on April 26, 2018 (the "Civil 3U Fee Judgment") and a transcript of Judgment was entered by the Queens County Clerk on May 11, 2018.

Supreme Court Litigation and Judgments Concerning Apartment 3V

By Order dated November 11, 2015 in the matter *Roshodesh v Plotch*, et al., New York State Supreme Court, County of Queens, Index number 25537/09 (the "Supreme Court Action") entered on November 27, 2015 by the Queens County Clerk, the Supreme Court confirmed a Referee's Report and granted the co-op an award of \$70,576.09 plus interest thereon, on its Second Counterclaim for unpaid maintenance due from Apartment 3V through December 2011.

On or about March 2, 2016 the Queens County Clerk entered a Judgment in favor of the co-op and against Roshodesh in the amount of \$70,576.09 for unpaid maintenance, together with interest thereon in the amount of \$37,022.38 for a total amount of \$107,599.07 (the "Supreme 3V Judgment"). Subsequently, the Supreme 3V Judgment was partially satisfied from the proceeds of a public auction. To date, according to petitioner, there remains an unsatisfied balance of \$15,246.09. The Co-op filed a partial satisfaction of judgment with the Queens County Clerk on or about November 1, 2018 which reflected the revised amount.

Respondent's Possession of Apartment 3V and Corresponding Shares

To date, petitioner states several Judgments remain unsatisfied, as follows:

Civil 3V Judgment (Remaining Unsatisfied Amount)-	\$56,750.85
Civil 3V Supplemental Judgment (Additional Rent)-	\$22,885.56
Civil 3V Supplemental Judgment (Legal Fees)-	\$27,218.95
Civil 3U Judgment (Remaining Unsatisfied Amount)-	\$18,328.56
Civil 3U Fee Judgment (Legal Fees)-	\$63,265.50
Supreme 3V Judgment (Unsatisfied Amount)-	\$15,249.09

The following described property of the respondent/judgment debtor herein, is a homestead exempt from application to satisfaction of a money judgment: the 1,669 shares of stock allocated to the cooperative apartment #3V, located at 70-25 Yellowstone Blvd., Forest Hills, New York 11375. The aforementioned property exceeds One Hundred Fifty Thousand Dollars (\$150,000.00) in value, to wit, the 1,669 shares allocated to respondent/judgment debtor's apartment are valued to be at least \$800,000.00.

Petitioner annexed the affidavit of Anthony Pellosie (hereinafter "Pellosie"). Pellosie attested that he is employed by Gerard J. Picaso, Inc., the managing agent for petitioner Gerard Owners Corp., a residential cooperative housing corporation, and the owner and proprietary lessor of the subject building. He stated that he was executing the affidavit based upon his own personal knowledge of the facts and circumstances, and that as a result of his position, he was familiar with

the units located within the building, and that he has knowledge of the recent sales prices of various units located within the building, and he had knowledge of the recent sales prices of various units. In or about April 2015, Apartment 11 V, an unit located in the same line as Apartment 3V in the building, and which is of identical size and configuration as Apartment 3V, which sold for approximately \$788,000.00. In or about November 2015, Apartment 15V, a unit located in the same line as Apartment 3V in the Building, an which is of identical size and configuration as Apartment 3V, sold for approximately \$860,000.00. Based upon these figures, he estimated that the value of Apartment 3V was conservatively \$800,000.00.

Petitioner is also seeking to recover attorneys' fees incurred herein, in accordance with the respondent's proprietary lease with the petitioner, and applicable law. Petitioner maintained that upon information and belief, there are no other assets of the Respondent which would enable the Petitioner to obtain satisfaction of the Judgments. Petitioner stated that at this juncture there is "no less drastic means by which [petitioner] may enforce [its] judgment" (*see Guardian Loan Co. v Early*, 47 NY2d 515 [1979]). Petitioner requests that respondent's interest in the property described in herein be sold by a Sheriff of Queens County. Upon the Sheriff's sale, petitioner requests that the proceeds from the sale in an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) be paid to Respondent/judgment debtor Faramarz Roshodesh, as a homestead exemption; and that \$56,750.85 of petitioner's \$107,298.94 judgment against respondent which remains unsatisfied, with interest from November 14, 2017 and the costs, disbursements and attorneys' fees of this proceeding be adjudged to be a lien upon the surplus, and that the lien be enforced; and petitioner's \$50,104.51 judgment against respondent entered, together with interest from February 22, 2018, and the costs, disbursements, and attorneys' fees of this proceeding be adjudged to be a lien upon the surplus, and that the lien be enforced; and the \$18,328.56 of petitioner's \$39,707.40 judgment against respondent which remains unsatisfied, together with interest February 14, 2017, and the costs, disbursements, and attorneys' fees of this proceeding be adjudged to be a lien upon the surplus, and that the lien be enforced; and petitioner's \$63,265.50 judgment against respondent, as entered, together with interest from April 19, 2018, and the costs, disbursements, and attorneys' fees of this proceeding be adjudged to be a lien upon the surplus, and that the lien be enforced; and the \$15,249.09 of petitioner's \$107,599.07 judgment against respondent which remains unsatisfied, together with interest from March 2, 2016, and the costs, disbursement, and attorneys' fees of this proceeding be adjudged to be a lien upon the surplus, and that the lien be enforced; and, that the surplus be applied to judgment obtained by petitioner against respondent so that they may be satisfied.

In opposition, Respondent claimed the judgments and awards were subject to the certain allegations by the respondent, including breach of the warranty of habitability, the mischaracterization of unsold shares of Apartments 7Y and 3U, multiplying underlying judgment by continuously compounding awards, repeatedly inflating associated maintenance, additional rent, costs and attorneys' fees, that petitioner obtained a voidable judgment in an improper venue under special referee; violations of title 13 NYCRR Part 18; mismanagement of the co-op resulting in calculable shareholder losses. Roshodesh also submitted an unsworn letter from a broker, Roger Mahihi, B.A, J.D. dated April 15, 2016, which inexplicably claimed that the subject apartment is an

“unsold” unit worth \$550,000.00 based on an alleged list of 14 one-bedroom apartments. As stated by petitioner in its reply, these issues, claims and allegations were addressed and determined in the previous proceedings which resulted in the judgments, and thus these arguments are barred under the doctrines of res judicata and collateral estoppel (*see Parker v Blauvelt Volunteer Fire Co. Inc.*, 93 NY2d 343 [1999]). Even if the Court were to accept the letter from respondent’s broker, the value as alleged by petitioner and respondent exceeded the sum of \$150,000.00 the amount of the homestead exemption.

“CPLR article 52 sets forth procedures for the enforcement of money judgments in New York” (*see Cruz v TD Bank, N.A.* 22 NY3d 61 [2013]; *Kantrowitz Goldhamer & Graifman, P.C. v Spivack*, –AD3d–, 2019 NY Slip Op 01751 [2019]). “Any judicial sale, especially one involving the judgment debtor’s residence, is a tragic event...this is particularly unfortunate where there are less drastic means by which a creditor may enforce his judgment generally, CPLR 5231 (income execution); CPLR 5232-5233 (levy and sale of personal property).” (*See Guardian Loan Co., Inc. v Early*, 47 NY2d 515 [1979]). Under CPLR §5206 titled “Real property exempt from application to the satisfaction of money judgments:

(a) Exemption of homestead. Property of one of the following types, not exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam...

(e) Sale of homestead exceeding one hundred fifty thousand dollars for the counties of Kings, Queens... [a] judgment creditor may commence a special proceeding in the county in which the homestead is located against the judgment debtor for the sale, by a sheriff or receiver, of a homestead exceeding one hundred fifty thousand dollars for the counties of Kings, Queens... The court may direct that the notice of petition be served upon any other person. The court, if it directs such a sale, shall so marshal the proceeds of the sale that the right and interest of each person in the proceeds shall correspond as nearly as may be to his right and interest in the property sold. Money, not exceeding one hundred fifty thousand dollars for the counties of Kings, Queens...paid to a judgment debtor, as representing his interest in the proceeds, is exempt for one year after the payment, unless, before the expiration of the year, he acquires an exempt homestead, in which case, the exemption ceases with respect to so much of the money as was not expended for the purchase of that property; and the exemption of property so acquired extends to every debt against which the property sold was exempt...”

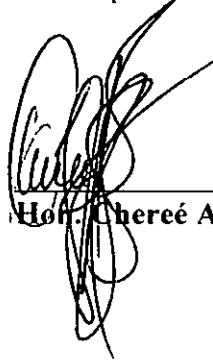
The exemption under the statute only applies to real property owned and occupied by the judgment debtor as a principal place of residence. Cooperative apartments are included as “real property” for the purposes of the homestead exemption. Based upon the Court’s careful consideration of the

papers submitted in support of and in opposition to the petition, the petition is granted to the extent that a receiver is hereby appointed to sell respondent's interest in shares of stock in a cooperative apartment corporation.

Therefore, upon the foregoing papers, the petition is granted.

Petitioner is directed to submit a Judgment to the Supreme Court, Queens County, room 140 for the undersigned's signature.

Dated: April 2, 2019



Hon. Chereé A. Buggs, JSC

FILED
MAY -7 2019
COUNTY CLERK
QUEENS COUNTY