

**Matter of Congregation Heichal Hakodesh Mesifita
Chasidei Breslov v Red Mtn. Ventures LLC**

2021 NY Slip Op 30553(U)

February 24, 2021

Supreme Court, Kings County

Docket Number: 511546/2020

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

**In the Matter of
CONGREGATION HEICHAL HAKODESH MESIFTA
CHASIDEI BRESLOV and RABBI ALEXANDER SHICK,**

DECISION / ORDER

**Index No. 511546/2020
Motion Seq. No. 1, 4, 6, 8
Date Submitted: 2/23/21**

Petitioners,

-against-

**RED MOUNTAIN VENTURES LLC
Pursuant to Section 392 of the Real Property Law to set
aside a Deed obtained by fraud,**

Respondent.

***Recitation, as required by CPLR 2219 (a), of the papers considered in the review of petitioner’s
motion for a preliminary injunction and petitioners’ motion to compel discovery and petitioners’
motion to convert this special proceeding to an action, and for related relief.***

Papers	NYSCEF Doc.
Order to Show Cause, (MS #4) Affirmations, Affidavits and Exhibits.	<u>67, 59-66</u>
Order to Show Cause, (MS #6) Affirmations, Affidavits and Exhibits.	<u>125, 114-124</u>
Notice of Motion, (MS #8) Affirmations and Exhibits Annexed.....	<u>145-153</u>
Reply Affirmations.....	<u>91</u>

Upon the foregoing cited papers, the Decision/Order on these motions is as follows:

In Mot. Seq. #4, brought by Order to Show Cause, petitioners seek an order, pending the disposition of this action, “enjoining and restraining respondent Red Mountain and its members, managers, officers, directors, employees, agents, attorneys and all those persons acting in concert with it or them or under its or their dominion or control, each and every one of them, individually and jointly, from entering upon, transferring, leasing, licensing, mortgaging, placing any lien or encumbrance upon, allowing any person, firm or entity to utilize, or otherwise encumbering all or any portion

of the real property consisting of the land and building commonly known as 1129 42nd Street, Brooklyn, New York (hereinafter the "Real Property"), from in any manner, directly or indirectly performing any construction or demolition of any type or description at the Real Property and from removing any assets or property located in or on the Real Property." Respondent brought a cross motion, which was subsequently withdrawn (MS #5), which does not contain any opposition to the petitioners' motion. Thus, this motion is unopposed.

In Mot. Seq. #6, also brought by Order to Show Cause, petitioners seek an order compelling respondent to comply with their demand for interrogatories, and for counsel fees incurred in connection with making the motion. Respondent filed a cross motion (MS #7) then withdrew it, so there is no opposition to this motion.

In Mot. Seq. #8, brought by Notice of Motion, petitioners seek an order permitting them to convert this special proceeding to an action, and for a dozen additional items of relief. After this motion was filed, the parties stipulated to convert this special proceeding to an action, and before this motion came on to be heard, petitioners e-filed a Supplemental Summons and a Verified Complaint (efile Docs 158-159).

Conclusions of Law

Motion Seq. #4 is granted without opposition, and it is

ORDERED that pending the disposition of this action or further order of the court, Red Mountain and its members, managers, officers, directors, employees, agents, attorneys and all those persons acting in concert with it or them or under its or their dominion or control, and each and every one of them, individually and jointly, is hereby enjoined and restrained from transferring, leasing, licensing, mortgaging, placing any lien or encumbrance upon, allowing any person, firm or entity to utilize, or otherwise

encumbering all or any portion of the real property consisting of the land and building commonly known as 1129 42nd Street, Brooklyn, New York (hereinafter the "Real Property"), in any manner, and/or directly or indirectly performing any construction or demolition of any type or description at the Real Property and from removing any assets or personal property located in or on the Real Property.

IT IS FURTHER ORDERED that defendant is enjoined from removing any assets or personal property from the Real Property, pending disposition of this action or further order of the court, and the plaintiffs shall formally itemize and have appraised all personal property and assets (other than the Real Property known as 1129 42nd Street, Brooklyn, New York) which belonged to Congregation Heichal Hakodesh Mesifta Chasidei Breslov on December 19, 2019, the date that the underlying petition was filed in the related special proceeding, Index No. 527553/2019, including all personal property in the Synagogue and its library, as well as all synagogue bank accounts and other financial assets, and including but not limited to, the three torah scrolls described in the papers, the torah scrolls' jewelry and other Judaica, prayer books, etc., within 60 days of this order. The court notes that a prior order(E-File Doc. 56), to appraise the books in the synagogue's library, was issued on July 29, 2020 by the prior justice on this matter, which states: "(a) Rabbi Alexander Shick shall not have access to the library located on the second floor of 1192 42nd Street, Brooklyn, New York; (b) defendant shall provide to the Rabbi all of the books located in the library on the second floor of the building after an inventory of the books is taken; (c) the Rabbi shall place the books in his apartment in the building or in a secure storage facility, and (d) if plaintiff is required to return the books pursuant to this Court's further Order and any books are missing, the Rabbi shall pay for the value of said books. The value shall be determined

by an independent appraiser to be paid for by the Rabbi.” This order is hard to understand, but clearly required the defendant to prepare an inventory of the books, and for the Rabbi to pay for an appraisal of them, and it has not been complied with. It must be complied with, with copies to all attorneys, within 60 days.

Motion Seq. #6 cannot be granted because at the time it was made, this was a special proceeding, which does not permit discovery without leave of court [CPLR 408], and now that it has been converted to an action, this relief still cannot be granted as a motion to compel discovery is non-justiciable until after a Preliminary Conference has been held. However, during the COVID-19 Pandemic, the Intake Part is issuing Preliminary Conference Orders ex parte and not holding conferences, but only after all of the defendants have had time to answer the complaint and upon request of the Intake Part by one of the attorneys. Thus, in that framework, this motion is premature.

With regard to Mot. Seq. #8, the court grants that branch of the motion settled by the so-ordered stipulation, which converted the special proceeding to an action, and directs that the newly added defendants be served within 30 days hereof. The Petition, which the court’s computer denominated Mot. Seq. #1, shall be marked “withdrawn” as it has been replaced by the complaint. The existing defendant is deemed served by the e-filing of the complaint. The caption is hereby amended, *nunc pro tunc*, to read as follows:

CONGREGATION HEICHAL HAKODESH MESIFTA
CHASIDEI BRESLOV and RABBI ALEXANDER SCHICK,

Index No. 511546/2020

Plaintiffs,

-against-

RED MOUNTAIN VENTURES LLC, MOSHE SCHICK,
YAKOV FREIMAN, and LEVI ROTTENBERG,

Defendants.

_____X

The branch of Mot. Seq. #8 that seeks to deny Mot. Seq. #5 is denied as moot, as Mot. Seq. #5 was withdrawn, and the branch that seeks to compel discovery responses is denied for the same reasons stated above for Mot. Seq. #6. The remainder of Mot. Seq. #8 is adjourned to be argued on March 16, 2021 at 10:00 A.M. Defendant shall e-file opposition papers, if any, no later than March 6, 2021.

The foregoing constitutes the decision and order of the court.

Dated: February 24, 2021

ENTER:



Hon. Debra Silber, J.S.C.