

Salveson v EQD LLC
2021 NY Slip Op 30839(U)
March 17, 2021
Supreme Court, New York County
Docket Number: 158976/2019
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE **PART** **IAS MOTION 12**

Justice

-----X

KENT SALVESON,

Plaintiff,

- v -

EQD LLC, STEVEN WOO, JOLYNNE WOO,

Defendants.

-----X

**DECISION + ORDER ON
MOTION**

INDEX NO. 158976/2019

MOTION DATE _____

MOTION SEQ. NO. 001 002

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35-51 were read on this motion for stay.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53-68 were read on this motion to/for discovery.

By notice of motion, Woo defendants move for a stay of the action. Plaintiff opposes. (Mot. seq. one).

By notice of motion, plaintiff moves for an order compelling defendants to respond to discovery requests. By email of March 17, 2021, plaintiff's counsel advised that the motion had been resolved.

I. BACKGROUND

In this action to quiet title, plaintiff seeks a judgment declaring that he has title to property in Manhattan at 450 West 17th Street, unit 1009. According to plaintiff, he obtained title to the property by a deed of conveyance from defendant EQD in March 2019, at which time he was, and remains, the sole member of EQD. He claims to have acquired his interest in EQD in 2016 from nonparty Sung Yi, who had himself acquired it from defendant Steven Woo in 2015. However, plaintiff alleges, defendants maintain that they are still members of EQD and therefore

the premises' owners, and have prevented him from obtaining physical possession thereof. Moreover, a tenant leases the premises, and defendants have failed to remit his or her rent to plaintiff. (NYSCEF 2).

In their answer, self-represented defendants Steven Woo and Jolynne Ewing (incorrectly sued here as Jolynne Woo) deny plaintiff's allegations and assert a counterclaim for fraud against plaintiff and a cross claim against EQD. (NYSCEF 11).

All of the parties are California residents. (NYSCEF 2).

II. CONTENTIONS

A. Defendants (NYSCEF 36)

According to defendants, prior actions pend in California Superior Court in which the parties' relationship to EQD and the premises, as here, are in issue, and both actions were filed before this New York action. Specifically, in 2018, Woo filed an action against plaintiff, EQD, and another entity, asserting claims for fraud, among others (2018 California action), and in 2019, a few months before the instant action was commenced, a nonparty filed an action against Woo, plaintiff, EQD, and another entity, pertaining to the alleged fraudulent transfer of property, including the premises here (2019 California action). In the 2019 California action, Woo advances as a defense that plaintiff and EQD engaged in fraud related to the premises.

Defendants thus contend that as the California cases were filed first, are more advanced in terms of discovery and motion practice, and involve the same parties and same issues as here, the New York action should be stayed pending the result of the California actions in order to avoid inconsistent decisions and unnecessary duplication of time and effort. And, they maintain that plaintiff is not prejudiced by the stay as they remain current on all financial obligations for the premises and that the tenant continues to pay rent to them.

B. Plaintiff's opposition (NYSCEF 40)

Plaintiff denies that the action should be stayed, as defendants have no valid defense to it. According to plaintiff, the 2018 California action was dismissed based on lack of jurisdiction, and discovery is ongoing in the 2019 action, with a trial scheduled for April or June 2021. Plaintiff claims he will be prejudiced by a stay as his funds are tied up in the premises and he does not have possession of it.

Plaintiff submits an order of the California court in the 2018 action reflecting, as pertinent here, that his motion to dismiss, in effect, was denied and that Woo's claims for fraud, breach of contract, breach of fiduciary duty, and legal malpractice were permitted to continue, whereas Woo's claim for quiet title to the apartment was dismissed absent jurisdiction over the New York premises. (NYSCEF 46). By order dated October 30, 2020, the California court set the trial date in the 2018 action for April 2021. (NYSCEF 47).

C. Reply (NYSCEF 50)

Defendants set forth the merits of their defense,

III. ANALYSIS

Pursuant to CPLR 2201, a stay may be granted in a proper case, upon such terms as may be just.

Here, absent any dispute that the two California actions involve the same parties as here, that the parties' dispute as to their relationships and dealings with EQD is relevant to the ownership of the premises at issue here and to Woo's defense in this action, that the California actions were commenced first and appear likely to be resolved before the instant action in which discovery has recently commenced, and that the trial in the 2018 California action is scheduled to begin approximately one month from now, defendants establish that a stay of this action is

warranted in order to avoid inconsistent adjudications and an unnecessary duplication of effort and resources. (*Cf Lauria v Kriss*, 147 AD3d 575 [1st Dept 2017] [“comity and judicial efficiency may warrant a stay where there is substantial overlap of claims and parties”]).

However, as plaintiff currently holds the deed to the premises, Woo defendants are directed to provide him, by email to his attorney by the last day of each month beginning with March 31, 2021, a monthly accounting of all expenses, payments, and any other financial obligations and debts related to the premises, including the monthly rent paid to them by the tenant. If defendants fail to comply, plaintiff may e-file a letter to the court, requesting that the stay be lifted.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants’ motion for a stay (sequence one) is granted, and the instant action is stayed pending the resolution of the two California actions, on the conditions set forth above; it is further

ORDERED, that the parties notify the court by joint email to cpaszko@nycourts.gov of the termination of either or both California actions within 10 days of such termination; and it is further

ORDERED, that plaintiff’s motion to compel (sequence two) is deemed withdrawn as it has been resolved.

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BARBARA JAFFE, J.S.C.

3/17/2021
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED
			<input checked="" type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE

