

10415 Commerce, LLC v BBC Dev., LLC

2020 NY Slip Op 30796(U)

February 5, 2020

Supreme Court, Saratoga County

Docket Number: 20171873

Judge: Thomas D. Nolan, Jr.

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

10415 COMMERCE, LLC,

Plaintiff,

-against-

BBC DEVELOPMENT, LLC,
HRATCHIA BARDAKJIAN, NAYERI BARDAKJIAN,
RAFFI BARDAKJIAN, and GEORGE MEKHJIAN.

Defendants.

DECISION
RJI No. 45-1-2017-1231
Index No. 20171873

SARATOGA COUNTY
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FILED

PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

APPEARANCES: GIRVIN & FERLAZZO, P.C.
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In this motion, plaintiff seeks a preliminary injunction to bar the defendants from conveying or further encumbering five parcels of real property, four now owned by defendant BBC Development, LLC (BBC) and one by defendant George Mekhjian, located in Saratoga, Albany, and Rensselaer counties.

As the court detailed in its decision and order dated April 12, 2018, these parties have been involved in real estate development projects and investments in New York and California

resulting in numerous litigations and bankruptcy proceedings. Plaintiff in this action ultimately prevailed in a California litigation and was awarded, as affirmed on appeal, a judgment of \$763,257.15 against defendant Hratchia Bardakjian (Hratchia).

In this action, plaintiff seeks a judgment determining the ownership rights and interests of the individual defendants in defendant BBC Development, LLC (BBC) to which plaintiff and its principal, Arman Yegiyats, allegedly collectively loaned \$726,253.00. Plaintiff contends that judgment debtor, defendant Hratchia, fraudulently conveyed most of his interest in BBC to his brother and sister, defendants Nayeri Bardajian and Raffi Bardajian, and that BBC previously conveyed one of the New York properties it owned without fair consideration to brother-in-law, defendant George Mekhjian.

Now, prior to a resolution of the plaintiff's claims on the merits, plaintiff seeks interim relief relying on assertions that Hratchia in other California litigations has been scheming to frustrate the rights of this plaintiff to collect on the judgment it recovered against him by "concocted fake loans" secured by a mortgage which encumbers real property to try to shield it from levy. A California court issued a preliminary injunction in April 2019 prohibiting Hratchia and others from enforcing a foreclosure judgment in their favor based on the "concocted fake loans". Plaintiff contends that a preliminary injunction is appropriate in this action based on Hratchia's conduct in California coupled with the allegations made in this action alleging a scheme of fraudulent transfers by Hratchia to divest his interest in BBC designed to frustrate plaintiff's right to recover on its loans to BBC.

Plaintiff's motion is supported by its attorney's affirmation, the verified complaint, records related to the California litigations, a copy of a 2009 deed transferring title from BBC to

Mekhjian, and a copy of BBC's operating agreement.

In opposition, defendants submit the affidavit of their attorney in which it is contended that plaintiff's motion is substantively flawed in that it is not supported by an affidavit of someone with personal knowledge as required by CPLR 6312(a), and if the merits were reached, that plaintiff does not establish that it will be irreparably harmed were injunctive relief not granted.

In reply, plaintiff's counsel asserts that his affirmation is appropriate since its purpose is simply to present documentary evidence which he contends supports granting the relief requested and not to state facts and that Hratchia's adequately documented conduct in frustrating plaintiff's attempt to enforce its California judgment standing alone is sufficient to justify the interim relief it now seeks.

To obtain a preliminary injunction, plaintiffs "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in [their] favor". Nobu Next Door LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Biles v Wisher, 160 AD3d 1159 (3d Dept. 2018). In establishing these elements, plaintiff must show a "clear right" based upon affidavits and other proof which "factually and convincingly" show that the court should exercise its discretion in his favor. Matter of Gault v United States Bobsled and Skeleton Federation, 179 AD2d 881 (3rd Dept 1992); Armbruster v Gipp, 103 AD2d 1014 (4th Dept 1984). The likelihood of success element need not proved to a certainty, Cooperstown Capital LLC v Patton, 60 AD3d 1251 (3rd Dept 2009), and "the mere fact that there indeed may be questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction". Emerald Green Props. Owners Assn. v Jada

Developers LLC, 63 AD3d 1396, 1397 (3rd Dept 2009), quoting Egan v New York Care Plus Ins Co., 266 AD2d 600, 601 (3rd Dept 1999). And naturally such relief should be issued cautiously. Rural Community Coalition, Inc. v Village of Bloomingburg, 118 AD3d 1092 (3d Dept. 2014).

Here, the court is abundantly familiar with these litigants, since, as noted in an earlier decision in this action, it presided over two earlier actions involving these parties. Moreover, the documents supplied to the court emanating from the litigations in California involving these parties lend credence to plaintiff's contention that if plaintiff obtains a favorable result in this litigation, defendant BBC and Hratchia will likely attempt to frustrate all attempts by plaintiff to enforce any resultant judgment. Again, plaintiff alleges in its complaint that defendant Hratchia fraudulently transferred most, if not all, of his interest in BBC without fair consideration and that BBC conveyed a parcel of real property to one of Hratchia's relatives for inadequate consideration and seeks judgment setting aside both transfers under the Debtor and Creditor Law §§ 273, 276 and 276-a.


Under all of these facts, the preliminary injunction requested is found to be warranted. Plaintiff's motion for a preliminary injunction is granted, without costs, provided plaintiff files with the Clerk of the Court an undertaking in the amount of \$50,000.00 on or before March 6, 2020.

This constitutes the decision the court. The original decision and all original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. The signing of this decision and the delivery of this decision to the Saratoga County Clerk shall not constitute notice of entry under CPLR Section 2220, and the plaintiff is not relieved from the applicable

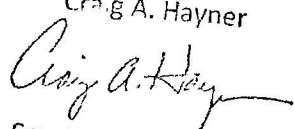
provisions of that rule regarding service of notice of entry.

Plaintiff to submit the proposed order on ten (10) days notice of settlement.

DATED: February 5, 2020
Saratoga Springs, New York



HON. THOMAS D NOLAN, JR.
Supreme Court Justice

ENTERED
Craig A. Hayner

Saratoga County Clerk

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ENTERED