

**Abdelqader v Abdelqader**

2019 NY Slip Op 33886(U)

November 12, 2019

Supreme Court, Queens County

Docket Number: 716482/2019

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

- - - - - x

KHARIA ABDELQADER a/k/a KHAIRIEH  
ABDELQADER a/k/a KHERIEH ABDEL-QADER,  
  
Plaintiff,

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Motion Date: 11/7/19

Motion No.: 1

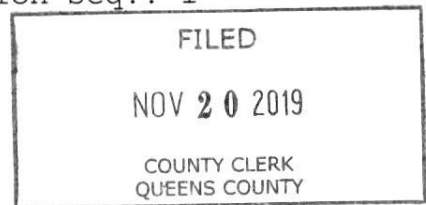
- against -

Motion Seq.: 1

ANWAR H. ABDELQADER, MONA ABDELQADER,  
RAMZI ABDELQADER, SHADI ABDELQADER and  
MAHER ABDELQADER,

Defendants.

- - - - - x



The following electronically filed documents read on this Order to Show Cause by plaintiff for an Order pursuant to CPLR 6301, enjoining defendant Maher Abdelqader from the enforcement of his judgment against defendant Anwar Abdelqader, but only to the extent enforcement is being sought against the property known as 105-29 63<sup>rd</sup> Avenue, Forest Hills, New York 11375, and/or for an Order pursuant to CPLR 5240, enjoining the enforcement of defendant Maher Abdelqader's judgment against defendant Anwar Abdelqader, but only to the extent enforcement is being sought against the property:

	<u>Papers</u>
	<u>Numbered</u>
Order to Show Cause-Affidavits-Exhibits-Affidavits of Service.....	EF 7 - 26
Affirmation in Opposition-Exhibits.....	EF 30 - 36
Affirmation in Reply-Exhibits.....	EF 38 - 42

Plaintiff commenced this action by filing a summons and verified complaint on September 25, 2019, seeking a constructive trust as to the interest of defendants Anwar, Mona, Ramzi and Shadi in certain property located at 105-29 63<sup>rd</sup> Avenue, Forest Hills, New York 11375. The complaint also alleges causes of action for unjust enrichment, equitable fraud, and breach of fiduciary duty. As to defendant Maher, the complaint seeks a declaratory judgment that the judgment held by Maher against Anwar is not a lien or encumbrance on the subject property.

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NYSCEF DOC. NO. 43

RECEIVED NYSCEF: 11/20/2019

Plaintiff now seeks an injunction, enjoining defendant Maher from the enforcement of his judgment against defendant Anwar, but only to the extent enforcement is being sought against the subject property.

The complaint alleges that the subject property is the primary residence of plaintiff and all defendants, except Maher. Plaintiff and her husband purchased the subject property in 1986. Plaintiff's husband died in 1998. Upon the death of plaintiff's husband, her oldest son, Maher, told plaintiff to convey half of her interest in the subject property to Anwar. Maher and Anwar told plaintiff that the property would be held in trust for her and that she would be able to live in the property for the rest of her life. On February 12, 2002, plaintiff transferred 50% of the property to Anwar without receiving any consideration for the transfer. Anwar obtained a Home Equity Loan on the property in May of 2002. On December 15, 2004, plaintiff transferred the remaining 50% of her interest in the property to Anwar at Maher's request. Anwar made similar representations that the property would be held in trust for plaintiff. Thereafter, Maher obtained a judgment against Anwar in the amount of \$1,332,299.88. Subsequent to the entering of the judgment, Anwar made two post-judgment transfers. The first transfer was made to Anwar's wife, Mona, on October 7, 2014. The second transfer was made from Mona to their two children, Ramzi and Shadi, in January 2017. Maher scheduled a sheriff's sale for October 9, 2019 to collect on the judgment. The sale was cancelled due to the filing of the instant application.

To establish entitlement to a preliminary injunction, a movant must establish (1) a likelihood or probability of success on the merits, (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of granting the injunction (see Stockley v Gorelik, 24 AD3d 535 [2d Dept. 2005]; Brach v Harmony Servs., Inc., 93 AD3d 748 [2d Dept. 2012]; Matter of Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd., 53 AD3d 612 [2d Dept. 2008]; Montauk-Star Is. Realty Group v Deep Sea Yacht & Racquet Club, 111 AD2d 909 [2d Dept. 1985]). The decision to grant a preliminary injunction lies within the sound discretion of the court (see Arcamone-Makinano v Britton Prop., Inc., 83 AD3d 623 [2d Dept. 2011]; Reichman v Reichman, 88 AD3d 680 [2d Dept. 2011]). A preliminary injunction to maintain the status quo may be granted even if the court has "grave doubts regarding the likelihood of plaintiffs' success on the merits" as long as they have demonstrated that if the "preliminary injunction is not granted, any subsequent judgment might be rendered ineffectual" (Scholesser v United Presbyt. Home at Syosset, 56 AD2d 615, 615 [2d Dept. 1977]).

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Regarding plaintiff's likelihood of success on the merits, the elements of a cause of action to impose a constructive trust are (1) the existence of a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment (see Sharp v Kosmalski, 40 NY2d 119 [1976]; Quadrozzi v Estate of Quadrozzi, 99 AD3d 688 [2d Dept. 2012]; Rowe v Kingston, 94 AD3d at 853 [2d Dept. 2012]; Poupis v Brown, 90 AD3d 881 [2d Dept. 2011]).

Based upon plaintiff's affidavit submitted in support of the application, this Court finds that plaintiff established the elements for a constructive trust by establishing that there was a confidential relationship between her and her two sons, Anwar and Maher, a promise by Anwar to plaintiff that the property was to be held in trust for her, and the transfer of the property from her to Anwar made in reliance on the promise. Additionally, plaintiff established that Anwar would be unjustly enriched if he is not simply a trustee for plaintiff, but the sole owner of the subject premises.

Only defendant Maher opposes the application. As none of the defendants who plaintiff asserts the cause of action for a constructive trust against oppose this application or submit answers asserting the expiration of the applicable statute of limitations as an affirmative defense, this Court finds that plaintiff established a probability of success on the merits of her constructive trust cause of action.

Additionally, plaintiff will also be irreparably harmed absent the granting of the preliminary injunction. Should a sale of the subject property proceed, plaintiff would likely be evicted. However, Maher would not suffer any substantial prejudice as staying the sale would simply continue the status quo. Defendant Maher would still have a valid judgment to execute on any other property owned by the judgment debtor, Anwar. Thus, plaintiff has established both irreparable harm and that the balance of equities tips in her favor.

Based on the above, this Court finds that a preliminary injunction is necessary to preserve the status quo. Moreover, the existence of a factual dispute will not bar the granting of a preliminary injunction if one is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance (see Mr. Natural, Inc. v Unadulterated Food Products, Inc., 152 AD2d 729 [2d Dept. 1989]).

Accordingly, plaintiff's application for a preliminary injunction is granted, and it is hereby

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ORDERED, that pending a further determination of this action, defendant MAHER ABDELQADER shall be enjoined from the enforcement of his judgment against defendant ANWAR ABDELQADER, but only to the extent enforcement is being sought against the property commonly known as 105-29 63<sup>rd</sup> Avenue, Forest Hills, New York (Block 02145, Lot 0050); and it is further

ORDERED, that plaintiff KHARIA ABDELQADER a/k/a KHAIRIEH ABDELQADER a/k/a KHERIEH ABDEL-QADER shall post an undertaking in accordance with CPLR 6312 in the sum of \$1,000,000.00 within thirty (30) days of the date of filing of this order as a condition of the injunctive relief.

Dated: Long Island City, NY  
November 12, 2019



ROBERT J. McDONALD  
J.S.C.

