

Parker Hart L.P. v Fasciglione
2021 NY Slip Op 30353(U)
February 1, 2021
Supreme Court, New York County
Docket Number: 655186/2020
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

PARKER HART LIMITED PARTNERSHIP,

Plaintiff,

- v -

JOY DACOSTA FASCIGLIONE, KIMBERLY FASCIGLIONE

Defendant.

-----X

INDEX NO. 655186/2020

MOTION DATE 01/12/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents and for the reasons set forth on the record (2/1/2020), Parker Hart Limited Partnership's (the **Plaintiff**) motion for a preliminary injunction and the appointment of a temporary receiver is granted without opposition.

Accordingly, it is

ORDERED that the Plaintiff's motion for a preliminary injunction and the appointment of a temporary receiver is granted without opposition; and it is further

ORDERED that that Joy Dacosta Fasciglione and Kimberly Fasciglione (collectively, the **Defendants**), their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney,

agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts:

(i) communicating or, in any way, contacting or interacting with the tenants of the subject properties located at 82 Morningside Ave., Yonkers, NY and 33 Fairview Street, Yonkers, NY (collectively, the **Properties**);

(ii) collecting, receiving, transferring, or in any way maintaining possession of any rents, cash, assets and/or property of any kind, shape or character collected from, or received on behalf of, the tenants of the subject Properties; and

(iii) exercising any authority, business, transactions, decision-making or management over those shares in Vito Fasciglione Holdings 24, Inc., currently held in the name of, or for the benefit of, judgment-debtor Kimberly Fasciglione; and it is further

ORDERED that the undertaking is fixed in the sum of \$ 1000, conditioned that the Plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to the Defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the motion for the appointment of a temporary receiver of the real property located at 82 Morningside Ave., Yonkers, NY and 33 Fairview Street, Yonkers, NY, which is the subject of this action, is granted; and it is further

ORDERED that Parker Hart Limited Partnership be and hereby is appointed temporary receiver of the said real property during the pendency of this action; and it is further

ORDERED that the temporary receiver hereby appointed shall take and hold and safeguard said real property and shall collect and, if necessary, sue for, and shall hold and keep secure, all rents due from tenants leasing space in the property; and it is further

ORDERED that the powers granted hereby to the temporary receiver may not be extended except on further order of the court; and it is further

ORDERED that the temporary receivership hereby authorized shall continue only up to the entry of final judgment herein unless hereafter directed otherwise by this court upon motion; and it is further

ORDERED that the temporary receiver, before entering upon his duties, shall be sworn faithfully and fairly to discharge the trust committed to him/her unless the oath is waived upon consent of all parties and that the oath may be administered by any person authorized by the Real Property Law to take acknowledgments of deeds; and it is further

ORDERED that the temporary receiver shall give an undertaking in the amount of \$ 500 that he/she will faithfully discharge his/her duties in such capacity; and it is further

ORDERED that the temporary receiver shall keep written accounts as provided in CPLR 6404; and it is further

ORDERED that, pursuant to Section 36.1 of Part 36 of the Rules of the Chief Judge, the temporary receivership shall be subject to said Part 36; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he/she is in compliance with Part 36, including Section 36.2 (d) ("Limitations on appointments based upon

compensation”), but if he/she is disqualified from receiving such appointment pursuant to the provisions of Part 36, he/she shall notify this court forthwith; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he/she is familiar with the duties and responsibilities of a temporary receiver, has experience in such area, and is fully capable of assuming, and prepared to assume, those duties and responsibilities, which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the appointee’s office may perform tasks under the appointee’s direct supervision, unless otherwise directed by the court, but all substantive appearances and reports must be made, performed, and created by the appointee; and it is further

ORDERED that, upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the temporary receiver shall complete, execute, and return the Form 872 to the Fiduciary Clerk; and it is further

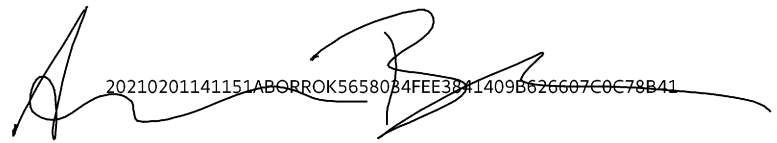
ORDERED that, pursuant to Section 36.1(a) (10) of Part 36 of the Rules of the Chief Judge, the temporary receiver is not authorized to hire counsel, an accountant, auctioneer, appraiser, property manager, or real estate broker (secondary appointees) without further order of this court, and that the temporary receiver is not authorized to pay fees to any secondary appointee without further order of this court; and it is further

ORDERED that, pursuant to Section 36.2 (c) (8), no temporary receiver shall be appointed as his or her own counsel and no person associated with a law firm of that receiver shall be appointed as counsel to that receiver unless there is a compelling reason to do so; and it is further

ORDERED that compensation for every secondary appointee is subject to prior court approval upon submission of an affirmation showing experience/expertise, services rendered, time expended, prevailing rate in the community, rate charged, and challenges presented and results achieved; and it is further

ORDERED that counsel for the movant shall, within 15 days from the date of this order, file a copy hereof with notice of entry with the Fiduciary Clerk; and it is further

ORDERED that such filing with the Fiduciary Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures For Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/suptctmanh).



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2/1/2021
DATE

ANDREW BORROK, 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

APPLICATION:

CHECK IF APPROPRIATE: