

**AB Stable VIII LLC v Law Off. of Ning Ye, Esq.**

2022 NY Slip Op 33115(U)

September 15, 2022

Supreme Court, New York County

Docket Number: Index No. 652814/2022

Judge: Barry R. Ostrager

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X

AB STABLE VIII LLC, AB STABLE VI LLC, and SHR ESSEX HOUSE, LLC, Plaintiffs,

- v -

LAW OFFICE OF NING YE, ESQ. and YAN ZHAO, Defendants.

Table with 2 columns: Field Name, Value. INDEX NO. 652814/2022, MOTION DATE, MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

-----X

HON. BARRY R. OSTRAGER

Before the Court is a motion by Order to Show Cause filed by Plaintiffs AB Stable VIII LLC, AB Stable VI LLC, and SHR Essex House, LLC, for an Order: (a) Cancelling, and ordering void ab initio, the notice of pendency on the Waldorf Astoria Hotel, 301 Park Avenue, New York, NY 10022, Block 1304; Lot 9001 (NYSCEF Doc. No. 55); (b) Sanctioning Defendants Law Office of Ning, Ye, Esq. and Yan Zhao for unlawfully filing the notice of pendency in violation of CPLR § 6501, et. seq., and for violating this Court’s prior orders; and (c) Ordering Defendants to pay all costs and fees associated with this action and attorney’s fees. For the reasons that follow, the motion is granted in its entirety.

On August 22, 2022, this Court heard extensive oral argument via Microsoft Teams on the earlier motion by Plaintiffs (seq. 001) to cancel two Notices of Pendency filed by Defendants with the Clerk of the Supreme Court, New York County, relating to two Manhattan properties, the JW Marriott Essex House Hotel and the Corning Glass Building (NYSCEF Doc. Nos. 14 and 15) and for related injunctive relief. By Decision and Order dated August 22, 2022 (NYSCEF Doc. No. 49), the Court granted the motion, except with respect to the request for sanctions. Specifically, the Court cancelled the two Notices of Pendency and enjoined Defendants their

agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, from (i) filing or causing to be filed any further notices of pendency on properties owned, directly or indirectly, by Plaintiffs or their affiliates; and (ii) directing and/or instructing any person to proceed in any way with filing or causing to be filed any further notices of pendency on properties owned, directly or indirectly, by Plaintiffs or their affiliates, without prejudice to any ruling by a court in the District of Columbia or in another jurisdiction, if appropriate.

The Court explained in the August 22, 2022 Decision that the Notices of Pendency filed against Plaintiffs' Properties should be cancelled for three distinct reasons: (1) the Notices of Pendency violated CPLR § 6501 and qualified for mandatory cancellation under CPLR § 6514(a) because plaintiffs AB Stable VI LLC and SHR Essex House, LLC were not parties to the underlying action filed in the District of Columbia ("the DC Action") and plaintiff AB Stable VIII LLC was dismissed from the underlying DC Action; (2) the Notices of Pendency violated CPLR § 6501 because the underlying action is not from a court in New York, as evidenced by the fact that the Notices had the caption for the DC Action; and (3) the Notices of Pendency qualified for discretionary cancellation under CPLR § 6514(b) because they had been filed in bad faith after the court in the DC Action had ruled against Defendants. This Court also found that the Notices caused Plaintiffs irreparable injury as they interfered with Plaintiffs' property rights and damaged their reputation. The equities favored Plaintiffs, who were merely seeking to remove a cloud on their title. Since the motion effectively requested the ultimate relief sought in the Complaint, and since Defendants had been given a full and fair opportunity to be heard on the merits, the Court not only cancelled the two Notices of Pendency but also granted Plaintiffs a permanent injunction in the form requested in the motion preliminarily, as described above.

Plaintiffs filed the instant Order to Show Cause on August 30, 2022 based on a third Notice of Pendency related to the Waldorf Astoria Hotel. In the moving papers, counsel explained that Plaintiffs had not uncovered the Waldorf Notice of Pendency as of the date the earlier motion was argued, and they correctly noted that Defendants' counsel made no mention of the Waldorf Notice during the earlier oral argument or in the papers for the earlier motion (seq. 001). When Plaintiffs did discover the Waldorf Notice, they asked Defendants' counsel to withdraw it pursuant to this Court's August 22, 2022 Decision and Order permanently enjoining Defendants from filing any additional Notices of Pendency related to Plaintiffs' Properties, but Defendants' counsel did not agree. Therefore, Plaintiffs assert they had no choice but to return to this Court to enforce the terms of the August 22, 2022 injunction and obtain related relief.

Plaintiffs have established their right to the requested relief through extensive documentation. The Waldorf Astoria Hotel is owned by AB Stable LLC. AB Stable IX LLC is the direct shareholder of AB Stable LLC and of Plaintiffs AB Stable VIII LLC and AB Stable VI LLC. AB Stable IX LLC is an indirect subsidiary of Dajia Insurance Group. Co., Ltd. Plaintiff SHR Essex House, LLC is an indirectly wholly-owned subsidiary of Plaintiff AB Stable VIII LLC, making the owner AB Stable LLC an affiliate of all three Plaintiffs in this action. The Waldorf Notice of Pendency was filed with the caption for the action that had been pending in the District of Columbia in which AB Stable VIII LLC was a named defendant.

The Waldorf Notice of Pendency should be cancelled for the same three reasons that this Court found for cancelling the earlier two Notices: (1) the Waldorf Notice of Pendency violates CPLR § 6501 and qualifies for mandatory cancellation under CPLR § 6514(a) because Plaintiffs AB Stable VI LLC and SHR Essex House, LLC were not parties to the underlying action filed in the District of Columbia ("the DC Action") and plaintiff AB Stable VIII LLC was dismissed

from the underlying DC Action; (2) the Waldorf Notice of Pendency violates CPLR § 6501 because the underlying DC Action is not from a court in New York, as evidenced by the fact that the Notice bears the caption for the action that had been filed in the US District Court for the District of Columbia; and (3) the Notice of Pendency qualifies for discretionary cancellation under CPLR § 6514(b) because it was filed in bad faith. Further, the Waldorf Notice was filed in direct contravention of the injunction ordered by the Court in the August 22, 2022 Decision and Order.

Defendants claim first that Plaintiffs' arguments for cancelling the Waldorf Notice are now moot due to an action filed by Ning Ye in the New York State Supreme Court the Sunday night before the August 22, 2022 hearing on Plaintiffs' first Order to Show Cause before this Court. But the Waldorf Notice lists as its basis the action pending in the United States District Court for the District of Columbia, not any lawsuit in New York. This defect is not curable through the filing of an intervening lawsuit, particularly because the New York action is not even referenced anywhere on the face of the Waldorf Notice.

Similarly unavailing is Defendants' newfound claim that Defendants were not properly served. Not only did Defendants waive that defense by affirmatively cross-moving for relief in connection with motion sequence 001 and actively participating in the proceedings without a reservation of rights, but Plaintiffs have established proper service in their detailed papers submitted with this motion.

In the August 22, 2022 Decision and Order, this Court in its discretion declined to award Plaintiffs sanctions. However, Defendants filed the Waldorf Notice of Pendency in direct violation of the injunction issued by this Court, which was clearly articulated on the record in the presence of Defendants' counsel and in a detailed written opinion. Further, Plaintiffs gave

Defendants an opportunity to resolve this motion by proposing that Plaintiffs would withdraw their request for sanctions if Defendants withdrew the Waldorf Notice, but Defendants did not withdraw the Notice and instead opposed the motion. These factors, along with the wholly frivolous nature of the Waldorf Notice, merit an award of sanctions in the sum of \$7,500.00 against the two Defendants jointly and severally. Accordingly, it is hereby

ORDERED that Plaintiffs’ motion is granted in its entirety; and it is further

ORDERED that the Notice of Pendency filed by Defendants on the Waldorf Astoria Hotel, 301 Park Avenue, New York, NY 10022, Block 1304; Lot 9001 (NYSCEF Doc. No. 55) is void *ab initio* and the Clerk of the Court is directed to cancel that Notice; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiffs AB Stable VIII LLC, AB Stable VI LLC, and SHR Essex House, LLC against Defendants Law Office of Ning, Ye, Esq. and Yan Zhao, jointly and severally, in the sum of seventy-five hundred dollars (\$7,500.00) as a sanction for Defendants’ conduct as described above upon Plaintiffs’ e-filing of a Proposed Judgment directed to the County Clerk.

All future appearances are cancelled.

Dated: September 15, 2022

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

APPLICATION:

GRANTED  DENIED

GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:

SETTLE ORDER

SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE