

Zaharatos v Zaharatos
2020 NY Slip Op 34458(U)
December 18, 2020
Supreme Court, Kings County
Docket Number: 500153/2011
Judge: Larry D. Martin
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At an IAS Term, Part Comm 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn and virtually, New York, on the 18th day of December, 2020.

P R E S E N T:

HON. LARRY D. MARTIN,

Justice.

-----X

MARINA ZAHARATOS, ALIMOS CORP., AND CHRYSA CORP.,

Plaintiffs,

- against -

DECISION

Index No. 500153/2011

JOHN ZAHARATOS,

Defendant.

-----X

JOHN ZAHARATOS, INDIVIDUALLY AND AS SHAREHOLDER OF CHRYSA CORP.,

Plaintiffs,

- against -

Index No. 6886/2011
(Consolidated Case)

MARINA ZAHARATOS,

Defendant.

-----X

JOHN ZAHARATOS, INDIVIDUALLY AND AS SHAREHOLDER OF ALIMOS CORP.,

Plaintiffs,

- against -

Index No. 6888/2011
(Consolidated Case)

MARINA ZAHARATOS,

Defendant.

-----X

The following e-filed papers read herein:

Plaintiffs' Findings of Fact/Conclusions of Law

Defendant's Findings of Fact/Conclusions of Law

NYSCEF Docket No.

593

595

Defendant's Memorandum of Law in Support of Defendant's Motion to Exclude Evidence	<u>596</u>
Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Exclude Evidence	<u>594, 597</u>

Attorneys and Law Firms

Kauff Laton Miller LLP, for plaintiffs.

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP, for defendant.

The parties appeared for a bench trial of the three above-captioned consolidated actions held on January 23-24, 27-28, 30, 2020, February 6-7, 2020, March 7, 10-13, 2020, and October 21-23, 2020.

Before the Court is the issue of ownership of thirteen (13) properties located throughout New York state as well as two corporations: Alimos Corp. and Chrysa Corp. Plaintiff Marina Zaharatos and Defendant John Zaharatos contend that they each individually owns, exclusive of the other, the various properties and the two corporations. Plaintiff Marina Zaharatos contends that Defendant is liable to plaintiff for conversion, unjust enrichment and money had and received because Defendant collected income earned by the properties and used the income for his personal expenses. Plaintiff also contends that Defendant should be directed to cease acting on behalf of the properties and corporations and be ejected from the remaining property he currently resides in.

Defendant contends that he purchased nine of the thirteen properties in his individual name and two of the thirteen properties were purchased by his nephew Peter Zaharatos on defendant's behalf. Defendant asserts that all of the deeds issued by the Plaintiff from Alimos and Chrysa to herself on February 2011 should be deemed null and void and such deeds should be vacated and the county clerks/registrar of the respective counties of each property be directed to cancel such deeds of record and the relief requested in the actions bearing Index No. 6886/2011 and 6888/2011 to be granted.

As this was a bench trial, the Court was both the finder of facts and the determiner of questions of law. The Court considered the testimony of the witnesses, gave weight to that testimony, and generally determined the reliability of the witnesses' testimony (*see Horsford v Bacott*, 32 AD3d 310, 312 [1st Dept 2006]). The Court also considered the interest or lack of interest in the case and the bias or prejudice of the witnesses (*see People v Ferguson*, 178 AD2d 149 [1st Dept 1991]).

Having reviewed the parties' submissions and upon reflection of the evidence submitted at trial, the Court renders the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Parties' Relationship Background

Marina and John are former husband and wife, originally from Greece. Marina and John married in 1989 for the first time. Marina and John had three children together during their first marriage: Panagiotis Zaharatos, Dimitra (Diana) Zaharatos, and John Zaharatos, Jr. Marina has two children from a prior marriage: Ekaterini Marinos and George Marinos. John has one child from a prior marriage: Daisy Zaharatos. Marina was an attorney in Greece and became a licensed attorney in New York state in 1998. John was an electrician and owned his own electrical company during the marriage and managed the properties at issue.

On September 30, 2000, Marina and John separated and executed a separation agreement. Marina represented herself and John was represented by Ares Axiotis, Marina's then law partner and now current husband. On June 25, 2001, Marina and John divorced for the first time. The parties then remarried on March 19, 2003, and divorced a second time on November 2, 2006.

Acquisition of Real Properties

The thirteen properties in question are (1) Beach 68th Street, Queens, New York (Beach 68th Street); (2) 96 Thollen Street, Staten Island, New York (96 Thollen Street); (3) 94 Dawn Road, Rocky Point, New York (94 Dawn Road); (4) 269 53rd Street, Brooklyn, New York (269 53rd Street); (5) 271 53rd Street, Brooklyn, New York (271 53rd Street); (6) 1679 62nd Street, Brooklyn, New York (1679 62nd Street); (7) 6001 Fifth Avenue, Brooklyn, New York (6001 Fifth Avenue); (8) 416 Senator Street, Brooklyn, New York (416 Senator Street); (9) 7011 17th Avenue, Brooklyn, New York (7011 17th Avenue); (10) 267 53rd Street, Brooklyn, New York (267 53rd Street); (11) 73 Harry Wells Road, Saugerties, New York (73 Harry Wells Road); (12) 257 60th Street, Brooklyn, New York (257 60th Street); and (13) Lanesville, Town of Hunter property (Lanesville, Town of Hunter).

Nine (9) of the thirteen properties were acquired before the parties' first marriage from third parties for consideration. Four properties were acquired during the marriage. Between 1975 and 1986, John purchased Beach 68th Street, 96 Thollen Street, 94 Dawn Road, 6001 Fifth Avenue,

416 Senator Street, 7011 17th Avenue, and 267 53rd Street. In 1978, John also acquired a 50 percent interest in the Lanesville, Town of Hunter property and John's brother in law, Harry Lambrakis, held the other 50 percent interest.

Two properties were originally acquired under John's nephew name, Peter Zaharatos, from third parties for consideration. One property, 1679 62nd Street, was purchased by Peter in 1986. The other property, 271 53rd Street, was purchased by Peter in 1994. According to Peter's and John's testimony, Peter purchased the properties on behalf of John and the funds used to purchase the properties belonged solely to John.

The two remaining properties, 73 Harry Wells Road and 257 60th Street, were purchased under Marina's name. The 73 Harry Wells Road property was purchased during the parties' first marriage in 1996 from a third party for consideration. The 257 60th Street property was purchased in February 2001 after the parties' 2000 separation agreement but prior to their first divorce from a third party for consideration.

Transfer of Properties

Prior to his first marriage to Marina, John transferred his interest in six (6) of the properties to either his nephew Peter Zaharatos or his brother Marios Zaharatos, Peter's father. In 1985, John transferred his interest in 94 Dawn Road to Peter. In 1987, John also transferred to his brother Marios his interest in the Lanesville, Town of Hunter property, 267 53rd Street, 416 Senator Street, 7011 17th Avenue, and 6001 Fifth Avenue. During the first marriage in 1990, John transferred his interest in two properties to Peter: 269 53rd Street and 265 56th Street. The 265 56th Street property is not at issue in this litigation. The property was sold in December 2000 to a third party and the proceeds of the sale were used by John to purchase 257 60th Street according to his testimony. Marina testified that Peter, instead, paid Marina \$202,000 from the proceeds of the sale pursuant to an agreement between the two and Marina then used those funds to purchase 257 60th Street in 2001.

According to John's testimony, the transfers to Marios and Peter and the two properties purchased in Peter's name were for no consideration and based on an oral agreement for Marios and Peter to hold the properties in their name on behalf of John. John hired an attorney to represent him in the above transfers transactions to Peter and Marios. According to John's testimony, he trusted Peter and Marios to hold the properties in their name on his behalf and in the case that

something happened to John, Peter and Marios would ensure that the properties will go to his oldest daughter.

Formation of the Corporations

In 1998, Marina became a licensed attorney in the state of New York. In or about June 1999, Marina formed the following eight corporations under the laws of New York to acquire and hold real estate: Alimos Corp., Ares Corp., Arun Corp., Chrysa Corp., Elina Corp., Ioannis Corp., Klio Corp., and Tourlos Corp. The certificates of incorporation for each of the eight corporations are signed by Marina as the incorporator, list John as the registered agent, and authorizes the corporation to issue two hundred (200) shares. The corporations operated out of and all corporate records were kept at 416 Senator Street.

The parties each produced their own sets of share certificates for the corporations. Plaintiff's share certificates dated in 1999 show 200 shares owned by Marina and signed by Marina as the secretary/treasurer and George Marinos, Marina's oldest son, as the president. Defendant's share certificates were blank and include invoices for the purchase of the corporate books in 2007 by plaintiff's then law partner, Kimberly Huebner. According to John's testimony, the shares were ordered in 2007 after he realized he was missing his original share certificates but that he did not fill out the actual shares and this is why they were still blank.

Transfers of Properties to Corporations

In 1999, Marios transferred the interest in 7011 17th Avenue to Klio Corp., 6001 5th Avenue into Chrysa Corp., 267 53rd Street to Elina Corp., and 416 Senator Street to Ioannis Corp. Also in 1999, Harry Lambrakis and Marios each transferred their respective 50 percent interest in the Lanesville, Town of Hunter property to Arun Corp. In 1999, Peter transferred his interest in 94 Dawn Road to Tourlos Corp., 1679 62nd Street to Alimos Corp., 269 53rd Street to Elina Corp., and 271 53rd Street to Elina Corp. John signed the deeds as attorney-in-fact on behalf of Marios and Peter for all the to the various corporations showed that. Harry signed the deed transfer himself.

According to Marina's testimony, she acquired the above properties from Marios, Peter, and Harry. She testified that John encouraged her to acquire these properties after she expressed interest in investing in New York real estate and that John told her she would get a good price for them. Marina then testified that she paid the following consideration in summer or fall of 1999:

(1) 3,000 British Gold Sovereign coins to Marios; (2) 2,500 British Gold Sovereign coins to Peter; and (3) 70 British Gold Sovereign coins to Harry.

Regarding these transactions, Plaintiff Marina produced Exhibit 145, a promissory note that stated that Marios promised: “with the present note on demand of creditor Marina Zaharatos nee Michalovits in the amount of three thousand British gold sovereigns, which [Marios] received from the above, that [Marios] shall to convey to her full title of ownership of all his real property in the jurisdiction of the State of New York of the United States of America, along with any and all existing encumbrances or mortgages thereon.” The promissory note also states that there were two schedules attached showing (1) the kind of gold sovereign and (2) description and addresses of the real properties which were intended to be conveyed by Marios to Marina. The two schedules were missing from the Exhibit and were never produced. The promissory note was witnessed by Fani Minodora-Kanellos, who is a family friend and who testified that she was present the day this transaction was held and that she indeed signed this promissory note. The promissory note also has the signature of the debtor, and Ms. Minodora-Kanellos testified that it was signed by Marios, as he showed her an identification card the day of the transaction with that name. Plaintiff did not offer any other promissory or documentary evidence for the transaction between Marina and Peter and Harry for the other properties she alleges were conveyed to her in exchange for the gold coins but alleges that they both had signed promissory notes for these transactions. Plaintiff’s counsel, during cross-examination, did not question Peter or Harry about these transactions and the conveyance of the properties to Marina for the gold coins. Marina was not present during the signing of the promissory note by Marios nor did she personally hand the gold coins to Marios.

Exhibit 145 is a copy and not the original signed promissory note. According to the testimony of Angeliki Kouratora, Marios’ close friend, she saw Marios in possession of gold coins and that, in 2017, nearly two decades after the alleged transaction, Marios gave her an envelope addressed to Marina that contained the promissory note. Ms. Kouratora, after Marios’ death, gave Marina the envelope containing the copy of the promissory note provided to the Court.

Defendant disputes the authenticity of Exhibit 145 and that Marina purchased the properties in exchange for the coins. Defendant provided the testimony of Peter and Harry who both testified that they never received gold coins from Marina, nor did they agreed to convey the properties to Marina for any consideration as these properties were owned by John. In fact, the testimony from Peter was that the transfer of the properties held by Peter and Marios to the

corporations was done at the direction of John as the true owner of the properties. Harry also testified that he never entered into an agreement with Marina to convey his 50% interest in the Lanesville, Town of Hunter property to Arun Corp. Harry testified that John told him he wanted to put the Lanesville, Town of Hunter property in his own corporation and Harry signed the deed to transfer the property to Arun Corp. Defendant also provided Exhibit QQ, a signed and notarized affidavit by Marios, stating that he was the transferee of certain real property transferred at the request of John and put in his name without the payment of any monies by him to John. In the affidavit, Marios also stated that in 1999, in a “series of deed transfers, the properties...were transferred by [Marios] to various corporations....These transfers were made at the direction of my brother and were accomplished by a Power of Attorney granted by [Marios] to [John] to complete such transfers. The corporations known as Klio Corp, Chrysa Corp, Elina Corp, and Ioannis Corp. were all entities owned by [] John Zaharatos. At no time during the period that title was in [Marios’] name for these properties did the Plaintiff, Marina Zaharatos, ever have any ownership interest in these properties.” The affidavit was notarized in Greece.

In 2001, John transferred his interest in Beach 68th Street and 96 Thollen Street to Ares Corp in accordance with the parties’ 2000 separation agreement. In 2007, after the parties’ second divorce, Plaintiff transferred her interest in 73 Harry Wells Road to Alimos Corp., and her interest in 257 60th Street to Chrysa Corp.

The parties and their counsel conceded that all of the deeds for the transfers of the properties into the various corporations evidenced that they were made without consideration.

Consolidation of Properties and Corporations

In April and May 2001, the properties owned by the corporations Klio, Ioannis, Elina, Arun, and Tourlos were transferred to Chrysa and Alimos for no consideration as part of a consolidation of the corporations. The deeds for these transfers were signed by George Marinos, Marina’s son, as the president for the corporations. Arun and Tourlos were merged into Alimos Corp. and Ares Corp. was dissolved. The merger documents were signed by Marina and George.

A day after Marina and John’s first divorce was finalized, Marina transferred Beach 68th Street and 96 Thollen Street properties to Alimos for no consideration. These two properties were transferred by John to Marina three months prior pursuant to their separation agreement.

After these transactions, Chrysa owned six properties: 6001 Fifth Avenue, 416 Senator

Street, 7011 17th Avenue, 257 53rd Street, 269 53rd Street, and 271 53rd Street; and Alimos owned five properties: Beach 68th Street, 96 Thollen Street, 94 Dawn Road, the Lanesville, Town of Hunter property, and 1679 62nd Street. The two remaining properties, 73 Harry Wells Road and 257 60th Street were owned by Marina.

Management of the Properties

John testified that he managed all the properties in question since the acquisition of the properties starting in 1975, collected all of the rent, paid all of the expenses, made all of the repairs or contracted with others to make such repairs, attended all court proceedings on behalf of the properties or the corporations, entered into leases with the tenants in the properties, and submitted tax returns for both Alimos and Chrysa Corps from 2006 to 2012.

Defendant produced Exhibit RR, a petition and notice of petition for non-payment of rent dated in November 1999, Exhibit SS, a 30-day notice to a tenant dated in March 2000, and Exhibit TT, a petition for non-payment of rent dated in March 2000. Exhibits RR and TT were signed by John as president for Chrysa Corp, the petitioner, and Marina appears as the attorney for the petitioner. Exhibit SS was signed by John as president for Chrysa Corp.

Marina testified that she delegates the management of the properties to John despite alleging that she owned the corporations and thus the properties. She also testified that John kept income for himself as payment for his work as property manager and that John also gave income to her. Plaintiff, however, did not provide any evidence other than her testimony as to how John decided how much income to take for himself as payment for his work and how much to provide to Marina as the alleged owner of all of the properties or the full details of their business relationship as owner and property manager since Marina acquired the properties other than they maintained an amicable relationship for many years.

Around 2007, the amicable relationship between Marina and John began to deteriorate following their second divorce in 2006. According to Marina's testimony, in 2007, John started holding himself out to be the owner of Alimos and Chrysa Corps. despite her being the owner of these corporations. John testified that he was always the owner of these corporations as well as the real properties held by the corporations. In 2009, Marina sent John four separate notices of termination demanding that John cease acting on behalf of Alimos and Chrysa. John did not stop acting on behalf of the corporations or the properties. Other than some tax returns, there was no

documentary evidence produced showing the income generated by any of the properties or their expenses and to the extent testimony was produced on these issues it was insufficient to establish the plaintiff's claims regarding misuse or conversion of income from the properties.

Final Deed Transfers of Properties

In February 2011, Marina transferred all of the properties held by Alimos and Chrysa to herself, individually, without consideration, to retake control of them from John. Marina signed each deed as president of the corporations. The properties remain in Marina's name at the conclusion of this trial.

Further Details on the Properties

The 7011 17th Avenue property was the family home as testified by John, Marina, Peter, Peter's wife Litsa Zaharatos, George, and Diana. All of the previously listed witnesses lived at 7011 17th Avenue at some point since John first acquired the property. The 416 Senator Street property was used as an office by John for his electrical companies and the properties before being held under the corporations. After the formation of the various corporations, including Alimos and Chrysa, the 416 Senator Street was listed as the corporate office. John currently resides at 416 Senator Street. Marina has resided in Connecticut during the pendency of this trial.

CONCLUSIONS OF LAW

First, the Court will address Defendant's motion to exclude Plaintiff's Exhibit 145, the alleged promissory note signed by Marios Zaharatos in Greece when he allegedly received gold coins in exchange for selling the properties in his name to Plaintiff Marina. Defendant's motion is denied. The defects with this document go to its weight, reliability and relevance, in light of the missing schedules and its provenance.

As to the instant matter, both the Plaintiff and Defendant bear the burden of proving their case by a preponderance of the evidence (*see Rinaldi & Sons, Inc. v Wells Fargo Alarm Service, Inc.*, 39 NY2d 191, 194 [1976]; *Rodriguez v Budget Rent-A-Car Systems, Inc.*, 44 AD3d 216, 220 [1st Dept 2007]; *Tinsley v New York*, 192 AD2d 701, 702 [2d Dept 1993]).

"The trial court's determination as to issues of credibility of the witnesses is given great deference, as the trial court is in a position which allows it to observe and evaluate the testimony

and demeanor of witnesses, and affords it a better perspective from which to assess their credibility” (*Zwarycs v Marnia Constr. Inc.*, 2014 WL 80986359[U] at *8 [Sup. Ct. 2014], citing *Vizzari v State of New York*, 184 AD2d 564 [2d Dept 1992]; *Kincade v Kincade*, 178 AD2d 510 [1991]).

The Court finds that Marina’s testimony that she purchased the 73 Harry Wells and 257 60th Street was credible and that she then acquired the Beach 68th Street and 96 Thollen Street pursuant to the separation agreement was also credible and supported by the credible evidence. However, Marina’s testimony that she acquired the remaining nine properties held by Peter, Marios, and Harry by the delivery in Greece of British sovereign gold coins as consideration was incredible and not worthy of belief. The promissory note that purported to show that Marios was to be paid 3,000 gold coins for his properties in New York lacked the schedule identifying what properties Marios and Marina agreed to transfer to Plaintiff. Further, if Marina indeed also had similar transactions for the properties owned by Peter and Harry, plaintiff provided no evidence that such transactions and agreements occurred and failed to question these two witnesses about these important events.

Instead, the testimony of John, Peter, and Harry, together with the 2015 affidavit of Marios, showed that John transferred these nine properties into his family members’ name to hold for his benefit in a constructive trust. “The usual elements of a constructive trust are (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment” (*see O’Brien v Dalessandro*, 43 AD3d 1123 [2d Dept 2007]). As elements of a constructive trust serve only as a guideline, a constructive trust may still be imposed even if all of the elements are not established (*see Delidimitropoulos v Karantinidis*, 186 AD3d 1489, 1490 [2d Dept 2020]; *Rowe v Kingston*, 94 AD3d 852 [2d Dept 2012]). “The constructive trust doctrine is given broad scope to respond to all human implications of a transaction in order to give expression to the conscience of equity and to satisfy the demands of justice” (*Kaprov v Stalinsky*, 145 AD3d 869, 872 [2d Dept 2016]). “A constructive trust is an equitable remedy, and may be imposed when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest” (*Quadrozzi v Estate of Quadrozzi*, 99 AD3d 688, 691 [2d Dept 2012]).

The testimonies of John, Peter, and Harry that John transferred the nine properties to Peter, Harry, and Marios, while maintaining equitable ownership of these properties was credible. No

evidence showed that Peter or Marios paid any consideration for these properties to John during the initial transfers to them and the evidence disputes that they were later paid consideration to transfer the properties to Marina. Instead, the credible evidence shows that Peter and Marios made a promise to John to hold these properties under their names for his benefit, the transfer from John to Peter and Marios was made in reliance of this promise. Harry's testimony was credible that he signed his interest over the Lanesville, Town of Hunter property over to John for no consideration. In the Court's view, John remained the equitable owner of these properties despite the transfer to his family members and to the corporations.

Upon consideration of all the credible testimony and evidence in this case, the Court finds that Plaintiff Marina Zaharatos has established, by a preponderance of the evidence, that she is the owner of four of the thirteen properties at issue, but failed to establish ownership of nine of the thirteen properties. The Court finds that the credible evidence establishes that the remaining nine properties were held in a constructive trust for the benefit of Defendant John Zaharatos and that this constructive trust survived the transfers of the properties into the corporations and out of the corporations.

CONCLUSION

ORDERED, that title to the following properties shall remain under Plaintiff Marina Zaharatos' name as sole owner: 73 Harry Wells, Saugerties, New York; 257 60th Street, Brooklyn, New York; Beach 68th Street, Queens, New York; and 96 Thollen Street, Staten Island, New York;

ORDERED, that the deeds to the following properties that were issued by the Plaintiff from Alimos and Chrysa Corps. to herself shall be vacated and the county clerks/registrars of the respective counties of each property are hereby directed to cancel such deeds of record: 94 Dawn Road, Rocky Point, New York; 269 53rd Street, Brooklyn, New York; 271 53rd Street, Brooklyn, New York; 1679 62nd Street, Brooklyn, New York; Lanesville, Town of Hunter; 6001 Fifth Avenue, Brooklyn, New York; 416 Senator Street, Brooklyn, New York; 7011 17th Avenue, Brooklyn, New York; and 267 53rd Street, Brooklyn, New York;

ORDERED, that Alimos Corp. and Chrysa Corp. are directed to transfer title to the following properties to John Zaharatos as sole owner: 94 Dawn Road, Rocky Point, New York; 269 53rd

Street, Brooklyn, New York; 271 53rd Street, Brooklyn, New York; 1679 62nd Street, Brooklyn, New York; Lanesville Town of Hunter; 6001 Fifth Avenue, Brooklyn, New York; 416 Senator Street, Brooklyn, New York; 7011 17th Avenue, Brooklyn, New York; and 267 53rd Street, Brooklyn, New York. For the purpose of transferring title from Alimos Corp. and Chrysa Corp., Defendant, John Zaharatos, is designated as an officer of each of the corporations and is hereby authorized to sign deeds transferring title to the properties from the corporations to himself;

ORDERED, that plaintiff failed to establish the claims for plaintiff for conversion, unjust enrichment and money had and received and those claims are hereby dismissed;

ORDERED, that the undertaking posted by the Plaintiff in the amount of \$100,000 pursuant to CPLR 6312(b) in accordance with the Order of the Hon. Carolyn E. Demarest dated May 21, 2015 shall forthwith be paid over to the Plaintiff.

The foregoing constitutes the decision and order of the Court.

Dated: December 22, 2020



Hon. Larry D. Martin, J.S.C.