

**Wang Real Prop. LLC v Prince Dev. Co. LLC**

2020 NY Slip Op 34079(U)

December 11, 2020

Supreme Court, New York County

Docket Number: 161935/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**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.** 161935/2019

WANG REAL PROPERTY LLC, ROUG KANG WANG, and  
STELLA WANG,

Petitioners,

**MOTION SEQ. NO.** 001 002 003  
004

- v -

PRINCE DEVELOPMENT COMPANY LLC, JOHN HON,  
JULIE HON, JOHN HON, D.O., P.C., EMIGRANT BANK,  
and JOSEPH FUCITO,

**DECISION, ORDER AND  
JUDGMENT**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 51, 78, 80,  
132

were read on this motion to/for JUDGMENT - DECLARATORY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12,  
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,  
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96,  
97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117,  
118, 119, 120, 121, 122, 123, 126, 127, 128, 129, 130, 131, 144

were read on this motion to/for CANCEL/EXTEND LIS PENDENS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57,  
58, 59, 60, 61, 62, 63, 124, 125

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 133, 134, 135, 136,  
137, 138, 139, 140

were read on this motion to/for SANCTIONS.

Motion sequence nos. 001 through 004 are consolidated for disposition. This is a special proceeding commenced pursuant to CPLR 5239 by petitioners Wang Real Property LLC, Roug Kang Wang, and Stella Wang (collectively the Wangs). In motion sequence no. 001, the Wangs petition for a declaratory judgment naming them owners of the property located at 132-03 and

132-05 41<sup>st</sup> Road in Flushing, New York (the Property), and for an order vacating the Sheriff's sale of the Property to respondents John Hon, Julie Hon, and John Hon D.O. P.C. d/b/a Elmhurst Avenue Medical Associates and Flushing Medical Associates (collectively the Hons). In motion sequence no. 002, the Hons move, by order to show cause, for a judgment declaring that the Wangs have no interest in the Property, an order directing the Queens County Clerk to cancel the notice of pendency filed against the Property, an order imposing sanctions against the Wangs' attorney, Jean Chunyu Wang, Esq., pursuant to 22 NYCRR.130-1.1, and an order barring the Wangs and their attorney from filing any papers or commencing any further action(s) in this Court relating to the Property without prior judicial approval. In motion sequence no. 003, defendant Emigrant Bank (Emigrant) moves, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the complaint as against it, as well as for sanctions against the Wangs. In motion sequence no. 004, the Wangs move, pursuant to CPLR 5515 (a) (2) - (3), Rule 1.8 (a), (k), & (l) of the Rules of Professional Conduct, and Judiciary Law § 488, for sanctions against the Hons and nonparty Joseph Aronauer (Aronauer), a member of the law firm which represents the Hons, as well as for an order vacating the sale of the Property to the Hons.

As an initial matter, Emigrant's motion to dismiss is granted, because the petition alleges no wrongdoing on its part. With regard to the sanctions sought by Emigrant, the Wangs note that, when they filed their first action in relation to the Property (Queens County Index No. 1097/2014), the court dismissed the action for failure to name Emigrant, a then-necessary party. Since that time, however, Emigrant has assigned its former interest in the Property to nonparty 41<sup>st</sup> Road Properties, LLC, and that entity was substituted for Emigrant as plaintiff in the related foreclosure action. *See 41<sup>st</sup> Rd. Props., LLC v Wang Real Prop., LLC*, 164 AD3d 455, 458 (2d Dept 2018). The Wangs profess ignorance as to whether Emigrant has retained some interest in

the Property but, since the decision of the Appellate Division, Second Department dated August 1, 2018, the Wangs knew or should have known that Emigrant assigned both its mortgage on the Property as well as the underlying note to 41<sup>st</sup> Road Property LLC. *See id.* at 458. Accordingly, this Court concludes that the naming of Emigrant as a defendant in this action is simply vexatious.

Turning to the petition, it is denied for the following reasons. CPLR 5239 provides, in relevant part, that:

“Prior to the application of property or debt by a sheriff or receiver to the satisfaction of a judgment, any interested person may commence a special proceeding against the judgment creditor or other person with whom a dispute exists to determine rights in the property or debt.”

Here, the Sheriff’s deed of the Property to the Hons was executed on January 16, 2019, and recorded on February 7, 2019. *See* NYSCEF Doc No. 89 at 4. This proceeding was not commenced prior to that date. Rather, it was commenced subsequent to that date in December 2019. Accordingly, inasmuch as it is brought pursuant to CPLR 5239, it is improper, and it must be dismissed.

Moreover, the gist of the petition is that the Wangs’ claim to the Property is senior to that of the Hons. The Wangs made this argument to Justice Pineda-Kirwan in *Matter of Wang Real Prop. v Prince Dev. Co. LLC* (Queens County Index No. 18415/14 at 6) but she rejected it. *See* NYSCEF Doc No. 83, at 6. Thus, the Wangs’ current iteration of the same argument is barred by res judicata. *See Hon v Prince Dev. Co., LLC* (168 AD3d 480, 480[1st Dept 2019] [holding, in the appeal of a previous CPLR 5239 proceeding brought by petitioners herein, that their claims pertaining to the Property were barred by res judicata]).

Further, that branch of the petition seeking a vacatur of the Sheriff's sale of the Property fails for an independent reason. CPLR 2003 provides in relevant part;

“At any time within one year after a sale made pursuant to a judgment or order, but not thereafter, the court, upon such terms as may be just, may set the sale aside for a failure to comply with the requirements of the [CPLR] as to the notice, time or manner of such sale, if a substantial right of a party is prejudiced by the defect.”

Here, it is undisputed that the Sheriff's sale took place on December 12, 2018, and that the return date of the petition was December 18, 2019. Accordingly, the relief of vacating the sale could not possibly have been granted within a year of the sale.

The Court now turns to the Hons' motion. The Wangs have filed a notice of pendency on the Property. They have not shown, nor do they even argue, that money damages would be inadequate to protect their asserted interests in the Property. Accordingly, the notice of pendency must be cancelled. *Knopf v Sanford*, 132 AD3d 416, 417 (1st Dept 2015), citing *Hoffman Invs. Corp. v Yuval*, 33 AD3d 511, 512 (1st Dept 2006). Pursuant to CPLR 6514(c), the Hons are entitled to the costs and expenses that they incurred as a result of the filing of the notice of pendency, as well as the costs and expenses of litigating to have the notice cancelled. *See Knopf v Sanford*, 132 AD3d at 418. Those expenses include the attorneys' fees that the Hons incurred in litigating to have the notice of pendency cancelled. *See Dermot Co., Inc. v 200 Haven Co.*, 73 AD3d 653, 654 (1st Dept 2010); *see also Delmestro v Marlin*, 168 AD3d 813, 816 (2d Dept 2019).

In addition to the history of the litigation between these parties, the Wangs' opposition to the Hons' order to show cause shows why the balance of the Hons' motion should be granted. That opposition consists primarily of attacks on the fee arrangement between the Hons and Aronauer and personal attacks against Aronauer. However, the Wangs clearly lack standing to

challenge the Hons' fee arrangement. *See Wilson v LaFontant*, 240 AD2d 172, 173 (1st Dept 1997); *see also Rozen v Russ & Russ, P.C.*, 76 AD3d 965, 969 (2d Dept 2010). Their argument, that the fee arrangement is fraudulent and therefore warrants setting aside the sale of the Property, is patently without merit. They do not allege that they were defrauded or that the sale was affected by fraud. They only claim that the fee arrangement between the Hons and Aronauer's firm is objectionable. Thus, the Wangs' argument borders on frivolity.

The Wangs have by now litigated their claim to ownership of the Property before Justice Pineda-Kirwan and in the Appellate Division, First *and* Second Departments. They made multiple applications to stay the Sheriff's sale and, when those failed, petitioner Wang Real Property LLC (Wang) filed for bankruptcy. After the Bankruptcy Court lifted the automatic stay provision of the Bankruptcy Code, and the United States District Court affirmed, Wang filed two stay applications with the United States Court of Appeals for the Second Circuit, both of which were denied. The Wangs' advocacy has since devolved steadily from zealous to vexatious. They have repeatedly sought to litigate their claims of ownership of the Property, despite the holdings of multiple courts that such claims are barred by *res judicata*.

Nevertheless, the Wangs now claim that their claims are not barred given the addition of a new respondent, the Sheriff. Their complaints against the Sheriff are that:

“[he] was wrong to sell the property because no sale can take place of the Wangs' property and was further wrong to permit the Hons to credit bid on the property as they had no credit with which to bid.”

Verified petition, ¶ 40.

As discussed above, the Wangs repeatedly tried to prevent the sale. Each of those attempts failed. The Wangs are barred from relitigating their claim to the Property here. The petition does not allege that the Hons failed to pay the amount that they bid at the Sheriff's sale

or that there was any collusion between them and the Sheriff. Further, the Wangs lack standing to question how the Hons paid.

The Wangs' motion for sanctions is also denied for the reasons set forth above.

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

ORDERED that in motion sequence no. 001, the petition of Wang Real Property LLC, Roug Kang Wang, and Stella Wang is dismissed; and it is further

ORDERED that in motion sequence no. 002, the motion by respondents John Hon, Julie Hon, and John Hon, D.O., P.C., d/b/a Elmurst Avenue Medical Associates, d/b/a Flushing Medical Associates is granted as follows: it is

ADJUDGED and DECLARED that petitioners Wang Real Property LLC, Roug Kang Wang and Stella Wang have no ownership interest in the property located at 132-05 and 132-03 41<sup>st</sup> Road, Flushing, New York, known as Block 5039 Lots 1 and 2 on the Queens County Tax Map; and it is further

ORDERED that the Clerk of Queens County is directed to cancel the notice of pendency that the petitioners herein have filed against said Property; and it is further

ORDERED that, as the Hons are entitled to recover the costs and expenses that they incur as a result of the filing and cancelling the notice of pendency, pursuant to CPLR 6514(c), and the amount of said costs and expenses will be determined by a referee, to whom this matter will be referred to hear and decide; and it is further

ORDERED that petitioners Wang Real Property LLC, Roug Kang Wang, and Stella Wang, as well as their counsel Jean Shunyu Wang, Esq., are permanently enjoined from filing any further actions pertaining to the property located at 132-03 and 132-05 41<sup>st</sup> Road, Flushing, New York in any court within this State, without permission from this Court; and it is further

ORDERED that, in motion sequence no. 003, the motion by defendant Emigrant Bank is granted, the petition is dismissed as against said defendant and said defendant may recover the fees and expenses that it has incurred, which are to be calculated by the referee to whom this case is assigned; and it is further

ORDERED that in motion sequence no. 004, the motion for sanctions by petitioners Wang Real Property LLC, Roug Kang Wang, and Stella Wang is denied; and it is further

ORDERED that this Court, having on its own motion determined to consider the appointment of a referee to determine as follows, and it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (a), it is now hereby

ORDERED that a judicial hearing officer (“JHO”) or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of the costs and expenses, including attorneys’ fees, that respondents John Hon, Julie Hon, and John Hon, D.O., P.C, d/b/a Elmhurst Avenue Medical Associates and d/b/a Flushing Medical Associates incurred as a result of the filing and cancellation of the notice of pendency filed against the property located at 132-03 and 132-05 41<sup>st</sup> Road in Flushing, New York;

(2) the issue of the costs and attorneys’ fees incurred by respondent Emigrant Bank in defending itself against this proceeding; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

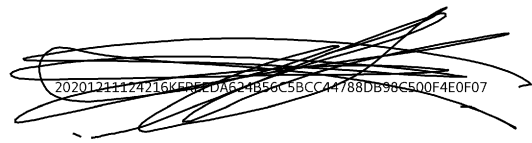
ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referees Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be granted by the Special Referees Part in accordance with the rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules; and it is further

ORDERED that this constitutes the decision, order and judgment of the court.

12/11/2020  
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE