

**Jung v Kobler**

2022 NY Slip Op 33895(U)

November 16, 2022

Supreme Court, New York County

Docket Number: Index No. 652436/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

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JEAN LUC JUNG,

Plaintiff,

- v -

HILDA KOBLER AKA HILDA JOAN JUNG, DEVOE STREET, LLC, 283 DEVOE STREET, LLC, HILA KOBLER, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF J.P. MORGAN CHASE COMMERCIAL MORTGAGE SECURITIES CORP., MULTIFAMILY MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017- SB42, NEW YORK ENVIRONMENTAL CONTROL BOARD

Defendant.

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INDEX NO. 652436/2021  
MOTION DATE N/A  
MOTION SEQ. NO. 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

**BACKGROUND**

Plaintiff commenced this action seeking to impose a constructive trust on the property known as 283 Devoe Street, Brooklyn, NY 11211 (Subject Premises).

Plaintiff and Hilda Jung were married in Paris, France in 1970. Defendant alleges that the Subject Premises is marital property and that the parties' interest in same will be determined in a pending divorce action that plaintiff commenced against Ms. Jung in the United Kingdom.

Plaintiff alleges that in 1994, Plaintiff and Ms. Jung orally agreed that Plaintiff would provide the money to purchase and obtain real property known as 140 West 24th Street, New York, NY 10011 ("140 West"). Ms. Jung and Plaintiff further agreed that the title for 140 West

would be transferred to Ms. Jung in name only, and held for the benefit of Plaintiff, and that Ms. Jung agreed to transfer the title to Plaintiff upon demand.

Plaintiff further alleges that on or about January 18, 2017, both parties agreed to sell 140 West via a 1031 exchange. The proceeds from the sale of 140 West were used to the Subject Premises and 458 West 51st Street, New York, NY 10019 (458 West Property). Again, Plaintiff alleges he and Ms. Jung agreed that the Properties were to be transferred to Ms. Jung in name only, and that upon his demand, Ms. Jung was required to transfer the Properties to Plaintiff, while Ms. Jung asserts it was simply marital property.

The parties' marriage fell apart, Plaintiff cut off Ms. Jung financially and demanded that Ms. Jung transfer the properties to Plaintiff without consideration.

Since Plaintiff cut Ms. Jung off from funds, Ms. Jung filed for temporary maintenance and then Plaintiff commenced divorce proceedings in London, United Kingdom. Both parties have appeared with counsel in the UK action, where the court is assessing multiple properties they own, including the two properties at issue herein, so as to undertake equitable distribution of same.

Plaintiff then commenced the instant action for a constructive trust over the Subject Premises and the 458 West Property, arguing that they were being held by Ms. Jung solely for the benefit of Plaintiff.

Ms. Jung refinanced the Subject Premises on August 28, 2017, with a Consolidation, Extension and Modification Agreement ("CEMA") given by Greystone Servicing Corporation. The loan was made solely in the name "Hilda J. Jung". Thereafter, December 13, 2018, Ms. Jung transferred the Subject Premises to 283 Devoe Street, LLC, which, unbeknownst to Ms. Jung, was violative of the CEMA loan agreement. Upon Greystone learning of the deed transfer,

Greystone immediately contacted Ms. Jung to advise that she had breached the loan agreement by transferring title to the property without prior consent of Greystone. Greystone advised Ms. Jung that they would allow for the original loan to remain in place so long as she provided Greystone with all the pertinent documentation and information with regards to 283 Devoe Street, LLC.

### **PENDING MOTION**

Plaintiff moved by order to show cause for a temporary restraining order as to the Subject Premises based on the allegation that he had reason to believe Ms. Jung was attempting to sell the Subject Premises. Ms. Jung filed opposition and requested that the Court stay this action pending the resolution of the divorce proceeding in the UK. For the reasons stated below, the OSC is granted and this action is stayed pending the outcome of the divorce proceeding in the UK.

### **DISCUSSION**

Ms. Jung has consistently stated that she has no intention of selling the Subject Premises until there is a determination as to the parties' rights regarding same in the UK divorce proceeding. Ms. Jung however opposes the TRO, arguing that it is duplicative of the *Lis Pendens* already filed. Ms. Jung further argues any resolution of the distribution of the marital assets in the UK action would be hampered should this Court issue a Restraining Order against the Subject Premises and she wishes to avoid further motions to this Court to lift the Restraining Order so as to facilitate the equitable distribution of the property in the UK action.

Finally, Ms. Jung argues this action should be stayed until the UK divorce action can be fully adjudicated to avoid inconsistent court rulings between this action and the divorce action in the UK.

Given the above facts and positions of the parties, the court finds it is appropriate to issue the temporary restraining order preventing Ms. Jung from selling the Subject Premises, but shall make such order subject to any further rulings by the UK court in the divorce proceeding. Ms. Jung has clearly stated she has no intention of selling the Subject Premises prior to the resolution of the divorce action and that she acknowledges the Subject Premises is marital property. There is no prejudice to Ms. Jung therefore in granting said relief.

The court will also grant Ms. Jung's request to stay this action pending the final resolution of the divorce proceedings in the UK.

A court, pursuant to CPLR 2201, may *sua sponte* grant a stay of proceedings in an action that is pending before it (*see, Sternberg v. New York Water Serv. Corp.*, 94 A.D.2d 723, 462 N.Y.S.2d 609). In this action Ms. Jung has requested such a stay. "CPLR 2201 affords Supreme Court the authority to stay an action pending before it 'upon such terms as may be just,' and a court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, duplication of proof and potential waste of judicial resources (*Zonghetti v. Jeromack*, 150 A.D.2d 561, 563, 541 N.Y.S.2d 235 [2d Dept. 1989])." *215 W. 84th St Owner LLC v. Ozsu*, 174 N.Y.S.3d 584 (App. Div. 2022).

In the event that the Divorce action does not resolve the issue then the parties may move to vacate the stay, similarly the stay may be vacated or modified by the UK court without further motion to this Court.

WHEREFORE it is hereby:

ORDERED that defendant is enjoined and restrained from selling or encumbering the property known as 283 Devoe Street, Brooklyn, New York 11211 (Block 02917, Lot 0026) pending further order of this court or of the court in the UK divorce proceeding; and it is further

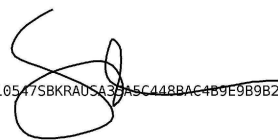
ORDERED that this action is stayed pending the final resolution of the UK Divorce proceeding or further order of this Court; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



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11/16/2022

DATE

SABRINA KRAUS, 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