

Wasserman v Farkas
2020 NY Slip Op 33868(U)
November 20, 2020
Supreme Court, Kings County
Docket Number: 514094/19
Judge: Bruce M. Balter
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At an IAS Term, Part 13 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Brooklyn, New York, on the 20th day of November, 2020.

P R E S E N T:

HON. BRUCE M. BALTER,
Justice.

-----X
SAM WASSERMAN a/k/a SHMUEL WASSERMAN,

Petitioner,

- against -

Index No. 514094/19

FAY FARKAS a/k/a FAIGY FARKAS,

Respondent,

- against -

FIDELITY NATIONAL TITLE INSURANCE COMPANY and
COMMONWEALTH LAND TITLE INSURANCE COMPANY,

Proposed Intervenor Respondents.

-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed_____

1-6, 8 10-27 30, 32-53

Opposing Affidavits (Affirmations)_____

32-53, 72-74; 56-65

Reply Affidavits (Affirmations)_____

56-65; 68; 72-74

Upon the foregoing papers in this proceeding to confirm an arbitration award, petitioner Sam Wasserman a/k/a Shmuel Wasserman (Wasserman) moves (in motion sequence [mot. seq.] one) for an order: (1) confirming the May 30, 2019 arbitration award (Arbitration Award) of Arbitrators Rabbi Sholom Lands, Rabbi Yascov Wieder and Rabbi Naftoli Hertzko Friedman (collectively, Beth Din), and directing that judgment

be entered thereon; (2) entering a judgment upon the confirmation of the Arbitration Award, pursuant to CPLR 7510 and 7514, which grants Wasserman ownership of the property at 294 Wallabout Street, Unit 2B in Brooklyn, New York (Block 2264, Lot 2518) (Property); (3) directing that title to the Property be transferred to him; and (4) granting a preliminary injunction restraining all judgment creditors of Wasserman's niece, respondent, Fay Farkas a/k/a Faigy Farkas (Farkas), from: (i) removing him from ownership of the Property through summary proceedings or otherwise, or (ii) selling or otherwise transferring ownership of the Property.

Nonparty judgment creditors, Fidelity National Title Insurance Company (Fidelity) and Commonwealth Land Title Insurance Company (Commonwealth) (collectively, Judgment Creditors), move (in mot. seq. two) for leave, pursuant to CPLR 1001, 1012 and/or 1013, to intervene in this proceeding and, upon intervention, cross-move (in mot. seq. three) for an order: (1) vacating the Arbitration Award, pursuant to CPLR 7511, and (2) permitting them to continue with an execution against the Property.

Background

The Dispute

According to the verified petition, the Property was “purchased on or about September 19, 2006 and title . . . was put into the name of [Wasserman's niece, Farkas], even though [Farkas] was never the intended owner of the Property” (petition at ¶ 5). The petition alleges that Wasserman “supplied the funds for the purchase of the property in the amount of approximately \$100,000.00” and “[t]he remaining funds were obtained

through a mortgage with JPMorgan Chase Bank [Chase]” (*id.* at ¶ 6). The petition further alleges that “[a]fter the purchase, [Wasserman] paid all the maintenance charges and monthly mortgage on the Property” and that his “nephew [Ben Wasserman] has been living at the Property as a tenant and paying rent for at least ten years” (*id.* at ¶ 7).

Subsequently, Farkas confessed to a \$708,184.20 judgment against her in favor of Judgment Creditors (*id.* at ¶ 8). The petition alleges that “[s]ince [Farkas] did not satisfy the judgment, the judgment creditors . . . on April 17, 2019 sought to satisfy their judgment from the Property” (*id.*). The petition alleges that “[i]n or about early June 2019, [Farkas] received a Property Execution letter, which notified Farkas that her ownership of the Property would be terminated on August 14, 2019, by virtue of a Sheriff sale of the Property” (*id.* at ¶ 15).

The petition alleges that “[s]ubsequent to this judgment against the property, a dispute arose between [Wasserman] and [Farkas] as to who is the rightful owner of the Property” (*id.* at ¶ 9 [emphasis added]).

The Arbitration Award

Wasserman “submitted his dispute concerning the owner[ship] of the Property to a binding Beth Din compromise” (*id.*). According to Wasserman’s petition, “[i]n or about May 2019, [Wasserman] and [Farkas] appeared before [the Beth Din] to present their respective cases as to which one of them is the rightful owner of the Property” (*id.* at ¶ 10).

The Beth Din subsequently issued the Arbitration Award on May 30, 2019, which provides that:

“There came before us the plaintiff, Mr Shmuel Wasserman, hereinafter ‘Party A’, and the defendant, Mrs Feiga Farkas, hereinafter ‘Party B’, regarding the [Property].

“Having heard their arguments and examined closely the facts of the matter, we issue the following verdict:

“1) Notwithstanding the fact that Party B’s [Farkas’] name appears on the deed, it became clear to the court that the [Property] belongs to Party A [Wasserman], and Party B [Farkas] has no connection to the [Property], and never had any connection with the [Property]. Party B [Farkas] is immediately to return the possession [of the Property] to Party A [Wasserman].

“2) Should this result in any loss to Party A [Wasserman], it shall be Party B’s [Farkas’] responsibility to pay for it out of her own pocket, as the law requires.”

The Instant Proceeding To Confirm The Arbitration Award

On June 26, 2019, Wasserman commenced this proceeding against Farkas by filing a verified petition with an order to show cause seeking: (1) to confirm the Arbitration Award; (2) the entry of a judgment in his favor upon the confirmation of the Arbitration Award, directing that title to the Property be transferred to him; and (3) a preliminary injunction enjoining and restraining Judgment Creditors from: (i) removing him from ownership of the Property through summary proceedings or otherwise, and/or (ii) selling or otherwise transferring ownership of the Property.

Notably, Wasserman failed to name Judgment Creditors as party respondents. However, the petition explicitly alleges that “[p]er the clear terms of the [Arbitration] Award, [Farkas] has no right to the Property” and thus, “judgment creditors, Fidelity . . . and Commonwealth[,] . . . have no right to take the Property to satisfy their judgment as they have no claim to the Property” (*id.* at ¶ 16).

Judgment Creditors’ Motion To Intervene

On July 10, 2019, Judgment Creditors moved to intervene in this proceeding “to ensure that their right to the Property is not adversely affected by the judgment sought by Petitioner.” They assert, by counsel, that:

“[Farkas’] attempt to fraudulently transfer the property under the guise of an arbitration award adversely [a]ffects Judgment Creditors’ right to the property, and by failing to notify Judgment Creditors about the arbitration proceeding and failing to name Judgment Creditors as defendants in this action, [Wasserman] and [Farkas] have severely prejudiced Judgment Creditors’ right to the property.

* * *

“It is clear from the content of Wasserman’s Petition and the attached Arbitration Award that Farkas and her ‘family members,’ including Wasserman, contrived a non-existent dispute to submit to arbitration in an attempt to fraudulently transfer ownership of the Property to avoid a valid right that Judgment Creditors have to the Property.”

Judgment Creditors submit a September 28, 2015 judgment against Farkas in the principal sum of \$708,184.20, which they obtained, in part, by an Affidavit of Confession executed by Farkas on May 7, 2015, and recorded on May 8, 2018. Judgment Creditors

also submit a copy of their April 17, 2019 Real Property Execution against the Property, with an explanation that “after all other attempts to enforce the Judgment against Farkas were unsuccessful, [they] began the process to execute on the Property. . . .” Judgment Creditors assert that it is clear from Wasserman’s petition that “no alleged dispute existed as to the ownership of the Property until after [they] served Farkas with a copy of the Real Property Execution. . . .” They note that the Arbitration Award was subsequently issued on May 30, 2019.

Regarding Farkas’ ownership of the Property, Judgment Creditors submit the September 19, 2005 deed to the Property containing only Farkas’ name. Judgment Creditors also submit the \$207,000.00 mortgage encumbering the Property executed by Farkas in favor of Chase, with an express representation that she “lawfully own[s] the Property.” In addition, Judgment Creditors submit the “Unit Owner’s Power of Attorney” executed by Farkas and “expressly acknowledge[ing] her ownership of the Property. . . .”

Judgment Creditors further argue that “during [their] attempt to enforce the Judgment, Farkas twice acknowledged, under oath, her *exclusive ownership* of the Property.” Judgment Creditors submit Farkas’ July 3, 2017 response to an Information Subpoena, in which Farkas expressly responded that she owns the Property. In addition, Judgment Creditors submit Farkas’ April 19, 2018 deposition transcript containing Farkas’ testimony that: (1) she exclusively owns the Property; (2) she and her husband pay the mortgage on the Property; and (3) she (not Wasserman) receives \$1,590.00 per

month in rental income from the Property from her tenant, Ben Wasserman. Judgment Creditors assert that “[e]ach of these sworn representations by Farkas contradict the statements contained in Wasserman’s Petition.”

Judgment Creditors’ Cross Motion To Vacate The Arbitration Award

On August 1, 2019, Judgment Creditors cross-moved for an order vacating the Arbitration Award, pursuant to CPLR 7511, to enable them to continue with an execution against the Property. In support of their cross motion, Judgment Creditors reiterate their version of events set forth in their motion to intervene, and, in addition, submit copies of: (1) Farkas’ deed to the Property, Farkas’ mortgage encumbering the Property, Farkas’ Unit Owner’s Power of Attorney, Farkas’ response to their Information Subpoena and Farkas’ deposition testimony, all of which evidence Farkas’ ownership of the Property.

Judgment Creditors argue that “this Court should vacate the Arbitration Award under applicable New York law” on the grounds that: (1) “Farkas and Wasserman did not have a valid agreement to arbitrate”; (2) “the Arbitration Award was procured by fraud”; and (3) “the arbitration panel improperly executed its power” because “[t]he Arbitration Award was ‘irrational’ within the meaning of New York law because absolutely no proof was offered to justify it.” Judgment Creditors argue that the Arbitration Award should be vacated because:

“the undisputed record amply demonstrates that Farkas was the record owner of the property, had a recorded mortgage on the property, and less than one month before the arbitration proceeding, testified under oath that she exclusively owned the property. In contrast, absolutely no evidence exists

demonstrating Wasserman's ownership interest in the property."

Alternatively, if the Court is inclined to confirm the Arbitration Award regarding Wasserman's ownership of the Property, Judgment Creditors contend that "such a finding would not be binding on them" because "his ownership took effect on May 30, 2019, at a time when [their] judgment lien was already docketed in Kings County" and "[u]nder New York law, Wasserman takes the property subject to all recorded liens." For this reason, Judgment Creditors contend that "[t]his Court does not have the authority to preclude [them] from executing on the property, as requested in Wasserman's Petition."

Wasserman's Opposition And Reply in Further Support of the Petition

Wasserman, in opposition to Judgment Creditors' motion to intervene and their cross motion to vacate the Arbitration Award, and in further support of the petition, submits an affirmation. Wasserman affirms that the arbitration arose because "I claimed that although [Farkas'] name appeared on the deed and mortgage, that she was holding the property for the benefit of me [in a constructive trust] and I was the rightful owner." Wasserman further affirms that "[b]efore commencing the arbitration, both [Farkas] and I signed an Arbitration Agreement, agreeing to submit this issue to the Rabbinical Court for a determination[,]" and submits a copy of that arbitration agreement.

Wasserman further avers that at the arbitration hearing "I testified and submitted documentation which proved that I was the rightful owner of the subject apartment[,]" including: (1) a September 20, 2006 Deed of Delegation and Acknowledgement, in

which Farkas transferred the Property to Wasserman and explicitly acknowledged that “[i]n order not to create envy among the family members, the apartment was registered in the government records under the name of Faigy Farkas, from the grantor . . .”; (2) a 2003 check stub in the amount of \$15,000.00 from Wasserman’s business account at Goldex Limited to Moses Feller, the Property developer, as a down payment for the purchase of the Property; (3) a copy of a September 19, 2006 cashier’s check in the amount of \$15,261.69 from Wasserman’s business account at Goldex Limited for the remainder of the purchase price of the Property; (4) check stubs, receipts and a letter evidencing Wasserman’s payments to Chase on the Property’s mortgage; (5) check stubs for payments made for water, sewer and maintenance for the Property; and (6) a copy of a check and a reinstatement letter regarding the Property’s mortgage.

Wasserman affirms that he “submitted other documentation which also confirmed that I have been paying all expenses associate[ed] with the subject apartment since the date of purchase” and “[Farkas] had no documentation to contradict my documents.” Wasserman further affirms that the mortgage statements and rent checks were sent to a post office box “[to] which I have always had access” and that “[a]ny outstanding amounts owed by the tenant were paid directly to me.” Wasserman contends that “the decision of the Beth Din should be confirmed as [he] produced clear and convincing evidence that [he] was the intended owner of the subject apartment. . . .”

Wasserman also submits a memorandum of law in which he argues that “Judgment Creditors lack standing to intervene and equally have no basis to void or

vacate the arbitration award.” Wasserman argues that “Judgment Creditors submit NO law which supports the allegation that a judgment creditor who has a judgment against an individual[,] NOT a property, is entitled to either notice or participation in arbitration proceedings or intervene in an action to confirm.” Wasserman argues that “Judgment Creditors[’] rights are and will remain completely intact without any effect, as a result of this petition[,]” since their judgment is against Farkas and not the Property. Wasserman asserts that “Judgment Creditors have the undisputed right to go after any assets owned by Respondent, Fay Farkas . . . [h]owever, the subject [Property] is not one of them since it never truly belonged to Fay Farkas.” For this reason, Wasserman argues that Judgment Creditors do not meet the statutory requirements of either CPLR 1012 (intervention as of right) or CPLR 1013 (intervention by permission).

Wasserman contends that “[a]bsent a right to intervene in this special proceeding, there is no need to consider the Judgment Creditors[’] second motion to vacate the arbitration award.” Wasserman notes that CPLR 7511 provides that “an application to vacate or modify an award may be made by A PARTY within ninety days. . . .” Wasserman thus argues that “Judgment Creditors lack the requisite standing pursuant to CPLR 7511 to vacate or void the arbitration award.”

Alternatively, if the Court considers Judgment Creditors’ motion to vacate, Wasserman argues that the motion should be denied because “the arbitrators did not exceed their authority[,] the courts are obligated to give deference to the decision of the arbitrator[s]” and the arbitrators “did not violate any public policy. . . .” Wasserman

further asserts that “Judgment Creditors fail to establish by clear and convincing evidence that fraud existed which would warrant that the award should be vacated pursuant to CPLR 7511 (b)” and “[i]nstead, the Judgment Creditor simply allege an unsubstantiated ‘scheme’ between the parties.”

Judgment Creditors’ Reply

Judgment Creditors, in reply and in further support of their motion to intervene, argue that they have a legal interest in the Property because they “recorded their Judgment against Farkas in Kings County on May 8, 2018 – more than one year before the Arbitration Award.” Judgment Creditors argue that “[b]ecause [they] have a recorded Judgment Lien on the Property, any transfer of the Property is subject to that lien.” Judgment Creditors thus argue that they “have standing to oppose the purported transfer of ownership from Farkas (the Judgment Debtor) to [Wasserman] (her family member).”

Discussion

(1)

Judgment Creditors’ Motion To Intervene

“Upon a timely motion, a person is permitted to intervene as of right in an action involving the disposition of property where that person may be adversely affected by the judgment” (*Wells Fargo Bank, Nat. Assn. v McLean*, 70 AD3d 676, 676 [2010]). “In addition, a court, in its discretion, may permit a person to intervene, inter alia, when the

person's claim or defense and the main action have a common question of law or fact"

(*id.* at 676-677). The Second Department further held that:

“[w]hether intervention is sought as a matter of right under CPLR 1012 (a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings” (*id.* at 677).

It is well-settled under New York law that a judgment creditor is required to take steps to enforce his judgment, “such as an execution or levy upon the judgment debtor’s property, in order to prevent the intervening rights of third parties from taking precedence over his claim against the judgment debtor” (*Aspen Industries, Inc. v Marine Midland Bank*, 52 NY2d 575, 580 [1981]; *Burstin Investors, Inc. v K.N. Investors, Ltd.*, 255 AD2d 478, 480 [1998] [same]; *see also Darling v Darling*, 22 Misc 3d 343, 348-349 [Sup Ct. Kings County 2008]).

Here, Farkas’ Judgment Creditors have demonstrated that they have a real and substantial interest in the outcome of the instant proceeding, since their right to the Property attached when they served Farkas with the execution against the Property on April 18, 2019, prior to the parties’ May 2019 arbitration before the Beth Din. Indeed, the verified petition alleges that “[s]ubsequent to this judgment against the property, a dispute arose between [Wasserman] and [Farkas] as to who is the rightful owner of the Property” (petition at ¶ 9 [emphasis added]). Consequently, Judgment Creditors’ motion

to intervene in this proceeding is granted because they may be adversely affected by the judgment.

(2)

***The Motion To Confirm And the
Cross Motion To Vacate the Arbitration Award***

CPLR 7510 provides that “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” CPLR 7511 (b) (2) provides that:

“The [arbitration] award *shall be vacated* on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

- (i) The rights of that party were prejudiced by one of the grounds specified in [CPLR 7511 (b) (1)] . . .”
(emphasis added).

CPLR 7511 (b) (1) (i) and 7511 (b) (1) (iii) provide that an arbitration award shall be vacated if a party’s rights were prejudiced by “corruption, fraud or misconduct in procuring the award” or “an arbitrator . . . exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.” An arbitrator exceeds his power, as a matter of law, where his “award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*In re Koaleski*, 16 NY3d 85, 90 [2010]). An arbitration award is irrational if there is no proof to justify it (*NFB Investment Services Corp. v Fitzgerald*, 49 AD3d 747, 748 [2008]).

Here, an order vacating the Arbitration Award is warranted because it is irrational and there is no evidence to justify the Arbitration Award. While the Beth Din acknowledged that Farkas' name appears on the deed to the Property, the Beth Din nevertheless ruled that "it became clear to the court that the [Property] belongs to [Wasserman], and [Farkas] has no connection to the [Property], and never had any connection with the [Property]." As Judgment Creditors correctly argue, "[t]he Arbitration Award offers absolutely no proof of Wasserman's 'connection' to the Property . . ." and "there is no recorded document or other evidence anywhere to demonstrate Wasserman's purported ownership interest." Importantly, one month prior to the May 30, 2019 Arbitration Award, Farkas testified under oath that she owned the Property, paid the Property's mortgage and collected rental income from the Property. Farkas' sworn testimony directly conflicts with the unsupported conclusion reached by the Beth Din. For this reason, the Arbitration Award is disaffirmed, and this proceeding to confirm the Arbitration Award is subject to dismissal. Accordingly, it is

ORDERED AND ADJUDGED that Wasserman's motion (in mot. seq. one) to confirm the Arbitration Award and for other relief is denied in its entirety, the petition is denied, and the proceeding is dismissed without costs or disbursements; and it is further

ORDERED AND ADJUDGED that Judgment Creditors' motion to intervene in this proceeding (in mot. seq. two) is granted; and it is further

ORDERED AND ADJUDGED that Judgment Creditors' cross motion (in mot. seq. three) for an order vacating the Arbitration Award and permitting them to continue with an execution against the Property is granted.

This constitutes the decision, order and judgment of the court.

E N T E R,



J. S. C.