

<b>Meisner v Finkelstein</b>
2021 NY Slip Op 32268(U)
October 7, 2021
Supreme Court, Kings County
Docket Number: Index No. 518557/2019
Judge: Francois A. Rivera
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At an I.A.S. Term, Part 52,  
of the Supreme Court of the  
State of New York, held in  
and for the County of Kings  
on the 7th day of October  
2021

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 52  
HONORABLE FRANCOIS A. RIVERA**

-----X  
**STEVEN A MEISNER, ESQ.**

Plaintiff,

-against-

**STEVEN I. FINKELSTEIN, SIF ENTERPRISES, LLC**

Defendants.  
-----X

**Index No.: 518557/2019**

**MOTION SEQ. NO. 001**

**DECISION AND ORDER**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8-20, 23-28, 29-30 were read on this motion for dismissal of affirmative defenses pursuant to CPLR 3211(b) and summary judgment.

Upon the foregoing documents and the oral argument by counsel the motion is determined as follows:

Plaintiff moves pursuant to CPLR 3211(b) (7) dismissing the defendant's affirmative defenses and the granting of summary judgment voiding the transfer of the property located at 1202 Bergen Avenue, Brooklyn, NY from Steven I. Finkelstein to SIF Enterprises Inc. For the reasons set forth below the plaintiff's motion is granted.

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The plaintiff commenced an action against the defendant in Supreme Court Nassau County for unpaid legal fees. After the defendant electronically filed his answer in that action, he transferred property located at 1202 Bergen Avenue, to SIF Enterprises, LLC., a limited liability company he controlled. In the documents utilized by the defendant to effectuate the transfer of the property the defendant listed himself as the seller and the buyer, he paid no consideration for the transfer and paid no tax in connection with the transfer. The Nassau County action resulted in the entry of a money judgment against the defendant Finkelstein in the sum of \$46,206.17, which remains unpaid.

Plaintiff docketed the money judgment in Kings County and commenced the instant action against the defendants to void the transfer of the property and direct the sale of the property to satisfy the judgment. The verified complaint contained exhibits which included the documents the defendant utilized to transfer the property. The defendants filed an answer and an amended answer which contained numerous affirmative defenses. Thereafter plaintiff moved to dismiss the affirmative defenses and the granting of summary judgment voiding the transfer.

The branch of Plaintiff's motion to dismiss the defendants' affirmative defenses is granted as to all of the affirmative defenses except that affirmative defense in which defendant claimed the subject transfer did not render him insolvent, as the defendant did not oppose the dismissal of his other affirmative defenses or they were pleaded in a conclusory fashion (see CPLR 3211 (b); *Bank of Am., N.A. v. 414 Midland Ave. Assoc., LLC*, 78 A.D.3d 746, 750 [2<sup>nd</sup> Dept 2010]).

As to the remaining affirmative defense, that the transfer did not render Finkelstein insolvent, the plaintiff's evidentiary showing demonstrates that there was a transfer

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between the defendant and a principal the defendant controls with documentation demonstrating the transfer was for no consideration. Pursuant to the version of Debtor and Creditor Law §273 applicable at the time of the subject conveyances, "a conveyance that renders the conveyor insolvent is fraudulent as to creditors without regard to actual intent, if the conveyance was made without fair consideration" (*Stout St. Fund I, L.P. v Halifax Group, LLC*, 148 AD3d 744, 747; see L 2019, ch 580, § 2; Debtor and Creditor Law former § 273; *Grace Plaza of Great Neck v Heitzler*, 2 AD3d 780, 781). To constitute fair consideration, the value given in exchange must be fairly equivalent and proportionate to the value of the property conveyed (see Debtor and Creditor Law former §272; *Commodity Futures Trading Commn- v Walsh*, 17 NY3d 162, 175; *Stout St. Fund I, L.P. v Halifax Group, LLC*, 148 AD3d at 748; *Sardis v Frankel*, 113 AD3d 135, 141). When a transfer is made without fair consideration, a presumption of insolvency and fraudulent transfer arises, and the burden shifts to the transferee to rebut that presumption (*Diaz v 297 Schaefer Street Realty Corp* 195 AD3d 794 (2<sup>nd</sup> Dept., 2021), *Battlefield Freedom Wash, LLC v. Song Yan Zhuo*, 148 AD3d 969 51 NYS3d 527, (2<sup>nd</sup> Dept., 2017)). The transfer is presumed to be fraudulent and render Finkelstein insolvent.

Summary judgment may only be granted when the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing" (see *Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302, 907 NYS2d 735 (2010), quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986)). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (see *Mazurek v*

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*Metropolitan Museum of Art*, 27 AD3d 227, 228 (1<sup>st</sup> Dept 2006), citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also, *DeRosa v City of New York*, 30 AD3d 323, 325 (1st Dept 2006). The burden shifted to Finkelstein to demonstrate that he was not rendered insolvent by the transfer. Finkelstein did not include in his opposition to the plaintiff's motion documentation to raise a triable issue on whether the transfer rendered him insolvent at the time of the conveyance. His remaining affirmative defense is dismissed.

Based upon the foregoing, the plaintiff's motion is granted. The transfer of the property located at 1202 Bergen Avenue, Brooklyn, NY to SIF Enterprises is void. The defendants are directed to cooperate in the voiding of the transfer and to execute whatever documents are necessary to reflect that the transfer is void and transfer the property back to Finkelstein. Defendants are not to encumber or transfer the property once the property is transferred back to Steven I. Finkelstein's sole name.

ENTER:



J.S.C.

KINGS COUNTY CLERK  
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