

Friedman v Matan

2021 NY Slip Op 33132(U)

November 22, 2021

Supreme Court, Queens County

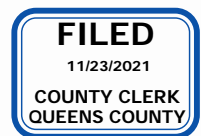
Docket Number: Index No. 714924/20

Judge: Robert I. Caloras

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This opinion is uncorrected and not selected for official publication.

**Short Form Order
NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS PART 36
Justice**



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**STEVEN ISAAC FRIEDMAN, HAWTHORNE
FUNDING, LLC, and JARABEN ENTERPRISES
LLC,**

**Index No: 714924/20
Seq. No 3**

Plaintiffs,

-against-

**YAIR MATAN, LORI MATAN, and
KARISH KAPITAL LLC,**

Defendants.

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The following numbered papers E44-E61, E66-E78 were read on this order to show cause by Plaintiffs for the following: (1) an order of Attachment pursuant to CPLR article 62, should not be issued with respect to Defendants Yair and Lori Matan ("the Matan Defendants"), against their assets and any debts owed to them, including the property located at property located at 75-22 137th Street, Flushing, NY 11367 ("the Flushing Property"), for the purpose of securing satisfaction of a judgment ultimately to be entered in this action; (2) why a Preliminary Injunction, pursuant to CPLR article 63, should not be issued with respect to the Matan Defendants, staying and enjoining them their affiliates, agents, employees, and assigns, and any other person acting on their behalf from selling, transferring, or otherwise disposing any assets of the Matan Defendants, including the Flushing Property.

**Papers
Numbered**

Order to Show Cause-Affidavits-Exhibits-Affirmation-Memo of Law.....	E44-E57, E62-E63
Affirmations in Opposition-Exhibits-Affidavit-Memo of Law.....	E58-E61, E66-E74
Answering Affidavits-Memo of Law- Exhibits.....	E75-E78

Upon the foregoing papers, it is ordered that Plaintiffs' order to show cause ("OSC") is denied for the following reasons:

Plaintiffs commenced this action by filing a Summons with Notice on September 3, 2020, and pursuant to Defendants' request therefore, filed a Complaint on October 12, 2020. On February 18, 2021, Plaintiffs filed an Amended Complaint, alleging that the Matans stole and used Friedman's notary stamp, and forged his signature on certain Karish Kapital LLC ("Karish") documents, including affidavits in support of Karish's enforcement of certain confessions of judgment, without Friedman's knowledge or consent, and that defendants failed to pay contracted for returns to its investors, Hawthorn and Jaraben. Plaintiff further alleged that Lori Matan, wife of co-Defendant Yair Matan, is a resident of Queens County, with a last known address of 75-22 137th Street, Flushing, New York. The Amended Complaint included causes of action for fraud/forgery; unfair trade practices; conversion of the notary stamp; defamation; intentional infliction of mental distress; prima facie tort; breach of contract; and conversion of investment money.

Plaintiffs filed the instant OSC on May 20, 2021. On May 21, 2021, Hon. Timothy J. Dufficy denied Plaintiffs' request for an attachment, a preliminary injunction and payment of a bond, and made the OSC returnable on June 30, 2021 before this Court. This OSC was subsequently submitted for decision on July 14, 2021. Thereafter, this Court issued an order, dated September 20, 2021 and entered on September 28, 2021, granting Defendants' motion dismiss, pursuant to CPLR 3211(a)(7), solely with regard to Plaintiffs' first cause of action, for fraud, against Defendant Lori

Matan, only, as to the fourth cause of action, for defamation, the fifth cause of action, for intentional infliction of mental distress, the sixth cause of action, for prima facie tort, and the eighth cause of action for conversion of investment money, and otherwise denied the motion. Thereafter, on October 18, 2021, Defendants filed an Answer, which included several affirmative defenses, and counterclaims asserted by Defendant Karish against Plaintiff Hawthorne for breach of contract, rent and attorney's fees, and Karish against Plaintiff Jaraben for rent and attorney's fees..

In the first branch of the instant OSC, Plaintiffs move for an order granting them an attachment of the Matans' property located at 75-22 137th Street, Flushing, NY 11367 ("Flushing Property") and any other property in the United States belonging to the Matans. In support thereof, they have submitted the following: Steven Isaac Friedman's affidavit; Sample Merchant Agreement ("SMA"); Master Participation Agreements ("MPA"); sample Confession of Judgment ("COJ") affidavit; email regarding notary stamp application; messages and email regarding alleged theft of property; report from Dr. Andrew Sulner, Board Certified Forensic Document Examiner; ACRIS for the subject property and other online information for the subject property; article, dated September 9, 2020 regarding the Matan's move to Israel; Amended Complaint; and Nathan D. Friedman's affidavit. Based upon these submissions, Plaintiffs allege the following: The Matan's purchased the Flushing Property in January 2019 for \$1,465,000.00, with a mortgage in the amount of \$1,020,000.00. On October 20, 2020, the Matan's listed the Flushing Property for sale. Since approximately December 28, 2020, the Flushing Property has been under contract for sale for approximately Two Million Dollars. On or about September 9, 2020, the Matan's moved to Israel with their children. The Matan's are building a new house in Israel, and their four children are enrolled in and attending school in Israel. Yair Matan is both a native and citizen of Israel, served in its military, and speaks fluent Hebrew. Most of Mr. Matan's immediate family members, including his mother, live in Israel.

Plaintiffs argue grounds for attachment for the Matan's Flushing Property exist pursuant to CPLR 6201(1), because the Matan's do not currently reside in New York and are not domiciliaries of New York. Even if CPLR 6201(1) was not applicable, they argue that grounds for attachment exist pursuant to CPLR 6201(3), because the Matan's have "concealed or [are] about to conceal property in one or more of several enumerated ways, and ha[ve] acted or will act with the intent to defraud creditors or to frustrate the enforcement of a judgment that might be rendered in favor of the plaintiff". Specifically, Plaintiffs claim the Matan's are currently in contract for the sale of their Flushing Property, which they put on the market seven weeks after they learned about this lawsuit. Since the Matan's moved to Israel, Plaintiffs claim they will likely remove the sale proceeds there. Moreover, Plaintiffs argue the Matan's diverted their money for their own personal use, contrary to the provisions of the MPAs. Plaintiffs further argue that "... given that Defendants engaged in a massive notary fraud scheme, there is little reason to expect that they will not try to frustrate any potential money judgment".

In opposition, Defendants argue that Plaintiffs have failed to establish their burden of demonstrating they are entitled to an attachment for the Flushing Property pursuant to CPLR 6201(1) and/or (3). In support thereof, they have submitted, among other things, the following: conveyance history and deeds for the Flushing Property New York State Department search results for Karish Kapital LLC; Shlomo Merirov's notarized affirmation; and Instagram posting advertising the sale of the Flushing Property. Based upon these submissions, Defendants allege the following: Defendant Lori Matan is the owner of the Flushing Property. On July 13, 2020 Deedee Weiss, a broker at Astor Brokerage advertised the Flushing Property for sale on Instagram. Thereafter, Ms. Matan changed brokers and retained Shlomo Merirov of Olam Realty Group, who listed the Flushing Property with

OneKey MLS, a multiple listing service on or about October 20, 2020. Mr. Merirov also listed the Flushing Property with a number of real estate Websites, including Zillow, Trulia and Redfin. On May 25, 2021, Ms. Matan sold the Flushing Property to Joseph and Yona Nissenfeld. In addition, Karish is an active New York corporation.

“CPLR 6212(a) provides that, on a motion for an order of attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in CPLR 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff” (651 Bay ST., LLC v Discenza, 189 AD3d 952 [2d Dept. 2020], internal quotations omitted). In order to obtain an order of attachment, Plaintiff must establish one of the grounds for an attachment set forth in CPLR 6201. Attachment is considered a harsh remedy, and CPLR 6201 is construed narrowly in favor of the party against whom the remedy is invoked (id.; Northeast United Corp. v Lewis, 137 AD3d 1387 [3rd Dept. 2016]; VisionChina Media Inc. v S’holder Representative Servs. LLC, 109 AD3d 49, 59 [1st Dept. 2013], internal quotations omitted]).

Initially the Court finds that Plaintiffs’ submissions only establish that Defendant Lori Matan was the owner of the Flushing Property. Plaintiff has also only addressed with specificity their request for an order of attachment for the Flushing Property. Therefore, Plaintiffs’ request for an order of attachment against Defendants’ assets and any debts owed to Defendants is denied.

The Court finds Plaintiffs failed to demonstrate their burden establishing grounds exist for an order of attachment pursuant to CPLR 6201(1) or (3). CPLR 6201(a) provides that an order of attachment may be granted when “the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state”. Where a nondomiciliary Defendant has consented to jurisdiction, an attachment brought under CPLR 6201(1) should issue only upon a showing that drastic action is required (In re Amaranth Natural Gas Commodities Litigation, 711 F Supp2d 301 [SDNY 2010]). To establish that drastic action is required, “New York courts have required an additional showing that something, whether it is a defendant’s financial position or past and present conduct, poses a real risk of the enforcement of a future judgment” (id.). Here, Plaintiffs’ submissions do not establish that Ms. Matan changed her domicile from New York to Israel, rather it merely established that Ms. Matan now resides in Israel. Even if Ms. Matan is now domiciled in Israel, she has consented to this Court’s jurisdiction and Plaintiffs have failed to establish that her financial position or past and present conduct poses a risk to the enforcement of a future judgment.

CPLR 6102(3) provides that that an order of attachment may be granted when “the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff’s favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these act”. The mere removal or assignment or other disposition of property is not grounds for attachment, Plaintiff must also show that Defendant has the requisite intent to either defraud their creditors or frustrate a potential money judgment (Halse v Hussain, 193 AD3d 1140 [3rd Dept. 2021]). Here, the Court finds Plaintiffs failed to satisfy the evidentiary threshold necessary to establish Ms. Matan fraudulently secreted or removed the Flushing Property pursuant to CPLR 6201(3). The ACRIS and other online information for the Flushing Property show there was no secrecy in the transfer of said property. Moreover, no evidence was submitted establishing that Ms. Matan had a close relationship with the buyers or that she has retained control over the Flushing Property. Accordingly, the branch of the OSC seeking an order of attachment against the Flushing Property is denied.

In the remaining branch of the OSC, Plaintiffs seek an order for a preliminary Injunction pursuant to Article 63 of the CPLR against the Matan Defendants, staying and enjoining them their affiliates, agents, employees, and assigns, and any other person acting on their behalf from selling, transferring, or otherwise disposing any assets of said Defendants, including the Flushing Property. Defendants oppose.

“Although the inclusion of a money demand will not necessarily preclude an injunction if other relief, which would satisfy this provision of CPLR 6301, is also sought, the court will refuse the injunction if convinced that a money judgment is the true object of the action and that all else is incidental. (In a money action, P (*sic*) often fears that D (*sic*) will secrete property during the action's pendency and thus make a money judgment uncollectable. P's (*sic*) remedy there, if P (*sic*) can establish such conduct by D (*sic*) convincingly, is an order of attachment under CPLR 6201 [3], not an injunction under Article 63)” (Credit Agricole Indosuez v Rossiyskiy Kredit Bank, 94 NY2d 541, 548 [2000], internal italics omitted).

For the reasons set forth above, the Court will only address Plaintiffs' request for a preliminary injunction as to the Flushing Property. Thereby, since this property was owned by Ms. Matan, the Court will only determine Plaintiffs' request for a preliminary injunction with respect to their existing claims as against Ms. Matan, which pursuant to the order issued on September 20, 2021, only include their cause of action for unfair trade practices, conversion of the notary stamp and breach of contract. These causes of action are incidental to and purely for the purposes of enforcement of the primary relief sought here, a money judgment. Accordingly, the branch of the order to show cause seeking a preliminary injunction is denied.

Dated: November 22, 2021



ROBERT I. CALORAS, J.S.C.

