Goodstein v Enbar
2019 NY Slip Op 33339(U)
November 1, 2019
Supreme Court, New York County
Docket Number: 654114/2016
Judge: Kathryn E. Freed

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 654114/2016

FRED GOODSTEIN and MICHELE GOODSTEIN,

Plaintiffs,

MOTION SEQ. NO. 003 004 008

- v -

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

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63, 66

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 69, 70, 71, 72, 73, 74, 75, 144

were read on this motion to/for ORDER OF ATTACHMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

were read on this motion to/for AMEND CAPTION/PLEADINGS.

This is a fraudulent conveyance action.[1] Fred Goodstein and Michelle Goodstein (plaintiffs) were previously awarded two money judgments on default in 2011 and 2013 in Supreme Court, Nassau County, against nonparties Maurice Enbar (Maurice, also known as Moshe) and Steven Kamhi, the latter also as guarantor, based on breach of contract (*see* NY St

[1] This Court refers to its full recitation of the alleged facts and procedural background, set forth in its decision and order dated March 16, 2017 (*see* NYSCEF Doc No. 64, *Fred Goodstein et al. v Adam Enbar, et al.*, Sup Ct, NY County, Mar. 16, 2017, Freed, J., Index No. 654114/2016 [decision and order of March 2017], at 9-10).

Cts Elec Filing [NYSCEF] Doc No. 135, judgments). The 2013 default judgment,[2] which pierced the corporate veil, was based on claims that Maurice, father of defendant Adam Enbar (Adam) and husband of defendant Linda Enbar (Linda), deposited plaintiffs' $150,000 loan and then transferred most of that amount into accounts of certain other businesses owned and controlled by him, including defendant Magnum Real Estate Services, Inc. (MRES), commingled the loaned monies with other monies and used them for personal purposes (*see* NYSCEF Doc No. 23, *Fred Goodstein and Michele Goodstein v Moshe Enbar a/k/a Maurice Enbar, Flatiron Equities, LLC and Magnum Real Estate Servs., Inc.*, Supreme Court, Nassau County, Index No. 16224/2011, summons and complaint, ¶¶ 37-38, 54-63). Although plaintiffs successfully won judgments in both actions, they have been unable to collect on either the 2011 or 2013 judgment.

In 2013, plaintiffs commenced an action in Supreme Court, Nassau County, alleging fraud, conversion and unjust enrichment against defendants Adam, Linda and MRES, as well as certain nonparties (*see* NYSCEF Doc No. 60, summons and complaint, *Fred Goodstein and Michele Goodstein v Adam Enbar, Linda Enbar, Rebecca Enbar, Steven Kamhi, Flatiron Equities LLC, Magnum Real Estate Servs. Inc., 2457 8th LLC, and 23-123rd St. LLC*, Sup Ct, Nassau County, Index No. 601224/2013 [the 2013 complaint]). The 2013 complaint alleged that the $150,000 loan made by plaintiffs to fund a particular project was transferred into the accounts of entities controlled by Maurice, including MRES, and then into accounts used by Adam, Linda, MRES, and the other entities and persons named in that action for their personal uses unrelated to the project (*see* NYSCEF Doc No. 60, 2013 complaint, ¶¶ 25, 39-40). In June, 2016, the Supreme Court, Nassau County dismissed the action as against Adam and Linda for

[2] See NYSCEF Doc No. 135, *Fred Goodstein and Michele Goodstein v Moshe Enbar a/k/a Maurice Enbar, Flatiron Equities LLC and Magnum Real Estate Services, Inc.*, Sup Ct, Nassau County, Jan. 15, 2013, Index No. 16224/2011 (2013 Maurice Enbar default judgment).

failure to state a cause of action and based on the running of the statute of limitations, and as against MRES and the other defendants based on res judicata (*see* NYSCEF Doc No. 61, *Fred Goodstein et al. v Adam Enbar, et al.*, Sup Ct, Nassau County, April 19, 2016, Galasso, J., Index No. 601224/2013, decision and order).

Plaintiffs commenced the instant action on August 4, 2016, alleging eight causes of action sounding in fraudulent conveyance brought under various sections of New York's Debtor and Creditor Law (*see* NYSCEF Doc No. 136, summons and complaint). The complaint alleges that defendants were aware "at all relevant times" that plaintiffs have a money judgment against Maurice, MRES, and other nonparty entities owned or controlled by Maurice, but intentionally caused the monies due and owing to plaintiffs under the terms of the promissory note to be shifted among various family members and entities within Maurice's control, so as to render the judgment debtors insolvent and the funds out of the control of Maurice and other judgment debtors (*see* NYSCEF Doc No. 136, summons and complaint, ¶¶ 37, 39). As part of this scheme, after plaintiffs commenced their earlier actions, Maurice had, unbeknownst to plaintiffs, created defendant Magnum Realty Holdings, LLC (Magnum Holdings), and, at or about the time a judgment was entered against Maurice and MRES in January 2013, Maurice and MRES had transferred most of the corporation's assets into Magnum Holdings, effectively rendering MRES insolvent (*see* NYSCEF Doc No. 136, summons and complaint, ¶¶ 44-45, 50; 89-90). Plaintiffs now seek to have the fraudulent transfers voided and to collect $ 212,637.75, representing the judgment awarded on default, plus interest, paid by defendants jointly and severally.

The Bankruptcy Proceeding

On August 16, 2016, 12 days after the commencement of this action, Maurice filed for chapter 7 bankruptcy in U.S. Bankruptcy Court for the Southern District of Florida under the name Moshe Enbar (*see* NYSCEF Doc No. 149, *Matter of Moshe Enbar*, US BR Ct, SD FL, 16-21262-BKC-AJC, Cristol, J., 2017 [hereinafter Bankruptcy Proceeding]). Plaintiffs filed an adversary proceeding as creditors of Maurice/Moshe Enbar (*see* NYSCEF Doc No. 142, memorandum of law in support at 6).

On August 3, 2017, Maurice entered into a stipulation settling the proceeding (the Stipulation) along with Linda, Adam and the daughter of Linda and Maurice, Melissa Benzel (Melissa), as settling parties, and the trustee of the bankruptcy estate (*see* NYSCEF Doc No. 150, Bankruptcy Proceeding, motion to approve stipulation to compromise controversy, appended Stipulation at court-stamped pages 1 of 21; 9 of 21). As relevant here, the Stipulation specifically indicated that the trustee "found no evidence that ... [Maurice] had transferred . . . or concealed, or permitted to be transferred . . . or concealed property ..., *within one year before the date of the filing of the petition*" (NYSCEF Doc No. 150, Bankruptcy Proceeding, Stipulation at court-stamped page 9 of 21 [emphasis added]). The trustee had "investigated transactions related to" three particular residential properties owned by Maurice and Linda, and "investigated any transactions regarding the following trusts, which may or may not exist – Lawrence Enbar Trust, Linda Enbar Trust, Adam Enbar Trust, Melissa Benzel Trust" (*see* NYSCEF Doc No. 150, Bankruptcy Proceeding, Stipulation at court-stamped page 10 of 21). The trustee also "evaluated" MRES, among other entities, and "investigated" Magnum Holdings (NYSCEF Doc No. 150, Bankruptcy Proceeding, Stipulation at court-stamped page 2 of 21). The trustee found that Maurice "ha[d] not failed to explain satisfactorily any loss of assets or deficiency of assets to

meet [his] liabilities" (see NYSCEF Doc. No. 150, Bankruptcy Proceeding, Stipulation at court-stamped page 10 of 21). The trustee agreed to accept $15,000 from the settling parties in "full satisfaction" of all "fully disclosed claims and assets in the bankruptcy case" and the settling parties were, upon payment, to be released "of any and all causes of action vested in the estate by operation of State or federal law" (NYSCEF Doc No. 150, Bankruptcy Proceeding, Stipulation at court-stamped page 10 of 21, ¶¶ 2, 3 [a]).

The Bankruptcy Court's order granting the trustee's motion, dated September 20, 2017, incorporated the Stipulation (*see* NYSCEF Doc No. 154, Bankruptcy Proceeding, order granting trustee's motion). The order required Maurice to pay $15,000 to the trustee, at which point "the Settling Parties shall be released of any and all causes of action vested in the estate by operation of State or federal law" (NYSCEF Doc No. 154, Bankruptcy Proceeding, order granting trustee's motion, ¶¶ 2, 4).[3] The Bankruptcy Court specifically provided that "[t]he Stipulation shall be binding only upon and inure to the benefit of the Parties hereto and their respective successors and assigns . . . *[and] shall not be binding on any creditors, or otherwise affect the rights of any creditors, of the Estate*" (NYSCEF Doc No. 154, Bankruptcy Proceeding, order granting trustee's motion, ¶ 10 [emphasis added]).

On January 31, 2019, the Bankruptcy Court's final decree was vacated and the proceeding reopened based on the existence of a complaint "currently pending resolution" (*see* NYSCEF Doc No. 152, Bankruptcy Proceeding, order vacating final decree and reopening case). It appears the proceeding remains open. As set forth below, defendants maintain that the

[3] Plaintiffs had asserted a claim of $ 281,270.22 against Maurice Enbar in the Bankruptcy Proceeding; they were awarded $ 829.53 from the bankruptcy estate (*see* NYSCEF Doc No. 151, Bankruptcy Proceeding, Chapter 7 Trustee's final account and distribution report certification, court-stamped page 4 of 10; *see also* court-stamped pages 8 of 10, 9 of 10).

motions, and this action, must be stayed in their entirety until the Bankruptcy Proceeding is resolved, whereas plaintiffs argue that the bankruptcy stay has no relevance to their claims.

Procedural History

This Court previously granted plaintiffs' motion seeking a preliminary injunction to prevent Magnum Holdings from in any manner withdrawing or transferring funds, or from creating any new entity to operate its business, but denied, without prejudice, plaintiffs' motion seeking an order of attachment on Magnum Holdings' bank accounts (*see* NYSCEF Doc No. 64, decision and order of March 2017). Magnum Holdings' motion to remove the restraint on its escrow account was denied as moot (*see* Doc No. 64, decision and order of March 2017). More recently, this Court granted Casa Property Management LLC (Casa) leave to intervene as a third-party plaintiff but denied its request to remove the freeze on Magnum Holdings' escrow account to the extent that the funds owed to Casa be released (see NYSCEF Doc No. 122, *Fred Goodstein et al. v Adam Enbar, et al.*, Sup. Court, NY County, Nov. 5, 2018, Freed, J, Index No. 654114/2016, decision and order). However, as Casa has never purchased a third-party index number as directed by this Court, it has never properly instituted its third-party action (see NYSCEF Doc No. 122, decision at 4-6).

Defendants Adam, Linda and MRES now move (motion sequence 003) to dismiss the complaint as against them. In motion sequence 004, plaintiffs move for an order of attachment on two bank accounts belonging to defendant Magnum Holdings. In motion sequence 008, plaintiffs move for leave to amend their complaint to add Melissa as a defendant, as well as four additional causes of action sounding in fraudulent conveyance and one claim of conspiracy to commit fraud. For the reasons set forth below, plaintiffs' motion to amend the complaint is

granted to the extent indicated; defendants' motion to dismiss is denied, and the motion for attachment is granted.

Defendants' Motion to Dismiss (Motion Sequence No. 003)

Defendants move to dismiss the complaint as against MRES based on the doctrine of res judicata (CPLR 3211 [a] [5]). They argue that this is the fourth litigation related to the same loan transaction, and the third against MRES (*see* NYSCEF Doc No. 62, memorandum of law in support at 6). They contend that plaintiffs are merely offering "alternative theories" and attempting to "recover the same relief arising out of the same loan transactions as detailed in the 2010 and 2011 actions against [MRES,] against whom they have a judgment" (NYSCEF Doc No. 62, memorandum of law in support at 5-6, citing *Pauk v Board of Trustees of City Univ. of N.Y.*, 111 AD2d 17, 19 [1st Dept 1985], *affd* 68 NY2d 702 [1986]).

As to defendants Adam and Linda, defendants argue that the first, third, and fifth causes of action, alleging fraudulent conveyance under Debtor and Creditor Law §§ 276, 276-a, 277, 278 and/or 279, fail to state a cause of action (*see* NYSCEF Doc No. 62, memorandum of law in support at 6-7). They argue that the complaint does not sufficiently allege the particulars of what was conveyed and when, and that a claim of fraudulent conveyance brought under Debtor and Creditor Law § 276 requires specificity and proof that the conveyance was made with intent to defraud (*see* NYSCEF Doc No. 62 at 7, 8). In particular, they contend there are no allegations that Adam or Linda were the transferees of the transfers, given that the funds were transferred into the corporate accounts of entities against whom plaintiffs already have judgments (*see* NYSCEF Doc No. 62 at 9-10, citing *Gallant v Kanterman*, 198 AD2d 76, 80 [1st Dept 1993]), and the complaint does not allege that either Adam or Linda had dominion and control over the

funds or that they benefitted from the conveyances (*see* NYSCEF Doc No. 62 at 10, citing *Federal Deposit Ins. Corp. v Porco*, 75 NY2d 840, 842 [1990]; *Estate of Shefner v De La Beraudiere*, 127 AD3d 442 [1st Dept 2015]). They further maintain that there is no cause of action for aiding and abetting a fraudulent conveyance and that merely providing assistance to an alleged transferee does not give rise to such a claim (*see* NYSCEF Doc No. 62 at 10, citing *Federal Deposit Ins. Corp. v Porco*, 75 NY2d 840).

Defendants also argue that the second and fourth causes of action against Adam and Linda, alleging "undiscovered fraudulent transactions" do not and cannot allege particularized facts to support a claim of fraud (*see* NYSCEF Doc No. 62 at 10-11). They also argue that the other sections of the Debtor and Creditor Law cited in the complaint are inapplicable: section 276-a merely provides for attorneys' fees; section 277 pertains to fraudulent conveyance of partnership property "which appears to be wholly inapplicable here," and sections 278 and 279 address rights of creditors whose claims have either matured or not matured which, they maintain, are also of no relevance (*see* NYSCEF Doc No. 62 at 7 and n 1).

In opposition, plaintiffs first argue that the doctrine of res judicata is not implicated because they are not relitigating the issue of the loan itself or MRES's liability for the loan, which were established by the previous judgment (*see* NYSCEF Doc No. 66, memorandum of law in opposition at 5-6). They seek to hold MRES liable for fraudulently conveying funds that it knew were transferred into and from its account "for the sole purpose of avoiding liability on the loan and subsequently on the debts and judgments due to [p]laintiffs" (NYSCEF Doc No. 66 at 5-6). Additionally, res judicata does not apply when, as here, a complaint alleges fraudulent acts that occurred subsequent to the commencement of a plaintiff's original claim (*see* NYSCEF Doc No. 66 at 6, citing *Maharaj v Bankamerica Corp.*, 128 F3d 94, 97 [2d Cir 1997] [res

judicata "generally does not come into play" where the second action concerns a transaction that occurred after commencement of the prior litigation]).

Plaintiffs also argue that the claims against Adam and Linda adequately pleaded violations of the Debtor and Creditor Law (*see* NYSCEF Doc No. 66 at 7). The complaint alleges that the series of transactions made by defendants after plaintiffs commenced their original action against Maurice resulted in the insolvency of Maurice and other entities controlled by him (*see* NYSCEF Doc No. 66 at 9; Doc No. 136, summons and complaint, ¶¶ 37-39). They further assert that the complaint alleges sufficient facts – "badges of fraud" – to demonstrate fraudulent intent, including a close relationship among the parties to the alleged fraudulent transactions; a questionable transfer not in the usual course of business; inadequacy of consideration; the transferor's knowledge of the creditors' claim; and retention of control of the property by the transferor after the conveyance (*see* NYSCEF Doc No. 66, memorandum of law in opposition at 8-9, citing *Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999]). They have shown through bank records, a series of individual transactions by and among defendants, made without consideration, within days of each other, which were allegedly made for the purpose of assisting Maurice and his entities to evade enforcement of the judgment against them. They point out that their evidence was sufficient for this court to have issued a preliminary injunction based on a finding that they were likely to succeed on the merits of their claims that the transfers were fraudulent (*see* NYSCEF Doc No. 66, memorandum of law in opposition at 9, citing Doc No. 64, decision and order of March 2017 at 3-4).

Motion for an Attachment (Motion Sequence No. 004)

Plaintiffs now move, pursuant to CPLR 6201 (motion sequence 004), for an order of attachment on two bank accounts belonging to Magnum Holdings. As noted above, this Court previously denied, without prejudice, plaintiffs' motion for an order of attachment because, while their application "[was] meritorious in substance, … it [was] defective in form, since [plaintiffs] fail[ed] to submit an affidavit in support of their application, in contravention of CPLR 6212 (a)" (NYSCEF Doc No. 64, decision and order of March 2107 at 9-10).

Plaintiffs' motion papers now include an affidavit by plaintiff Fred Goodstein (*see* NYSCEF Doc No. 144, corrected affidavit of Fred Goodstein [Goodstein affidavit]),[4] in addition to the bank records and other documentation previously provided to establish their need for, and entitlement to, an attachment. The Goodstein affidavit recites the alleged facts as contained in plaintiffs' complaint, including that only after plaintiffs attempted to enforce the default judgments did they learn that Maurice had created Magnum Holdings and that MRES had "started slowly draining the funds out of its … [b]ank [a]ccount" and into Magnum Holdings, resulting in MRES no longer having adequate funds by the time the Nassau County judgment was entered (NYSCEF Doc No. 144, Goodstein affidavit, ¶¶ 30-32). Plaintiffs learned that Magnum Holdings shares the same New York State Department of State address and business office as those of MRES, operates the same type of business as MRES, that both Magnum Holdings and MRES share the same residence address for their bank accounts, and that both Maurice and Linda are signatories on Magnum Holdings' bank account (*see* NYSCEF Doc No. 144, ¶ 29). Goodstein avers that plaintiffs' claims of fraudulent conveyance made in an attempt

[4] The Goodstein affidavit was initially filed as NYSCEF Doc No. 74, and refiled as Doc No. 144, apparently in order to correct the omission of page 4 from the initial filing, and to redact bank account numbers in adherence with current court rules.

to thwart enforcement of the judgments against Maurice Enbar, will likely succeed on the merits, and that to his knowledge, defendants have no counterclaims and that "[t]he amount demanded from the defendants therefore exceeds all counterclaims known to us" (*see* NYSCEF Doc No. 144, ¶ 41; CPLR 6212 [a]). Defendants do not oppose the motion.

Motion to Amend (Motion Sequence No. 008)

Plaintiffs also seek leave to amend their complaint (motion sequence 008) to add Melissa, daughter of Linda and Maurice, as a necessary party (*see* NYSCEF Doc No. 142, memorandum of law in support at 11-13; *see* CPLR 3025 [b]; 1003), as well as four causes of action sounding in fraudulent conveyance of two pieces of real property as against Linda, Adam and Melissa individually and as co-trustees of the Linda Enbar Asset Trust and Enbar Lawrence Trust, and one cause of action of conspiracy to defraud as against all defendants (*see* NYSCEF Doc No. 155, proposed amended complaint, ¶¶ 125-182). These claims arise from Linda's 2017 testimony before the bankruptcy trustee in the Bankruptcy Proceeding (*see* NYSCEF Doc No. 142, memorandum of law in support at 6-7; Doc No. 139, Bankruptcy Proceeding, Rule 2004 Examination of Linda Enbar, 02/28/2017 [Linda Enbar Examination]).

Plaintiffs note that Linda testified that she and her husband Maurice "quitclaimed: (a) the property they live in in Florida, (b) an apartment in New York and (c) a house in New York to a Trust for the benefit of Linda" and later "quitclaimed the deeds from Linda's Trust into a Trust for the benefit of Adam and Melissa," and that tenants living in the New York home pay rent to the trust benefitting Adam and Melissa (NYSCEF Doc No. 142, memorandum of law in support at 6-7, citing NYSCEF Doc No. 139, Linda Enbar Examination at 28-37).

The proposed amended complaint alleges that the Florida property (Turnberry), originally owned by Maurice and Linda, was conveyed solely to Linda in June 2009 (*see* NYSCEF Doc No. 155, proposed amended complaint, ¶ 62). After judgment was entered against Maurice and MRES in Supreme Court, Nassau County on January 15, 2013, but before plaintiffs asserted a lien against the judgment, Linda formed the Linda Enbar Asset Trust, naming Adam and Melissa as co-trustees, and, on June 11, 2013, she transferred Turnberry to the trust by quitclaim deed for consideration of $10.00 (*see* NYSCEF Doc No. 155, ¶¶ 63-64; 150-151). The proposed amended complaint further alleges that Maurice owned 345 Broadway from May 29, 1998 until February 21, 2014, on which date he and Linda executed a quitclaim deed transferring 345 Broadway to the Linda Enbar Asset Trust (*see* NYSCEF Doc No. 155, ¶¶ 164, 167). Subsequently, Adam and Melissa formed the Enbar Lawrence Trust on April 27, 2015, and on or about May 20, 2015, the Linda Enbar Asset Trust conveyed 345 Broadway to the Enbar Lawrence Trust by quitclaim deed for consideration of $10.00 (*see* Doc No. 155, ¶¶ 60-61; 168-169). The proposed amended complaint alleges that the transfers were made with the knowledge of all defendants of the pending actions and judgments against Maurice, and made with actual intent to hinder, evade or defraud plaintiffs so that they could not collect their judgment, knowing that the transfers would leave Maurice and the other judgment debtors with insufficient assets to satisfy plaintiffs' judgment (*see* NYSCEF Doc No. 155, ¶¶ 154-156, 170-172). Further, alleged plaintiffs, "[a]t all relevant times," Maurice, Linda, Adam and Melissa "have continued to enjoy the use of [Turnberry] and [345 Broadway]; residing from time-to-time at [Turnberry], and collecting rents from 345 Broadway" (NYSCEF Doc No. 155, ¶ 65).

Only Adam opposes the motion (*see* NYSCEF Doc No. 147, memorandum in opposition). He argues, inter alia, that plaintiffs' claims are barred because, under Bankruptcy

Code § 544 (b), the bankruptcy trustee has the exclusive right to pursue claims to avoid or nullify allegedly fraudulent transfers (*see* NYSCEF Doc No. 147 at 5, citing among others, *Matter of Berg*, 376 BR 303, 312 [D Kan 2007] ["It is well-established that creditors may not vie with the bankruptcy trustee for the right to pursue fraudulent conveyance actions ... [and] commencement of bankruptcy gives the trustee the right to pursue fraudulently conveyed assets *to the exclusion of all creditors*" [internal quotation marks and citation omitted]). He emphasizes that the Stipulation specifically states that the trustee "investigated transactions related to" Turnberry and 345 Broadway, as well as transactions concerning the Lawrence Enbar Trust and the Linda Enbar Asset Trust, and settled any claims concerning them, and strenuously argues that the transfers of these properties are "precisely the subjects of Plaintiffs' proposed new causes of action" (NYSCEF Doc No. 147 at 2, 5-6, citing Doc No. 150, Bankruptcy Proceeding, motion to approve Stipulation, ¶ 12). The Stipulation explicitly provides that the settling parties "shall be released of any and all causes of action vested in the estate by operation of State or federal law" (NYSCEF Doc No. 147, memorandum in opposition at 6, quoting Stipulation, ¶ 3). Thus, Adam argues, because the trustee had the exclusive right to pursue fraudulent conveyance claims on behalf of Maurice Enbar's bankruptcy estate to the exclusion of all creditors, including plaintiffs, the Stipulation released all of the estate's causes of action against the children and wife of Maurice, thereby barring plaintiffs' proposed causes of action (*see* NYSCEF Doc No. 147 at 3, 6, citing *Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.* (17 NY3d 269, 276 [2011]). Further, maintains Adam, the allegations concerning fraudulent transfers of residential real property, "have nothing to do with the subject matter of [p]laintiffs' original lawsuit against Maurice" (NYSCEF Doc No. 147 at 2).

Adam also argues that leave to amend must be denied because the automatic bankruptcy stay provision continues while Maurice's Bankruptcy Proceeding remains pending (*see* NYSCEF Doc No. 147, memorandum in opposition at 8, 9, quoting *Matter of Tribune Co. Fraudulent Conveyance Litigation*, 818 F3d 98, 108 [2d Cir 2016] ["When a bankruptcy action is filed, any 'action or proceeding against the debtor' is automatically stayed by Section 362 (a)"]). The stay, Adam contends, extends to third parties who are alleged to have received the fraudulent conveyance (*see* NYSCEF Doc No. 147 at 8, quoting *Matter of Tribune Co. Fraudulent Conveyance Litigation,* 818 F2d at 108 ["Although fraudulent conveyance actions are against third parties rather than a debtor, there is caselaw ... stating that the automatic stay applies to such actions"]). In particular, *Matter of Colonial Realty Co.* (980 F2d 125 [2d Cir 1992]), states that a "third-party action to recover fraudulently transferred property is properly regarded as undertaken to recover a claim against the debtor and [therefore] subject to the automatic stay provision pursuant to § 362 (a) (1)" (NYSCEF Doc No. 147 at 8, 9, quoting *Matter of Colonial Realty*, 980 F2d at 131-132 [internal quotation marks and citation omitted]).

Further, Adam contends that plaintiffs' motion must be denied because plaintiffs did not provide a redlined version of the proposed amended complaint, thereby failing to comply with CPLR 3025 (b), which requires that a motion to amend a pleading must include a copy of the proposed amended pleading and "clearly show[ ] the changes or additions to be made in the pleading" (*see* NYSCEF Doc No. 147, memorandum in opposition at 9-10 citing *Dragon Head, LLC v Elkman*, 102 AD3d 552, 553 [1st Dept 2013]).

In reply, plaintiffs argue that Adam ignores the language of the Bankruptcy's Court's final order, which states that the "Stipulation of Settlement *shall not be binding on any creditors*, or otherwise affect the rights of any creditors, of the Estate" (*see* NYSCEF Doc No. 157, reply

memorandum at 1, 3, quoting Doc No. 154, Bankruptcy Proceeding, order granting trustee's motion to approve, ¶ 10 [emphasis added]). Plaintiffs maintain that, given this language, neither they nor other creditors are bound by the terms of the Stipulation between Maurice, the trustee, and non-debtor-settling parties Linda, Adam and Melissa (*see* NYSCEF Doc No. 157, reply memorandum at 3). They further assert that their proposed amended pleadings add additional independent causes of action against the non-debtors as participants and beneficiaries of the alleged fraudulent transfers (*see* NYSCEF Doc No. 157 at 5), and that "[u]nder New York law, a creditor may recover money damages against parties who participate in the fraudulent transfer and are either transferees of the assets or beneficiaries of the conveyance" (NYSCEF Doc No. 157 at 5, quoting *RTC Mortgage Trust 1995-S/N1 v Sopher,* 171 F Supp 2d 192, 201-202 [SD NY 2001] [citations omitted]).

Plaintiffs maintain that defendants lack standing to seek the protections of the bankruptcy stay accorded to the subject debtor, i.e., Maurice (*see* NYSCEF Doc No. 157 at 4, citing *Matter of Siskin*, 231 BR 514, 517 [ED NY 1999]). They insist that non-debtors who may be subject to litigation for transactions or events involving the debtor are not protected (*see* NYSCEF Doc No. 157 at 6, citing *Wedgeworth v Fireboard Corp.*, 706 F2d 541, 544 [5th Cir 1983]). With respect to *Matter of Colonial Realty* (980 F2d 125), relied upon by defendants because it disallowed claims brought against third parties to the bankruptcy, plaintiffs assert that it is not relevant, citing the discussion about that case in *Securities Inv. Protection Corp. v Bernard L. Madoff Inv. Sec. LLC* (490 BR 59 [SD NY 2013], *affd sub nom. Picard v Fairfield Greenwich Ltd.*, 762 F3d 199 [2d Cir 2014]) (hereinafter *Madoff*) (*see* NYSCEF Doc No. 157 at 7). *Madoff* explained that the decision in *Matter of Colonial Realty*, disallowing fraudulent conveyance claims brought against third parties to the bankruptcy action, was explicitly predicated on the derivative nature

of those particular claims (*see* NYSCEF Doc 157 at 7, citing *Madoff* at 67). The fraudulent conveyance action in *Madoff* was not subject to the stay because independent third-party claims against non-debtor parties are generally not subject to the automatic stay, and, as in that case, "wholly independent" of the bankrupt's estate (*see* NYSCEF Doc No. 157 at 7, quoting *Madoff* at 66-67). Plaintiffs assert that the same situation exists here and that courts are empowered to extend the automatic stay to non-debtor co-defendants only in "unusual situations" where a non-bankrupt co-defendant is not independently liable to the creditor (NYSCEF Doc No. 157 at 7-8, citing *Variable-Parameter Fixture Dev. Corp. v Morpheus Lights, Inc.*, 945 F Supp 603, 608 [SD NY 1996]).

Finally, plaintiffs argue that there is no rule requiring that a proposed amended pleading include a redlined version so as to show the changes and, in *Dragon Head, LLC v Elkman* (102 AD3d 552), cited by Adam, the Court denied a motion to amend because the movant failed to attach *any sort of amended pleading* to its motion (*see* NYSCEF Doc No. 157 at 8-9).

LEGAL CONCLUSIONS

Plaintiffs' Motion to Amend (Motion Sequence 008)

Courts have wide discretion in granting or denying leave to amend pleadings pursuant to CPLR 3025 (b) when there is no actual surprise or prejudice to the other side (*see Murray v City of New York*, 43 NY2d 400, 405 [1977], *lv dismissed* 12 NY3d 880 [2009]). Where there is prejudice or surprise, or where the proposed amendment is "palpably improper or insufficient as a matter of law," the motion must be denied (*see LDIR, LLC v DB Structured Prods., Inc.*, 172 AD3d 1, 4 [1st Dept 2019], internal quotation marks and citation omitted]). To conserve judicial resources, an examination of the underlying merits of the proposed causes of action is

warranted (*see Eighth Ave. Garage Corp. v H.K.L. Realty Corp.*, 60 AD3d 404, 405 [1st Dept 2009] [citing *Murray v City of New York*, 43 NY2d 400 [1977], *lv dismissed* 12 NY3d 880 [2009]). The court should determine whether the facts as alleged in the proposed complaint "reasonably infer" the elements of the proposed causes of action (*see McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]). An amended complaint, when served, takes the place of the original complaint (*see Hudson Tenants Corp. v Laber*, 98 AD2d 692 [1st Dept 1983]; *see also Golia v Vieira*, 162 AD3d 864 [2d Dept 2018]).

Bankruptcy Stay

Section 362 (a) (1) of the Bankruptcy Code provides, in relevant part, that upon the filing of a bankruptcy petition, any actions or proceedings that could have been, or were commenced against the debtor before the commencement of the bankruptcy proceeding, are stayed, including actions to recover a claim against the debtor that arose before the commencement of the bankruptcy proceeding (*see* 11 USC § 362 [a] [1]). The stay pertains to the debtor and concerns property of interest to the debtor's estate (*see* 11 USC § 541 [a] [1]). "'Property of the estate' is broadly defined as 'all legal or equitable interests of the debtor in property as of the commencement of the case'" (*Madoff* at 69, quoting 11 USC § 541 [a] [1]). "'In the case of both Chapter 7 and Chapter 11 petitions, [t]he purposes of the bankruptcy stay under 11 USC § 362 'are to protect the debtor's assets, provide temporary relief from creditors, and further equity of distribution among the creditors by forestalling a race to the courthouse'" (*Deutsch v Liquid Holdings Group, Inc.*, 2016 NY Slip Op 30966, 2016 WL 3917757 at *3, 2016 NY Misc LEXIS 1949 at *2-3 [Sup Ct, New York County 2016], quoting *Catholic Order of Foresters v U.S. Bancorp Piper Jaffray, Inc.*, 337 F Supp 2d 1148, 1161 [ND Iowa 2004]).

In general, independent third-party claims brought against nondebtor parties are not subject to the automatic stay (*see Madoff*, 490 BR at 66-67). Similarly, if during a litigation brought against two or more defendants, one of them seeks bankruptcy protection, the plaintiff may proceed as against the nonbankrupt codefendants on claims that do not involve the bankrupt's property; the automatic stay is not available to such parties, "'even if they are in a similar legal or factual nexus with the debtor'" (*Croyden Assoc. v Alleco, Inc.*, 969 F2d 675, 677 [8th Cir 1992], quoting *Maritime Elec. Co. Inc. v United Jersey Bank*, 959 F2d 1194, 1205 [3d Cir 1992]; *see also GATX Aircraft Corp. v M/V Courtney Leigh*, 768 F2d 711, 716 [5th Cir 1985] [holding that "[b]y its terms the automatic stay applies only to the debtor, not to co-debtors under Chapter 7 ... of the Bankruptcy Code nor to co-tort-feasors"]).

A bankruptcy court will stay proceedings against non-bankrupt co-defendants in the "unusual situation" where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor" (*A.H. Robins Co., Inc. v Piccinin*, 788 F2d 994, 999 [4th Cir 1986]; *see Queenie, Ltd. v Nygard Intl.*, 321 F3d 282, 287 [2d Cir 2003] ["The automatic stay can apply to non-debtors, but normally does so only when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate"]).

Matter of Colonial Realty, relied upon by defendants, involved involuntary bankruptcy proceedings brought against two general partners and their partnership (the debtors) (*see Matter of Colonial Realty*, 980 F2d at 127). The partnership's failure caused thousands of investors, as well as certain banks that had loaned money to the partners, to suffer losses (*id.*). Sisti, one of the partners who had defaulted on obligations he owed the banks, allegedly transferred funds to

his wife and a separate corporation (*id.*). The Federal Deposit Insurance Corporation (FDIC), appointed as the receiver of five of the former banks, brought an action against the transferees of those funds, although not against the debtors or the bankruptcy trustee, seeking to recover the funds for the benefit of the estates of the failed banks (*id.*). The FDIC's complaint alleged that Sisti was liable to it because of the loans made by the banks, and the defendants were liable as fraudulent transferees of Sisti but, because the FDIC was attempting in fact to recover a claim against Sisti, its claim against the third-party defendants was not "independent" of the claims of the bankruptcy trustee. Thus, held the court, the action had to be stayed (*id.*).

In contrast, the action at issue in the *Madoff* case was found to be wholly independent of the estate and not subject to the bankruptcy stay (*see Madoff*, 490 BR at 67). The bankruptcy trustee had claimed that the plaintiffs, who had brought suit against four investment funds created and operated by the defendants which, in turn, had invested most of the plaintiffs' money in Bernard Madoff's infamous company (BLMIS), were subject to the automatic bankruptcy stay, citing *Matter of Colonial Realty* (980 F2d 125 at 131-32). The trustee sought "the return of certain fraudulent conveyances allegedly transferred from BLMIS" to the defendants (*id.* at 64-65) and argued that "a third-party action to recover fraudulently transferred property is properly regarded as undertaken 'to recover a claim against the debtor'" (*Madoff* at 67 [internal quotation marks and citation omitted]). The *Madoff* court ruled that the proposed settlement between the plaintiffs and the defendants-funds did not violate the automatic stay; plaintiffs' claims, including breaches of fiduciary duty, and the Martin Act, were "separate and distinct" from the claims of the BLMIS estate and not the property of the BLMIS estate (*Madoff* at 66). Nor were the plaintiffs "direct 'customers'" of BLMIS and thus creditors of the BLMIS estate who could recover through the trustee's action (*Madoff* at 65-66). *Madoff* explained that where, as here "the

non-debtor's liability rests upon his own breach of duty, a stay clearly cannot be extended to the non-debtor" (*id.* at 68, quoting *Variable-Parameter Fixture Dev. Corp.*, 945 F Supp at 608 [internal quotation marks omitted] [holding that even where the debtor and non-debtors are joint tortfeasors, § 362 (a) (1) does not bar claims where "the non-debtor's liability rests upon his own breach of duty"]).

This Court is not persuaded that plaintiffs' original claims against Maurice are so intertwined with the current claims that the automatic stay in the Bankruptcy Proceeding encompasses this action.[5] An action claiming breach of contract and conversion as against one party is quite different from a suit alleging the fraudulent transfer of assets to and among the settling parties of a bankruptcy proceeding and other nonparty entities. Here, as in *Madoff*, "the non-debtor's liability rests upon [their] own breach of duty," namely the alleged fraudulent transfers of funds now held in the bank accounts of Magnum Realty, and by Linda to family trusts for the benefit of the family, and the bankruptcy stay is not at issue (*Madoff* at 68). Notably, the trustee specifically stated that he had found no evidence that Maurice had transferred or concealed property "*within one year* before the date of the filing of the petition" (NYSCEF Doc No. 150, Bankruptcy Proceeding, motion to approve Stipulation, ¶ 8 [emphasis added]), and although the trustee investigated "transactions" related to Turnberry and 345 Broadway, and the Laura Enbar Asset Trust and the "Lawrence Enbar Trust" (see NYSCEF Doc No. 150, Bankruptcy Proceeding, motion to approve Stipulation, ¶ 12), it is unclear whether the "Lawrence Enbar Trust" examined by the trustee is the "Enbar Lawrence Trust," identified throughout plaintiffs' papers as allegedly consisting of both pieces of real property.

[5] Defendants never previously sought a stay, and this Court has entertained and decided several motions during the time the Bankruptcy Proceeding has been pending without such a request.

Debtor-Creditor Law

In the complaint and amended complaint, plaintiffs set forth causes of action under New York's Debtor and Creditor Law. Section 276 provides that "[e]very conveyance made and every obligation incurred with *actual intent* … , to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors" (Debtor and Creditor Law § 276 [emphasis added]). Section 276-a provides an award of reasonable attorneys' fees where the creditor successfully recovers a judgment from the debtor. Section 277 addresses fraudulent conveyances of partnership property that render the partnership insolvent (Debtor and Creditor Law § 277 [a], [b]). Section 278 of the Debtor and Creditor Law provides that a creditor whose rights have matured may set aside a fraudulent conveyance as to the creditor (Debtor and Creditor Law § 278), and section 279 addresses relief for creditors whose claims have not matured (Debtor and Creditor Law § 279).

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). "A claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016 (b)" (*id.*). The complaint must "allege the basic facts to establish the elements of the cause of action" (*id.*, internal quotation marks and citation omitted). A claim is sufficiently pleaded under CPLR 3016 (b), "when the facts suffice to permit a 'reasonable inference' of the alleged misconduct" (*id.* at 559, quoting *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]). "'[I]n certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud'" (*Eurycleia* at 559, quoting *Pludeman* at 493).

This Court finds that the proposed amendments to the first and third causes of action alleging fraudulent conveyance as against Adam and Linda, sufficiently satisfy the pleading requirements of CPLR 3016 (b), as do the proposed ninth, tenth, eleventh and twelfth causes of action concerning the separate conveyances of Turnberry and 345 Broadway, originally owned by Linda and Maurice, and then by Linda alone. The causes of action sufficiently allege that the transfers were made with the ongoing knowledge of the judgment owed to plaintiffs, and made in order to hide the assets of the properties, for the benefit of defendants, with the intent to defraud plaintiffs. The particulars of the fraudulent conveyance claims – from the cycling of the original loan monies through various accounts without consideration and their placement in a new and seemingly identical entity to the one known by plaintiffs to have housed the monies, to the transfer of ownership interests in two real properties from Maurice and Linda, to Linda and then into various trusts and now as property of the Enbar Lawrence Trust – are pleaded in sufficient detail to satisfy the heightened particularity requirement of CPLR 3016 (b) (*see Marine Midland Bank v Zurich Ins. Co.*, 263 AD2d 382, 382-383 [1st Dept 1999] [finding the complaint complied with CPLR 3016 (b) where it alleged the overall fraudulent scheme in detail, and stating that "fraudulent intent is fairly inferred from such details"]).

The amended complaint alleges the dates or timeframe when the transactions occurred with sufficient specificity. The proposed complaint details the property's transfer from one defendant to another, with the knowledge that plaintiffs were attempting to enforce their judgment, and the intent to protect and hide these assets.

As this Court discussed in its previous decision addressing plaintiffs' motion for an attachment, the complaint, and now the proposed amended complaint, allege sufficient "badges of fraud" that strongly suggest that the conveyances were made with intent to defraud, and

satisfy the requirements under Debtor and Creditor Law § 276 for specificity and proof that the conveyance was made with intent to defraud (*see* NYSCEF Doc No. 64, decision and order of March 2017 at 8-9). The claims allege not only that Adam, Linda and Melissa, were transferees of certain assets, but that they benefitted from the conveyances because of their ability to live in and use, or collect rents from, the properties (*see Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999]).

However, the proposed amended complaint does not sufficiently allege "undiscovered fraudulent transactions" as against Adam and Linda because there are no particularized facts alleged to support these claims. Accordingly, the second and fourth causes of action are dismissed in their entirety, because while the standard of review is "much less exacting" than that applied on a motion seeking summary judgment (*see James v R & G Hacking Corp.*, 39 AD3d 385, 386 [1st Dept 2007]), where the court finds that a proposed claim or claims are not viable, it may properly deny leave to amend (*see Lau v Human Resources Admin.*, 168 AD3d 565, 566 [1st Dept 2019]).

Similarly, there are no factual allegations to support the claim that plaintiffs have unmatured claims, unsecured or otherwise, pursuant to Debtor and Creditor Law § 279. Therefore, the claims based on section 279 in the 1st through 5th, 7th, and 9th through 12th causes of action in the proposed amended complaint are dismissed without prejudice.

The proposed amended complaint asserts a new cause of action of conspiracy against all defendants. "'[A]llegations of conspiracy are permitted only to connect the actions of separate defendants with an otherwise actionable tort'" (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010], quoting *Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986]). A claim of conspiracy "stands or falls with the underlying tort" (*Abacus* at 474, quoting *Romano*

v Romano, 2 AD3d 430, 432 [2d Dept 2003]). In order to establish a claim of civil conspiracy, the plaintiff "must demonstrate the primary tort, plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury" (*Abacus Fed. Sav. Bank*, 75 AD3d at 474, internal quotation marks and citation omitted]). The proposed amended complaint sufficiently alleges all four elements of a claim of conspiracy and, thus, sufficiently alleges a claim of conspiracy against defendants to engage in fraudulent conveyance of monies owed to plaintiffs.

Finally, the proposed amended complaint is based on facts and documents within the defendants' knowledge and possession, and this Court finds that granting the amendment does not prejudice defendants (*see Jacobson v Croman*, 107 AD3d 644, 646 [1st Dept 2013]). The motion papers are not defective. Plaintiffs included a copy of the proposed amended pleading as part of their motion and their attorney showed proof that copies, including a redlined version of the proposed amended complaint, were sent to defendants in July 2018, prior to the filing of the motion. Further, the proposed amendments are meritorious to the extent stated above (*compare Drice v Queens County Dist. Attorney*, 136 AD3d 665, 666 [2d Dept 2016] [motion denied where the plaintiff failed to provide a copy of its proposed amended complaint and the proposed amendments were "palpably insufficient or patently devoid of merit"]).

Given that this Court grants plaintiffs' motion to amend their complaint, there is no need to directly address defendants' motion to dismiss the original complaint (motion sequence 003).

Res Judicata

> "The doctrine of res judicata, frequently referred to as 'claim preclusion', provides that 'as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action'"

(*Singleton Mgt. v Compere*, 243 AD2d 213, 215 [1st Dept 1998], quoting *Gramatan Home Invs. Corp. v Lopez*, 46 NY2d 481, 485 [1979]).

Plaintiffs persuasively argue that the doctrine is not applicable, because the allegations in their complaint, as well as in the proposed amended complaint, concern the transfer and intentional hiding of funds by defendants that were either unknown to plaintiffs at the time they filed their original action, or had not yet occurred.

Plaintiffs' Motion for an Attachment (Motion Sequence 004)

Attachment is a provisional remedy that gives a pre-judgment creditor the ability to secure a defendant's property pending the entry of a judgment (*see Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d 303, 310 [2010]; *see* CPLR art. 62). The decision to grant a motion for attachment rests within the discretion of the court (*see Morgenthau v Avion Resources Ltd.*, 11 NY3d 383, 387 [2008]). A plaintiff must establish that it has stated a claim for a money judgment; has a probability of success on the merits; satisfies one of the five attachment grounds listed in CPLR 6201; and that the amount demanded is greater than the amount of all counterclaims known to the plaintiff (*see Ford Motor Credit Co. v Hickey Ford Sales*, 62 NY2d 291, 301 [1984]). The right to attach fraudulently transferred property is codified in Debtor and Creditor Law § 278 [1] [b]).

Plaintiffs seek to attach the contents of two specific New York bank accounts belonging to Magnum Holdings (*see* NYSCEF Doc No. 70, Peterson affirmation in support of motion).

They contend that attachment is needed because defendants, "with intent to defraud" or to "frustrate the enforcement of a judgment [ ] rendered in the plaintiff[s'] favor ... [have] assigned, disposed of, encumbered, or secreted property ... or [are] about to do any of those acts" (*see* CPLR 6201 [3]). They demonstrate that there is a real risk, based on the financial position and past conduct of Magnum Holdings and of Maurice, as well as Linda, Adam and Melissa, that defendants "will not be able to satisfy the judgment" (*see VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 60 [1st Dept 2013]). Also relevant here is plaintiffs' showing that most of the defendants have numerous judgment liens against them for failure to pay creditors, that Maurice filed for bankruptcy, and that defendants have demonstrated a history of attempts to hide financial assets.

This Court has previously addressed the merits of plaintiffs' motion for an attachment, which was denied for procedural reasons (*see* NYSCEF Doc No. 64, decision and order of March 2017). Plaintiffs now provide an affidavit by Fred Goodstein, as required by CPLR 6212 (a), in which he sets forth the factual allegations and "badges of fraud" that, together with the documents included with the motion, sufficiently demonstrate that plaintiffs have a viable cause of action, that it is probable they will succeed on the merits, and that one or more grounds exist for attachment (*see* Doc No. 144, Fred Goodstein affidavit).

Defendants have not opposed the motion. Where a party fails to controvert a material fact, that fact may be deemed admitted (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; *Madeline D'Anthony Enters., Inc. v Sokolowsky*, 101 AD3d 606, 609 [1st Dept 2012]). Thus, plaintiffs have demonstrated their entitlement to an attachment.

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

ORDERED that plaintiffs' motion to amend their complaint (motion sequence 008) is granted to the extent indicated above, and plaintiffs are to file and serve a second amended complaint to conform with this decision within 20 days after service on plaintiffs' attorney of a copy of this order with notice of entry; and it is further

ORDERED that upon the filing of the second amended complaint, defendant will submit an answer or file a motion to dismiss, in conformance with the CPLR; and it is further

ORDERED that defendants' motion to dismiss the complaint (motion sequence 003) is denied as academic; and it is further

ORDERED that Casa Property Management LLC, previously given permission to join as a third-party plaintiff, shall purchase a third-party index number within 10 days of entry of this decision and order; and it is further

ORDERED that the plaintiffs' motion for an order of attachment (motion sequence 004) is granted; and it is further

ORDERED that the amount to be secured by this order of attachment, inclusive of probable interest, costs and Sheriff's fees and expenses, shall be $ 242,407.02,[6] and it is further

ORDERED that the plaintiffs' undertaking is fixed in the sum of $12,120.35 for each of the five defendants, for a total of $ 72,722.11, plus $12,120.35 for the Sheriff's fee, to be paid equally by each defendant, on the condition that the plaintiffs shall pay to the defendants an amount not exceeding $10,000.00 for legal costs and damages which may be sustained by reason of the attachment, and up to and not exceeding $12,120.35 to the Sheriff for allowable fees, if the defendant recovers judgment or if it is decided that the plaintiff is not entitled to an attachment of the property of the defendant; and it is further

[6] This figure was calculated by taking the amount of the judgment, adding 9% estimated interest; a 5% estimated sheriff poundage fee, $300 in court fees, and $100 as a sheriff levy fee.

ORDERED that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, shall levy within his jurisdiction, at any time before final judgment, upon such real and personal property in which the defendants have an interest and upon such debts owing to the defendants as will satisfy $ 242,407.02, the amount of plaintiffs' demand, together with probable interest, costs, and the Sheriff's fees and expenses, including the following property: any bank account of Magnum Realty Holdings LLC located in TD Bank, Westbury, Long Island, New York and, in particular, the accounts ending in 3240 and 3232, and that the Sheriff proceed herein in the manner and make his return within the time prescribed by law; and it is further

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

11/1/2019
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE