

<b>Schlanger v Harloff</b>
2022 NY Slip Op 34331(U)
December 21, 2022
Supreme Court, New York County
Docket Number: Index No. 161505/2021
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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DREW SCHLANGER, JEFFREY SCHLANGER

Plaintiffs,

- v -

AMY L HARLOFF,

Defendant.

-----X

INDEX NO. 161505/2021  
MOTION DATE N/A, N/A  
MOTION SEQ. NO. 002 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for MODIFY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for GUARDIAN AD LITEM.

Motion Sequence Numbers 002 and 003 are consolidated for disposition. Both plaintiffs' motion (MS002) to modify the Court's order with respect to serving the order and non-party Susan Rios' motion (MS003) for the appointment of a guardian ad litem are decided as described below.

In this action concerning the sale of an apartment, the Court previously granted plaintiffs' motion for a default judgment on default (NYSCEF Doc. No. 23). Plaintiffs seek specific performance of defendant's obligation to complete the sale of the subject apartment. The Court denied plaintiffs' motion for the appointment of a receiver in motion sequence 001 but observed that plaintiffs could make another application if defendant failed to comply with the Court's order. Defendant has not appeared, answered, or filed anything in connection with this case.

Plaintiffs contend that they could not find defendant in order to personally serve her with the Court's decision. Non-party Susan Rios, defendant's sister, contends that her sister was not competent to enter the contract of sale or carry out the sale. She claims that her sister is paranoid and has limited mental capacity; she wants a guardian ad-litem appointed for defendant. Ms. Rios insists that her sister is part of the Sovereign Citizens Movement and believes she can defeat the instant lawsuit by not responding to plaintiffs' requested relief.

After oral argument, the Court decides the motions as follows. It will appoint a receiver to act in place of defendant to complete the sale of the apartment. The receiver will ensure that any outstanding liens and charges against the property are paid off from the sale funds up to the date of the closing and that plaintiffs take ownership of the property. This receiver shall keep whatever proceeds remain in an escrow account solely for defendant's benefit. Once an account for defendant is identified, those proceeds may be deposited in that account. In addition to paying off all liens, the receiver shall pay the closing attorney (who represented defendant in the contract and presumably is holding the deposit in escrow) and the receiver shall be compensated \$2,500 from the purchase funds. If an extraordinary amount of time is expended by the receiver – which is not now anticipated – then the receiver may apply to this Court for additional fees.

The Court observes that at oral argument, and on this record, numerous arguments were made about defendant's purportedly mental capacity. There is also a proceeding in Civil Court because she has not paid her maintenance. Certainly, some of the behavior allegedly exhibited by defendant is concerning. However, the Court cannot invalidate the sale of the apartment nor can it permit defendant's sister to intervene without a Court order finding that defendant is wholly incapable of handling her own affairs. And there is no evidence submitted that defendant was incapacitated at the time she entered into the contract to sell the apartment.

A receiver can facilitate the completion of the sale, which will hopefully also make the civil court proceeding moot (assuming that the co-op will be paid in full at the closing). The appointment of a guardian ad litem is not necessary under these circumstances because there is no proof that the contract of sale is invalid. The Court also notes that it is not ordering an eviction; it is just ordering that the sale close, that all expenses be paid from the proceeds and the rest given to defendant once an account is located.

Accordingly, it is hereby

ORDERED that the motion for the appointment of a Temporary Receiver is granted; and it is further

ORDERED that Elaine Shay, Esq., 757 Third Avenue, 20<sup>th</sup> floor, New York, New York 10017, [elaine@eshayesq.com](mailto:elaine@eshayesq.com), 212-520-2690 is hereby appointed Temporary Receiver for the for the sole purpose of facilitating the closing of the subject contract of sale for the apartment known as 257 Central Park West, Unit 11G, New York, New York 10022; and it is further

ORDERED that the Temporary Receiver is authorized – but not required –to sign whatever documents are necessary to complete the sale, including but not limited to signing all closing documents, transfer forms, tax returns, releases, lost stock certificate affidavits, etc. on behalf of defendant/seller, but, if the receiver determines that a document is not routine or not appropriate, the receiver need not sign it and the parties may make an application to the Court ; and it is further


ORDERED that the Temporary Receiver shall use the monies from the purchase to (1) pay off outstanding liens against the property up to the date of closing, (2) pay all outstanding fees due to defendant's attorney who is representing her on the contract and is holding the deposit, and who may now represent the receiver; if said attorney declines to represent the

receiver, she must immediately turn the down payment over to the receiver, who shall hold it in escrow as set forth below, and (3) the temporary receiver may pay herself \$2500 if the defendant’s attorney continues the representation and, if not, the Receiver is entitled to \$4500 ; and it is further

ORDERED that all sums to be paid out of the closing funds (for liens, taxes, maintenance, Receiver fees, seller’s attorney’s fees, mortgage payoff and anything else) may be requested to be by bank check/certified check/wire transfer/etc. provided by the buyer regardless of any limit as to the number of checks agreed in the contract of sale; and it is further

ORDERED that the Temporary receiver shall deposit all proceeds not disbursed, if any, in an FDIC-insured bank where the Temporary Receiver has an escrow account for that purpose and hold such funds solely for defendant’s benefit and shall deposit the money into an account owned by defendant if and when one can be identified; and it is further

ORDERED that the proceeds of the sale shall not be used to pay any funds (such as maintenance or attorneys’ fees unrelated to this closing ) once plaintiffs acquire the deed to the property.

<u>12/21/2022</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE