

Axt v Salomon Holdings, LLC
2020 NY Slip Op 31515(U)
April 13, 2020
Supreme Court, Kings County
Docket Number: 521367/2017
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 13 day of April, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

MARC AXT,
Plaintiff,
- against -
SALOMON HOLDINGS, LLC,
JEAN SALOMON,
GREGG LUCKMAN,
ANGELIQUE ROCHEMONT and
PIERRE ROCHEMONT
Defendants.

Index No.: 521367/2017
Motion Seq. # 3
DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
OSC Affidavits, Affirmation and Exhibits	1
Affirmation in Opposition to OSC	2
Defendant's Reply Affirmation, Affidavit and Exhibits	3

Upon the foregoing papers Defendants, Salomon Holdings, LLC, Jean Salomon, Gregg Luckman, Angelique Rochemont and Pierre Rochemont (collectively "Defendants") move this Court for an Order (a) pursuant to CPLR § 6514 (b) cancelling Plaintiff's, Marc Axt ("Plaintiff"), Notice of Pendency filed herein on the premises located at 300 Stuyvesant Avenue, Brooklyn, NY ("the premises") based on a failure to commence and prosecute this action in good faith; (b) pursuant to CPLR § 6514 (c) awarding Defendants cost and expenses occasioned by the filing of the cancellation of the aforesaid Notice of Pendency; (c) directing Plaintiff to cooperate with Defendants in the pay off and discharge of the mortgage lien held by M & T Bank [Account

0103135356] on the premises which is the subject of this action; (d) directing Plaintiff to authorize meaningful communication between the lender, M & T Bank, and Defendants concerning the mortgage lien on the Premises which is the subject of this action and providing consent to the Lender to provide a mortgage pay-off amount to Defendants and permit the credit of such sums paid to said account; (e) enjoining Plaintiff from further communications with tenants at the premises; (f) enjoining Plaintiff from entry upon the premises; (g) awarding Defendants the costs and disbursements for this application; and (h) awarding Defendants such other and further relief as the Court deems just and proper.

Background

This is a case of a property investment gone awry. The premises subject to this litigation is a three unit residential property. Previous to February 14, 2013, Angelique Rochemont owned the premises in fee. On February 14, 2013, the parties entered a transaction regarding the property, however, the exact nature of the transaction is disputed. Plaintiff argues that during the transaction, he believed that he was taking actual title to the premises, so that his credit could be used to obtain a mortgage on the premises. Plaintiff contends that it was understood that he would transfer title to the premises to Salmon Holdings, LLC — an entity he claims he is a member of. The transaction intended for Plaintiff to become a member of the LLC, take part in managing the premises, and share in its revenue. Moreover, Plaintiff claims that at the time of this transaction, as a “layperson” he had no understanding of the concept of “nominee” and never intended to be a nominee for the mortgage. The same attorney “represented” both parties to this oral agreement.

Defendants contend that the transaction intended for Plaintiff to acquire title as nominee, in order for Angelique Rochemont to secure a mortgage on the premises. Additionally, Angelique and Pierre Rochemont would manage the property and pay all monthly mortgage payments and associated expenses from rental income collected. Finally, a holding company would be formed around one year from the closing, and Plaintiff would convey title of the premises to the holding company to insulate him from potential liability. Defendants dispute whether Plaintiff is in fact a member of Salomon Holding, LLC the holding company allegedly contemplated in the transaction.

Plaintiff did take title to the premises on February 14, 2013 and mortgaged the property to Wells Fargo. Plaintiff then transferred title to Salomon Holdings, LLC on March 8, 2014 without transferring the mortgage and note. Defendants claim that in March 2019, they attempted to pay off the entire mortgage, then valued at \$379,620.00, but on or about April 15, 2019, Wells Fargo sent them a letter explaining the mortgage was assigned to M&T Bank. Plaintiff concedes that he contacted M&T Bank, and directed it not to accept payment from Defendants, as the mortgage is not in any of their names. Plaintiff opines that the Defendants are engaged in a scheme to fraudulently take over the premises, which he is meant to hold title to, by paying off the loan through another entity they control. As a result of non-payment, the mortgage held by the plaintiff is being foreclosed by M&T Bank.

Discussion

As previously stated, there is a question of fact as to the nature of the transaction that brought about this litigation. Plaintiff alleges that the premises is rightfully his, and he was defrauded into conveying the premises to Salomon Holdings, LLC. Plaintiff also contends that he

is meant to manage the premises. Defendants allege that the initial transaction occurred as planned, and that the transaction never intended for Plaintiff to be involved in the premises any further. Furthermore, the parties dispute whether Plaintiff properly prosecuted this action See CPLR § 6514 (b), (c). Accordingly, it is HEREBY

ORDERED that Defendants' motion is DENIED in its entirety.

This is the Decision and Order of the Court.

ENTER



LOREN BAILY-SCHIFFMAN

JSC