

Matter of Cangro v Flagg Place Dev., LLC
2019 NY Slip Op 31846(U)
May 16, 2019
Supreme Court, Richmond County
Docket Number: 85036/2018
Judge: Jr., Orlando Marrazzo
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

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In the Matter of the Application of

DCM PART 21

**EMIL CANGRO and CARLO CANGRO, as
As Individuals and as Members of CLOVE ROAD
DEVELOPMENT, LLC,**

**Present:
Hon. Orlando Marrazzo, Jr**

**For the Judicial Dissolution of FLAGG PLACE
DEVELOPMENT, LLC, a Limited Liability Company
pursuant to Section 702 of the New York Limited
Liability Law,**

Petitioners,

DECISION and ORDER

- against -

**FLAGG PLACE DEVELOPMENT, LLC, ANTHONY
SENECA, ROY K. DANISCHEWSKI, AS TRUSTEE
OF CARLEEN BUONO TRUST, CLAIRE KHORSANDI
ESTATE, MANOOTCHER KHORSANDI, the Attorney
General of the State of New York, as an Interested Party,
and NYS Department of Taxation and Finance, as a
an Interested Party,**

Index No. 85036/2018

Motion No. 845 – 004

Respondents.

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The following papers numbered 1 and 2 were fully submitted on the 26th day
of March, 2019.

Papers Numbered

Petitioners' Order to Show Cause, with Supporting Papers (dated February 19, 2019).....	1
Affirmation in Opposition by Respondents Clove Road Development, LLC and Anthony Seneca (dated March 22, 2019).....	2

Upon the foregoing papers, petitioners' Order to Show Cause dated February 19, 2019 (Motion Seq. 004) seeking the appointment of a temporary receiver pursuant to CPLR §6401, to manage respondent Flagg Place Development, LLC is granted; petitioners' application for a preliminary injunction pursuant to CPLR §6301 is denied.

FACTS

Flagg Place Development, LLC (hereinafter, "Flagg Place LLC") was and still is a Limited Liability Company formed pursuant to Section 702 of the New York Limited Liability Company Law, and has its principal office located at 1874 Clove Road, Staten Island, New York. The company is a family-owned business that owns, develops, and leases real estate on Staten Island.¹ Respondents Anthony Seneca, Carleen Buono, Claire Khorsandi Estate, Manootcher Khorsandi, as surviving beneficiary of the Khorsandi Estate, and petitioners Emil Cangro and Carlo Cangro are the members of the company pursuant to its Operating Agreement effective May 6, 2004. Membership shares are held as follows: Mr. Seneca - 25%; Ms. Buono - 25%; Khorsandi Estate - 25%; Emil Cangro - 12.5%; and Carl Cangro - 12.5%. Mr. Seneca and Claire Khorsandi, now deceased, were the managing members of the company. Currently, Mr. Seneca serves as the sole managing member.

¹ Petitioners and respondents Anthony Seneca, Carleen Buono, Claire Khorsandi Estate, and Manootcher Khorsandi are the owners of three businesses, *i.e.*, C. Seneca Construction, Inc., Clove Road Development, LLC and Flagg Place Development, LLC, which is the subject of this matter. Emil and Carlo Cangro, collectively, own 25% of each company. They commenced related actions for the dissolution of C. Seneca Construction, Inc. (Index No. 85035/2018) and Clove Road Development, LLC (Index No. 85034/2018) on similar grounds. Their applications for the appointment of a temporary receiver, or in the alternative, a preliminary injunction in those cases are pending before the Court.

Petitioners maintain that in or about 2005, Mr. Seneca's management of Flagg Place LLC became secretive and exclusive. He allegedly assumed total control of the business operations, creating internal dissension wherein it is not reasonably practicable to carry on the company's business affairs. Petitioners commenced this action seeking the dissolution of Flagg Place LLC, liquidation of its assets, and the equitable distribution of the proceeds to the respective members. Discovery has not been concluded in this action.

Presently before the Court is the application of Emil Cangro and Carlo Cangro for the appointment of a temporary receiver. Petitioners' maintain that the assets of Flagg Place LLC are in danger of being lost, materially injured or destroyed. Allegedly, they are unable to ascertain the financial condition of the company's real estate holdings and believe that its assets have been diverted. They contend that respondents have failed to disclose the LLC's business operations, revenue, and liabilities in their responses to recent discovery demands.

As an alternative to the appointment of a temporary receiver, petitioners seek a preliminary injunction pursuant to CPLR §6301, enjoining and restraining respondents from (1) incurring or paying expenses on behalf of the LLC except those necessary for the day-to-day operations, (2) paying the personal expenses of its members, and (3) selling, leasing and encumbering the company's real property. Petitioners maintain that given Mr. Seneca's covert and wholly exclusive control over the LLC, there is a strong likelihood that its assets will be lost, converted, hidden, or dissipated during the pendency of this lawsuit.

DISCUSSION

CPLR § 6401(a) provides, in pertinent part, "[u]pon motion of a person having an apparent interest in property which is the subject of an action in the supreme or county court, a temporary

receiver of the property may be appointed....at any time prior to the judgment...where there is a danger that the property will be removed from the state, or lost, materially injured or destroyed.”. “A temporary receiver is a person appointed by the court to take hold and preserve the property at issue while the action is pending” (Alexander, Practice Commentaries, Cons Laws of NY Book 7B, C6401:1, p 407). This kind of provisional remedy is warranted where the moving party has made a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party’s interest during the pendency of the lawsuit (*see Vardaris Tech, Inc. v Paleros, Inc.*, 49 AD3d 631, 632 [2d Dept 2000]; *Matter of Kristensen v Charleston Sq.*, 273 AD2d 312, 312 [2d Dept 2000]).

In support of the present application, petitioners attest in their affidavits, they have been excluded from participation in the operations and business affairs of Flagg Place LLC and denied access to its records. They further attest that Mr. Seneca has refused to convey information regarding, *inter alia*, the company’s income from real estate holdings, bank’s accounts, expenses, liabilities, and insurance coverage. Their business relationship with Mr. Seneca has allegedly deteriorated to one of distrust and contention. Petitioners seek the appointment of a temporary receiver to maintain the status quo and to ensure that the LLC’s assets will not be “lost, hidden or destroyed” whereby they will have no adequate means of recovering the value of their ownership interest in the company.

Mr. Seneca disputes that the appointment of a temporary receiver is warranted. In his opposing affidavit, he attests, *inter alia*, that the real properties owned by Flagg Place LLC are “fully maintained” and only one of the properties is mortgaged; foreclosure or bankruptcy proceedings have not been filed against the properties. He attests that the LLC has not defaulted

in any of its obligations. According to Mr. Seneca, during the course of discovery, petitioners have been provided with all financial records and other corporate documents.

The Court finds that Mr. Seneca's general averments concerning the financial status of the LLC are of no avail. Petitioners have made a sufficient showing that, given the undisputed state of affairs between the parties, the appointment of a temporary receiver is necessary to protect and conserve the company's assets (*see Meagher v Doscher*, 157 AD3d 880, 884 [2d Dept 2018]).

The appointment of a temporary receiver to manage Flagg Place LLC is warranted and will promote judicial economy. The temporary receiver will efficiently and fully ascertain the condition of the company's real estate holdings, assure payment of its debts and expenses, collect revenues, and account for its income. Furthermore, the appointment is necessary to conserve the LLC's assets and protect its real estate holdings from waste, dissipation or disappearance. It is likely to facilitate a non-judicial resolution of this matter.

In view of the Court's decision to appoint a temporary receiver to manage Flagg Place LLC during the pendency of this action, petitioners' alternative request for a preliminary injunction is rendered moot.

Accordingly, it is

ORDERED, that the branch of petitioners' Order to Show Cause dated February 19, 2019, seeking the appointment of a temporary receiver pursuant to CPLR §6401 to manage respondent Flagg Place Development, LLC is granted; and it is further

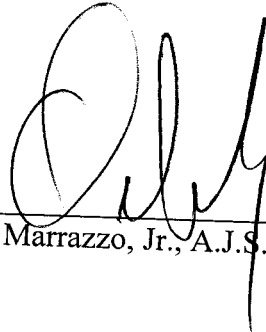
ORDERED, that the balance of the motion is denied.

Submit Order on Notice.

Dated:

5/16/19

ENTER,



Hon. Orlando Marrazzo, Jr., A.J.S.C.