

**Holy Spirit Assn. for the Unifiction of World
Christianity v Barreto**

2019 NY Slip Op 31745(U)

June 21, 2019

Supreme Court, New York County

Docket Number: 155828/2019

Judge: Robert David Kalish

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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. ROBERT DAVID KALISH **PART** **IAS MOTION 29EFM**

Justice

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THE HOLY SPIRIT ASSOCIATION FOR THE
UNIFICATION OF WORLD CHRISTIANITY,

Plaintiff,

INDEX NO. 155828/2019

MOTION DATE 06/12/2019

MOTION SEQ. NO. 001

- v -

MICKEY BARRETO and MICKEY BARRETO MISSIONS,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The Court has before it a motion brought by order to show cause by Plaintiff Holy Spirit for the Unification of World Christianity (“Plaintiff” or “Holy Spirit Association”), pursuant to CPLR 6301 et seq., seeking an order (i) granting it a “mandatory injunction,” enjoining Defendants Mickey Barreto (“Barreto”) and Mickey Barreto Missions (“Missions”) (collectively, “Defendants”) from claiming ownership in a property located at 481 Eighth Avenue, New York, NY and designated as Block 758, Lot 37 on the Tax Map of the City of New York and compelling said Defendants to file certain documents “in order to annul, vacate, set aside, expunge and/or otherwise vacate” a document recorded by Barreto on May 28, 2019 (the “Barreto Deed”) with the New York City Department of Finance purporting to transfer ownership to Defendants; (ii) adjudging and declaring that the Barreto Deed is null and void, and of no legal force or effect; and (iii) granting it such other and further relief as the Court deems just and proper.

The Court also has before it a cross-motion, pursuant to CPLR 3211, by Barreto to dismiss the action, brought by a summons with notice.

For the reasons stated below as well as those stated on the record during appearances before the Court on June 12, 13 and 20, 2019, the motion by Plaintiff is granted in part and denied in part, and the cross-motion by Barreto is denied.

BACKGROUND

Based upon the papers submitted on this motion, documents received in evidence and testimony given during appearances on June 12, 13 and 20, 2019, this Court finds that the following has been established by clear and convincing evidence for purposes of the instant motion.

Plaintiff Holy Spirit Association has been the fee simple owner of property located at 481 Eighth Avenue in Manhattan since 1976 (“the subject property”), including a building (“the Building”) situated upon the property. The New Yorker Hotel (the “Hotel”), through a management company MCRNYH LLC, operates a hotel establishment in a portion of the Building pursuant to a ground lease.

Defendant Mickey Barreto (“Barreto”) is an individual who is currently staying in a room at the New Yorker Hotel. Defendant Mickey Barreto Missions (“Missions”) is a non-profit corporation organized in California.

This case arises from Barreto filing a document that purports to be a deed (the “Barreto Deed”) transferring ownership of the subject property from himself to both Missions and himself. This deed was recorded in the records of the New York City Department of Finance on May 28, 2019 and states in relevant part: “THIS CONVEYANCE is made possible because of the Final Order/Judgment of Possession granted to Mickey Barreto by Honorable JACK STOLLER in the New York City Court case Index #LT 1512672018.”

There is no dispute that the above sentence refers to a decision by the Honorable Jack Stoller, sitting in the Civil Court of the City of New York, dated July 10, 2018 (the “Stoller Decision”). In said decision, Judge Stoller noted that Barreto had “commenced this illegal lockout proceeding by order to show cause claiming that Respondents [The New Yorker Hotel and Barry Rauch] illegally locked him out of 481 8th Avenue, **Room 2565**, New York, New York (**‘the subject premises’**),” that Respondents defaulted in appearing, and that the Court had held an inquest in Respondents’ absence. (Emphasis added.) Judge Stoller then found that Barreto had proven that he had booked a room at the Hotel on June 18, 2018, and then requested a lease for the room pursuant to the Rent Stabilization Law. Judge Stoller further found that Barreto had proven that “Respondent used self-help to prevent Petitioner from possessing the subject premises.” The Stoller Decision ended with the following language:

“Accordingly, the Court awards Petitioner a final judgment of possession. Issuance of the warrant of eviction is permitted Forthwith, with no stay. The Court also directs Respondents to restore Petitioner to possession of the subject premises forthwith by providing him with a key. Petitioner also may seek the assistance of the New York Police Department in enforcing the provisions of this order.”

In the three appearances before this Court and the papers submitted by Barreto, Barreto has made clear that he believes that his ability to claim ownership of the subject property first originated from the Stoller Decision.¹

Based on this belief, Barreto has communicated to various individuals and entities that he and / or Missions is the owner of the subject property. Barreto has also: demanded that rent for the subject property be paid to him and / or Missions; declared that certain sub-tenants of the New

¹ Barreto asserts other arguments for why he is entitled to claim ownership of the subject property. However, this Court will not discuss these arguments further because said arguments are all contingent on Barreto’s belief that the Stoller Decision granted him ownership of the subject property and are similarly not availing.

Yorker Hotel are trespassers and must vacate the subject property; and demanded various items of information from Plaintiff, the New Yorker Hotel, and non-party entities, including financial information from banking institutions. On one occasion, Barreto called the FDNY claiming that he smelled gas, and then identified himself as the owner of the subject property when the FDNY arrived on scene.²

On July 13, 2019, after hearing argument from Plaintiff's counsel and Barreto, this Court signed the order to show cause and issued the requested temporary restraining order ("TRO"), which in sum and substance enjoined Barreto and Missions from holding themselves out as the owners of the subject property and from taking any actions as purported owners during the pendency of the instant motion.

On July 19, 2019, Barreto submitted papers in opposition to the motion and in support of a cross-motion to dismiss the action pursuant to CPLR 3211.³ That same day, Plaintiff's counsel submitted papers in opposition to the cross-motion and in reply on its motion.

On July 20, 2019, this Court held a hearing to determine:

- (1) whether to maintain, modify, or vacate the terms of the TRO for the pendency of the action;
- (2) whether to grant Plaintiff a "mandatory injunction," enjoining Defendants Mickey Barreto ("Barreto") and Mickey Barreto Missions ("Missions") (collectively, "Defendants") and compelling said Defendants to file certain documents with the New York City Department of Finance "in order to annul, vacate, set aside, expunge and/or otherwise vacate" the Barreto Deed;
- (3) whether to issue an order adjudging and declaring that the Barreto Deed is null and void, and of no legal force or effect; and
- (4) whether to grant any other and further relief as the Court deems just and proper.

² In addition, during the June 20, 2019 hearing on this motion, this Court was shown a printout of what Barreto admitted was his LinkedIn profile in which he refers to himself as the owner of the subject property. However, Barreto stated that he is no longer referring to himself as such in order to comply with this Court's temporary restraining order.

³ The Court notes that pursuant to CPLR 321, Missions must appear by an attorney. As stated on the Record, Barreto is not admitted to practice law in this state, and, as such, he cannot represent Missions.

Further, it has come to the Court's attention that Barreto's papers were not filed on NYSCEF on the date of the hearing. Accordingly, this Court directs Barreto to upload his opposition papers to NYSCEF within ten (10) days. However, Barreto must not upload a certain draft settlement agreement attached to his opposition papers as an exhibit. Said document is inadmissible pursuant to CPLR 4547, and the document contains confidential information that will cause harm if made publicly available. Accordingly, unless Barreto withdraws said exhibit from his submissions, he must move this Court for permission to file it under seal pursuant to 22 NYCRR § 216.1.

DISCUSSION

I. Preliminary Matters

A. The Motion

The Court notes that at various points within the motion, Plaintiff appears to state that it is seeking an order granting it a “permanent injunction” and an order “adjudging” the Barreto Deed to be void. At other points, Plaintiff appears to argue that the Court should issue a preliminary injunction based on a finding that Plaintiff is likely to succeed on the merits—i.e., that Plaintiff will – at a point *after* the instant motion is decided – be awarded a final judgment declaring the Barreto Deed void and granting Plaintiff a permanent injunction.

As a preliminary matter, the Court cannot grant a permanent injunction or render a declaratory judgment prior to joinder of issue. (*See Durkin v Durkin Fuel Acquisition Corp.*, 224 AD2d 574, 575 [2d Dept 1996] “[P]ermanent injunctions and declaratory judgments are not provisional remedies and may not be obtained in a motion prior to the joinder of issue.”.) Here, Plaintiff has only served a summons with notice, and issue has not been joined.

Accordingly, this Court will treat the instant motion as seeking a preliminary injunction including mandatory relief, and any request for a permanent injunction or a final order of declaratory judgment is denied as being premature.

B. The Cross-Motion

Barreto’s cross-motion to dismiss the action, pursuant to CPLR 3211, is denied. A motion to dismiss a summons with notice is premature except to the extent of challenging service of process. However, Defendants accepted service of process by Barreto agreeing to accept service in open court last week.

II. The Instant Motion for a Preliminary Injunction

Pursuant to CPLR 6301:

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.”

(Id.)

In order to obtain a preliminary injunction, a movant must show by clear and convincing evidence:

- (A) a likelihood of success on the merits of the action;
- (B) the danger of irreparable injury in the absence of preliminary injunctive relief; and
- (C) a balance of equities in favor of the moving party.

(*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005].) A weak showing regarding one of the requirements can sometimes be compensated for by a very strong showing on the other requirements. (See e.g. *Schlosser v United Presbyt. Home at Syosset, Inc.*, 56 AD2d 615 [2d Dept 1977] [noting that the court had “grave doubts” about the likelihood of movants having success on the merits but that movants would be irreparably harmed absent a preliminary injunction to preserve the status quo].) The decision to issue a preliminary injunction is “ordinarily committed to the sound discretion of the lower courts.” (Id.) However, the motion court should be mindful that a preliminary injunction is a drastic remedy and should be “issued cautiously and in accordance with appropriate procedural safeguards.” (*Uniformed Firefighters Ass'n of Greater New York v City of New York*, 79 NY2d 236, 241 [1992].) Moreover, “[t]he ordinary function of a preliminary injunction is not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits” (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 616 [1st Dept 2018], citing, *inter alia*, *Moltisanti v East Riv. Hous. Corp.*, 149 AD3d 530, 531 [1st Dept 2017].)

Preliminary injunctions with mandatory relief—wherein the Court directs a party to take an affirmative act—have a higher threshold:

“A mandatory preliminary injunction by which the movant would receive some form of the ultimate relief sought as a final judgment is granted only in “unusual” situations, where the granting of the relief is essential to maintain the status quo pending trial of the action. A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, *pendente lite*.”

(*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 616 [1st Dept 2018].)

Here, the Court finds that Plaintiff has established that it has a likelihood of success on the merits. The chain of title—a public record easily accessible online through New York City Department of Finance’s ACRIS website—shows that Plaintiff has been the fee simple owner of the subject property since roughly 1976, and it seems abundantly clear to this Court that Defendants are not the owners of the subject property. At most, Barreto has certain rights to occupy a particular room within the Hotel pursuant to the Rent Stabilization Law, but this clearly did not give him ownership of the entire Building. Barreto’s theory as to how he and Missions own the subject property is bizarre and has no basis in law or fact.

Second, irreparable harm will result if injunctive relief is not granted. Barreto has recently informed numerous individuals and entities that he / Missions own the subject property. Barreto’s actions have included demanding rent from certain tenants and even presenting himself as the owner of the subject property to the FDNY during a call for a gas leak. Clearly, Plaintiff’s actions as a purported owner of the subject property seriously threaten Plaintiff’s ability to run its

operations with respect to the subject property, could result in considerable financial damage, and could threaten the safety of the persons working and residing at the Building.

Lastly, Plaintiff has demonstrated that extraordinary circumstances exist and that the granting of a preliminary injunction with mandatory relief is necessary to restore and maintain the status quo that existed until Barreto recently began claiming that he owned the subject property. (*N. Am. Soccer League, LLC v United States Soccer Fedn., Inc.*, 883 F3d 32, 37 [2d Cir 2018] [stating that in ascertaining the status quo, courts must look to “the last actual, peaceable uncontested status which preceded the pending controversy”].)

As such, Plaintiff is entitled to a preliminary injunction enjoining Defendants from holding themselves out as the owners of the subject property and from taking any actions as purported owners of the subject property—precisely the relief granted in the TRO—during the pendency of this action.

However, this Court will not, as requested by Plaintiff, order Barreto and / or Missions to file certain documents “in order to annul, vacate, set aside, expunge and/or otherwise vacate” the Barreto Deed. As a general matter, when a deed is declared void by a final court order, the prevailing party simply records a copy of that judgment or final court order, and the losing party is normally not ordered to remove their deed from the chain of title or perform some specific ameliorative filing. As such, the appropriate method here, pending a final judgment, is for Plaintiff to record a copy of the instant decision in the chain of title.

Nonetheless, excepting court or other governmental records, to the extent that Barreto or Missions has caused any other communications, documents, or statements claiming ownership of the subject property that are currently open to public view, Barreto must remove those communications, documents, or statements from public view within ten (10) days. For example, to the extent that Plaintiff’s LinkedIn profile or other social media accounts contain statements that he is the owner of the subject property, those accounts must be modified to remove those statements. The Court finds that this form of mandatory relief is appropriate to restore the parties to the status quo and in light of the exigent circumstances.

In addition, Barreto is prohibited from commencing any other court actions or proceedings with respect to the subject dispute without leave from this Court. This of course does not prohibit Barreto from litigating any issues related to the “lockout proceeding” that was before Judge Stoller or any other landlord-tenant issues in Housing / Civil Court.

Lastly, this Court is compelled to order Plaintiff to post an undertaking, and as such this Court orders that Plaintiff post an undertaking in the amount of \$500. (*Gerstner v Katz*, 38 AD3d 835, 836 [2d Dept 2007] [“Although the fixing of the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court, the language of CPLR 6312(b) is ‘clear and unequivocal,’ and it requires the party seeking the injunction to give an undertaking.”].)

CONCLUSION

Accordingly,

It appearing to this Court, upon review of the papers, the submission of documentary evidence and live testimony, and after hearing oral argument (collectively, “the Record”), that a cause of action exists in favor of Plaintiff Holy Spirit for the Unification of World Christianity (“Plaintiff” or “Holy Spirit Association”) and against Defendants Mickey Barreto (“Barreto”) and Mickey Barreto Missions (“Missions”) (collectively, “Defendants”), that Plaintiff has demonstrated a likelihood of success on the merits, that Plaintiff will suffer irreparable harm if a preliminary injunction is not granted, and that the equities balance in favor of granting a preliminary injunction, and, as such, this Court finds that the Plaintiff is entitled to a preliminary injunction on the ground that Defendants threaten to and/or are doing or procuring or suffering to be done, an act in violation of Plaintiff’s rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the instant decision and the Record, and Plaintiff has demanded and would be entitled to a judgment restraining Defendants from the threat to and/or the commission or continuance of any act, which, if committed or continued during the pendency of the action, would produce injury to Plaintiff, as set forth in this decision and the Record; and as such it is

ORDERED that the motion brought by order to show cause by Plaintiff, pursuant to CPLR 6301 et seq., seeking an order from this Court (i) granting it a “mandatory injunction,” enjoining Defendants from claiming ownership in a property located at 481 Eighth Avenue, New York, NY and designated as Block 758, Lot 37 on the Tax Map of the City of New York and compelling said Defendants to file certain documents “in order to annul, vacate, set aside, expunge and/or otherwise vacate” a document filed by Barreto on May 28, 2019 (the “Barreto Deed”) with the New York City Department of Finance purporting to transfer ownership to Defendants; (ii) adjudging and declaring that the Barreto Deed is null and void, and of no legal force or effect; and (iii) granting it such other and further relief as the Court deems just and proper, is granted in part and denied in part as described herein; and it is further

ORDERED that the cross-motion by Barreto, pursuant to CPLR 3211 to dismiss the action, brought by a summons with notice, is denied; and it is further

ORDERED that Defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Defendants’, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of Defendants or otherwise, any of the following acts:

(i) informing, stating, advising, notifying, and/or otherwise communicating with, any individuals and/or entities, whether orally or in writing (and in any form or medium whatsoever), including, but not limited to, any New York City and/or State agencies (including, without limitation, the New York City Department of Finance), and/or any vendors, employees, tenants, residents and/or customers of the New Yorker Hotel (the “Hotel”) located in the Building (including, without limitation, the restaurants located

therein), and/or any other person or entity with an interest in the Building, financially or otherwise, that Defendants are the owners of the Building;

(ii) demanding any rent, money and/or other compensation, from any guest, vendor, employee and/or tenant of the Hotel and/or otherwise sending any notices, letters and/or other communications (regardless of the form or medium, and whether orally, in writing or otherwise) to any guest, vendor, employee and/or tenant of the Hotel, including, but not limited to, the restaurants located therein, pursuant to which Defendants seek compensation from said individuals and/or entities and/or otherwise state that they are the owner of the Building;

(iii) demanding and/or seeking (whether in writing or orally and regardless of the form or medium) any rent, money and/or other compensation from Plaintiff, the ground lessee of the Building and/or anyone affiliated or associated with the Hotel based upon the Barreto Deed;

(iv) presenting and/or filing the Barreto Deed to any individual and/or entity;

(v) taking any actions, steps and/or measures in connection with the Barreto Deed, including, but not limited to, actions, steps and/or measures in connection with, and/or otherwise supporting, Defendants' claim of ownership to the Building;

(vi) filing any liens, mortgages and/or encumbrances against the Building;

(vii) conveying, transferring and/or otherwise selling all or any portion of the Building;

(viii) entering into any agreements, written or oral, with any third person or entity, whether a lease, occupancy agreement or otherwise, for all or any portion of the Building, including, but not limited to, the restaurants located therein; and

(ix) taking any actions and/or measures in connection with the mortgage affecting the ground lessee of the Building, in the amount of \$110,000,000.00 (the "Mortgage"), which is maintained and/or held by Manufacturers and Traders Trust Company ("M&T Bank") including, but not limited to, visiting any local branch of M&T Bank, communicating (whether orally or in writing and regardless of the form or medium) with any of M&T's officers, directors, shareholders, employees and/or agents about the Mortgage and/or the Building and/or demanding any bank accounts, records and/or other information maintained by M&T Bank relating to the Mortgage and/or the Building; and

(x) bringing any actions or proceedings, in any court, related to the issue of ownership of the property or ownership of a portion of the property located at 481 Eighth Avenue, New York, NY and designated as Block 758, Lot 37 on the Tax Map of the City of New York (the "subject property") without leave of this Court.

And it is further

ORDERED that, except for any recordings already made regarding the subject property in the records of the New York City Department of Finance or any communications, documents, or statements that are part of another governmental record, to the extent that Defendants have caused any other communications, documents, or statements claiming that they are the owners of the subject property that are currently open to public view, Defendants must undertake diligent, good faith efforts to remove those communications, documents, or statements from public view within ten (10) days of this order; and it is further

ORDERED that if Defendants fail to abide by the terms of this order, Defendants may be subject to sanctions, including being held in contempt by this Court; and it is further

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

ORDERED that the undertaking is fixed in the sum of \$500 conditioned that Plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to Defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that Plaintiff's counsel, counsel for Missions and Barreto (or counsel for Barreto if he subsequently retains counsel) are directed to appear for a conference in Room 104, 71 Thomas Street, New York, New York on August 6, 2019, at 9:30 AM; and it is further

ORDERED that Plaintiff is to purchase a copy of the record of the hearing of June 20, 2019 (the "June 20 Transcript") and upload said transcript to NYSCEF within thirty (30) days.

The foregoing together with the June 20 Transcript shall constitute the decision and order of this Court.


6/21/2019
DATE

CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED NON-FINAL DISPOSITION

CHECK IF APPROPRIATE: SETTLE ORDER GRANTED IN PART OTHER

INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE


ROBERT DAVID KALISH, J.S.C.