

**Simon v Francinvest, S.A.**

2022 NY Slip Op 30309(U)

January 31, 2022

Supreme Court, New York County

Docket Number: Index No. 162867/2014

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JEAN-PASCAL SIMON,

Plaintiff,

- v -

FRANCINVEST, S.A. (NOMINAL DEFENDANT), JJS  
GROUP, INC., FRENCH-AMERICAN SURGERY  
CENTER, INC., FRENCH AMERICAN CLINIC, INC.,  
JEAN-FRANCOIS SIMON, CHARLES RAAB, GEORGE  
KESSLER,

Defendant.

INDEX NO. 162867/2014

MOTION DATE N/A,  
01/12/2022

MOTION SEQ. NO. 028 029

**DECISION + ORDER ON  
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1217, 1218, 1219, 1220, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1246, 1247, 1248, 1249, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1281, 1284, 1287, 1289

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

The following e-filed documents, listed by NYSCEF document number (Motion 029) 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1277, 1278, 1279, 1282, 1285, 1288

were read on this motion to/for INTERIM RELIEF.

Upon the foregoing documents, Jean-Pascal Simon’s motion (Mtn. Seq. No. 028) for an order (i) restraining Jean-Francois Simon and those working with him from interfering with the Special Meeting of JJS Group, Inc. (**JJS**) noticed to take place on December 27, 2021, (ii) restraining Jean-Francois Simon and those working with him from selling, transferring, or hypothecating any property owned by FrancInvest, S.A. (**FrancInvest**), JJS, or French-American Clinic, Inc. (**FAC**), the condominium located at 1049 Fifth Avenue (the **Premises**) or its property, (iii) granting Jean-Pascal Simon leave to rescind unauthorized filings made with the New York State, Department of State, Division of Corporations, (iv) entering sanctions for civil contempt against

Jean-Francois Simon, (v) enabling Jean-Pascal Simon or Leslie Berkoff to commence equitable proceedings for the rescission of the mortgage filed with Morgan Stanley Bank, (vi) striking Jean-Francois Simon's answers and affirmative defenses, and (vii) imposing sanctions on Jean-Francois Simon for litigation misconduct is granted because it is undisputed that Jean-Francois Simon has violated multiple orders of this court and, among other things, has improperly used his mother's rescinded power of attorney. Jean-Francois Simon's motion (Mtn. Seq. No. 029) for an order permitting him to sell the Premises and place the proceeds in his counsel's escrow account is denied and Jean-Francois Simon is ordered to quit claim the Premises to JJS so that the receiver can sell Premises and the proceeds of such sale shall be kept in the receiver's escrow account. With respect to Jean-Francois Simon's multiple willful and contumacious acts in violation of various orders of this court (e.g., refinancing the property in violation of this court's (Scarpulla, J.) June 11, 2015 order [NYSCEF Doc. No. 47], this court's order prohibiting the use of the rescinding power of attorney on behalf of his mother [NYSCEF Doc. Nos. 1011, 1138], he shall be charged \$1,000 per day until the quit claim deed is executed transferring the property in Florida into JJS where it should have been owned from the time it was acquired and delivered to the receiver. Additionally, his pleadings are struck and the plaintiff shall submit judgment on notice. For the avoidance of doubt, it is of no moment that the receiver has not yet determined whether and the extent to which the proceeds of the most recent \$4.5 million refinancing obtained in violation of this court's (Scarpulla, J.) order may have been embezzled by Mr. Jean-Francois Simon (i.e., the prior mortgage was \$2.5 million on this net leased property). The court's order (NYSCEF Doc. No. 47) prohibited refinancing without sixty days prior written notice to Jean-Pascal Simon. This was undeniably done surreptitiously and without consent and with the assistance of Mr. Mark Lebow, his attorney, who is the notary on the mortgage

refinance documents and the notice party in the same (NYSCEF Doc. Nos. 886-888) who knew full well that such refinancing constituted a violation of this court's order.

1. On the record on September 9, 2021, Mr. Siegel, counsel for George Kessler, represented to the court on behalf of the defendants that the Premises were conveyed to Jean-Francois Simon in his individual capacity because the condominium bylaws prevented the sale of the Premises to anyone other than an individual (September 9, 2021, tr. at 52, lines 24-25, NYSCEF Doc. No. 1142). This was false and said without any basis at the time as counsel did not have a copy of the bylaws. At the time, the court held that, if the bylaws did not prohibit corporate ownership as was represented, the defendants would be deemed to have breached their fiduciary duties and embezzled the money from JJS and Jean-Pascal Simon would have leave to renew his cross-motion for summary judgment (September 10, 2021 Decision and Order; NYSCEF Doc. No. 1138, at 3). The court subsequently held that the bylaws only prohibited corporate ownership as of July 20, 2021 (NYSCEF Doc. No. 1137), that JJS could have been the proper owner when Jean-Francois Simon purchased the property, and that defendants were deemed to have breached (November 18, 2021 Decision and Order; NYSCEF Doc. No. 1189, at 3-4). Indeed, notwithstanding the **recent** change in condominium bylaws prohibiting corporate ownership, the condominium has confirmed that JJS could be the owner because its ownership would be grandfathered (NYSCEF Doc. No. 1208). Jean-Francois Simon now asserts that the Premises are his because they were purchased with his own funds in 2011 (Jean-Francois Simon Aff., NYSCEF Doc. No. 1268, ¶ 8). Based on the evidence in front of the court, this is also untrue.

2. Jean-Pascal Simon adduces (i) the corporate resolution of JJS authorizing the purchase of the apartment (NYSCEF Doc. No. 1003) and (ii) two checks, one dated January 24, 2012, for \$261,339.18 (NYSCEF Doc. No. 1242) and one dated March 5, 2012, for \$192,365.61 (NYSCEF Doc. No. 1243), both from JJS to Jean-Francois Simon, each signed by Jean-Francois Simon. Jean-Pascal Simon asserts that this money was to pay Jean-Francois Simon for the Premises, and that, although Jean-Francois Simon may have initially put up the initial escrow deposit for the Premises, the cost was ultimately borne by JJS. For the avoidance of doubt, it does not matter that Jean-Francois Simon personally fronted the initial escrow deposit if the entire payment was not borne by him. To the extent that the receiver determines that there was any money paid by Jean-Francois Simon that was not reimbursed, he shall be entitled to a credit out of the proceeds. Jean-Francois Simon shall immediately quit claim the Premises to JJS so that receiver can sell the Premises.
3. The receiver is ordered, upon the quit claim of the Premises to JJS, to sell the Premises and hold the proceeds of the sale in her escrow account pending distribution by the court.
4. As agreed by the parties to address the concerns raised by the parties as to the market rent at the surgery center located in New York City, the receiver is authorized to hire an appraiser to determine the fair market value of the Premises at the time of the 2019 extension. The cost of hiring the appraiser shall be borne by JJS. It is simply wrong for this cost to be borne by Jean-Pascal Simon under the facts of this case. This is an expense of the company as part of the reconciliation.
5. It cannot be disputed that Jean-Francois Simon has violated multiple orders of this court and is again in contempt of the court. Jean-Francois Simon was previously held in

contempt by decision and order dated June 14, 2021 (NYSCEF Doc. No. 976). By order to show cause dated July 19, 2021, the court issued a temporary restraining order, among other things, restraining defendants and anyone working with them or with knowledge of the order from using the power of attorney signed by Francine Simon (NYSCEF Doc. No. 1011). This restraining order was continued by decision and order dated September 10, 2021 (NYSCEF Doc. No. 1138), wherein the court held that the power of attorney signed by Francine Simon was void (among other reasons, because she indicated that it was rescinded), any transactions undertaken using that power of attorney were presumptively invalid, and the defendants and anyone working with defendants were enjoined from using that power of attorney. Knowing that she had previously revoked the power of attorney, and then given this court's order preventing further inappropriate use of the same, Mr. Lebow's office filed a document with the New York State, Department of State, Division of Corporations (NYSCEF Doc. No. 1205) that named Jean-Francois Simon, not Francine Simon, as CEO of JJS. Previously, Jean-Francois Simon and Mr. Lebow had explained that the document was already submitted when this court issued its order and that it was "in the process" of being filed. This too is false. Now, in his opposition papers, Mr. Lebow contends that the document was filed by the paralegals in his office and that this was filed as a routine matter to "keep the company going". This is ridiculous. This filing not only violated this court's orders (the time it was submitted clearly shows it was after the court issued its order), but was not routine. In this filing, Mr. Lebow facilitated the appointing of his client as President of JJS. It is beyond cavil that even taking Mr. Lebow's new assertion as true, Mr. Lebow had an absolute obligation to supervise his paralegal (New York Rules of Professional Conduct,

¶ 5.3). Given the multiple violations of this court's orders and the blatant untruths told to this court, Jean-Pascal Simon is authorized to immediately cause to be filed with the New York State, Department of State, Division of Corporations paperwork naming Jean-Pascal Simon as President of JJS in accordance with the minutes of the special meeting of the shareholders on December 27, 2021 (NYSCEF Doc. No. 1247). For completeness, Mr. Lebow's involvement in these shenanigans can not be overstated. In addition to the most recent filing with the secretary of state appointing his client as President of JJS, Mr. Lebow also took part in violating this court's orders by representing Jean-Francois Simon in the mortgage refinance for which Jean-Francois Simon was previously held in contempt in violation of this court's order to which he was aware. To wit, Mr. Lebow knew as counsel of record in this case that such mortgage refinancing was prohibited without consent. Mr. Lebow signed the mortgage refinance documents as a notary public (NYSCEF Doc. Nos. 886-888) and was named as the counsel to whom notices should be sent under the Consolidated, Amended and Restated Mortgage and Security Agreement (NYSCEF Doc. No. 886, ¶ 16.1). Mr. Lebow's participation in violating this court's orders and multiple blatant misrepresentations to this court warrant referral to the Disciplinary Committee.

It is hereby ORDERED that Jean-Francois Simon shall immediately quit claim the Premises to JJS; and it is further

ORDERED that the receiver shall hire an appraiser to determine the fair market value of the surgery center at the time of the 2019 extension and the cost of hiring such appraiser shall be borne by JJS; and it is further

ORDERED that the receiver shall sell the Premises and hold the proceeds of the sale in her escrow account pending distribution by the court; and it is further

ORDERED that Jean-Pascal Simon shall immediately cause to be filed with New York State, Department of State, Division of Corporations paperwork naming Jean-Pascal Simon as President of JJS; and it is further

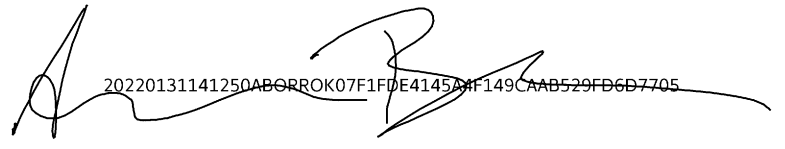
ORDERED that in respect of the contempt of this court, Jean-Francois Simon is hereby fined the sum of \$1,000 per day until the quit claim deed is executed and delivered to the receiver, which payment shall be paid to the Lawyers' Fund for Client Protection and shall be deposited with the Clerk of the Court for transmittal to the Commissioner of Taxation and Finance, within ten days after delivery of the quit claim to the receiver; and it is further

ORDERED that counsel for Jean-Pascal Simon shall order a copy of the transcript (1.31.2022) and have it turned over to the Disciplinary Committee together with a copy of this decision and order; and it is further

ORDERED that Jean-Francois Simon's pleadings in this action are struck; and it is further

ORDERED that Jean-Pascal Simon is ordered to enter judgment on notice; and it is further

ORDERED that the remaining parties shall appear for a status conference on March 14, 2022 at 11:30am.



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1/31/2022  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE