

Simon v French-American Surgery Ctr., Inc.
2021 NY Slip Op 32365(U)
November 18, 2021
Supreme Court, New York County
Docket Number: Index No. 162867/2014
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK **PART 53**

Justice

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JEAN-PASCAL SIMON,

Plaintiff,

- v -

FRANCINVEST, S.A., and JJS GROUP, INC.,

Nominal Defendants

-and-

FRENCH-AMERICAN SURGERY CENTER, INC., FRENCH
AMERICAN CLINIC, INC., JEAN-FRANCOIS SIMON,
CHARLES RAAB, GEORGE KESSLER,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 027) 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1178, 1179, 1180, 1181

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing papers and for the reasons set forth on the record, and as set forth in this court's prior decision, dated September 10, 2021 (NYSCEF Doc. No. 1138), Jean-Pascal Simon's (**JPS**) motion to restrain and enjoin Jean-Francois Simon (**JFS**) and those working in concert with him from selling, transferring, or hypothecating the property located at 820 NE 25th Avenue, UNIT 67-K, Hallandale Beach, Florida 33009 (the Florida Property), compelling JFS to sign a Quitclaim Deed and transfer title of the Florida Property to JJS Group, Inc. (**JJS**), ordering the Receiver to pay all expenses associated with the motion and transfer of title to JJS of the Florida Property, and holding JFS in civil contempt is granted solely to the extent of restraining and enjoining the sale, transfer, or hypothecation of the Florida Property.

Simply put, JPS has demonstrated a likelihood of success on the merits, irreparable harm in the absence of the injunction and the balance of the equities favor granting the injunction (*see Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005] [“The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger or irreparable injury in the absence of an injunction and a balance of equities in its favor”]). The record before the court indicates that JFS used JJS’s money to purchase the apartment in his own name. The bylaws did not require the ownership of the apartment to be held by an individual. The previous representation to the court to the contrary was false. JFS is not located in the United States and the subject of the injunction prevents the transfer of real estate which appears to be the property of JJS. There is substantial risk that in the absence of the injunction there will be more misappropriation and that the funds may be sent outside of the United States. JPS shall post a bond in the amount of \$10,000 within 14 business days of this decision and order.

The branch of the motion seeking to hold JFS in contempt and to require him to sign a Quitclaim Deed must be denied. The September 10, 2021 decision and order restrained JFS, George Kessler, and anyone working with them from using the voided Power of Attorney. On the issue of the Quitclaim Deed, the Condominium seems to have changed its bylaws effective July 20, 2021 (NYCEF Doc. No. 1137) such that JJS may no longer under the bylaws be permitted to own the apartment in its name. Thus, it may be appropriate that a transfer of the property be to tenants in common to the owners of JJS, or a sale of the apartment if this can not be accomplished in accordance with the bylaws unless the condominium consent to the transfer of the unit to JJS. In any event, this is premature at this junction and should be addressed together with the summary judgment motion.

More specifically, compelling JFS to sign the Quitclaim Deed would grant JPS the ultimate relief sought, which is not appropriate on this motion. Further, the September 10, 2021 decision and order of this court prohibited JFS, among others, from using the voided Power of Attorney signed and revoked by Francine Simon (NYSCEF Doc. No. 1138). As no claim has been made that JFS is attempting to sell the Florida Property using the voided Power of Attorney, there is no claim that he violated the September 10, 2021 decision and order of the court, and he cannot be held in contempt.

At the hearing on September 9, 2021, Mr. Kessler's lawyer argued that the condominium by-laws for the Florida Property "did not permit corporate or entity ownership and that the corporate strategy of JJS changed" such that the Florida Property had to be purchased by JFS, rather than by JJS (NYSCEF Doc. No. 1138, at 2). The September 10, 2021 decision and order held that "[i]f the by-laws do not prohibit corporate ownership as was represented on the record, or if the by-laws are not produced, the defendants will be deemed to have breached and the plaintiff may renew its cross-motion for summary judgment" (*id.*, at 3). The Venetian Park Condominium 2, Inc. Rules and Regulations were produced on September 14, 2021 (NYSCEF Doc. No. 1137). The bylaws state: "Effect 7/20/2021, Limited Liability Corporations (LLC). To limit sales to just individual owners. No sales to be approved to corporations or LLC's. No AIRBNB or VRBO allowed" (*id.*, ¶ 15). It is clear that the bylaws prohibited corporate entities from owning condominiums at the location of the Florida Property only as of July 20, 2021. Thus, at the time JFS purchased the property, corporate ownership was permitted, and JJS could have been the proper owner. As indicated by the court in the September 10, 2021 decision and order, this is


conclusive proof of the claim alleged. Defendants are thus deemed to have breached, and plaintiff may renew its cross-motion for summary judgment.

It is hereby ORDERED that Jean-Pascal Simon’s motion is granted solely to the extent of restraining and enjoining Jean-Francois Simon and those working in concert with him from selling, transferring, or hypothecating the property located at 820 NE 25th Avenue, UNIT 67-K, Hallandale Beach, Florida 33009; and it is further

ORDERED that Jean-Pascal Simon is ordered to post a bond in the amount of \$10,000; and it is further

ORDERED that Jean-Pascal Simon has leave to renew his motion for summary judgment.

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11/18/2021
DATE

ANDREW BORROK, JSC

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