

Lemberg Found., Inc. v Shuttleworth Artists Ltd.

2023 NY Slip Op 30327(U)

January 24, 2023

Supreme Court, New York County

Docket Number: Index No. 651734/2021

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

LEMBERG FOUNDATION, INC., LEMBERG
SYNDICATE, and NEWBURY STREET PARTNERS,

Index No. 651734/2021

Plaintiffs

- against -

DECISION AND ORDER

SHUTTLEWORTH ARTISTS LTD., BOARD OF
DIRECTORS OF SHUTTLEWORTH ARTISTS LTD.,
A.J. AGARWAL, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTISTS LTD.,
HERBERT HENRYSON, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTISTS LTD.,
DARREN KEITH, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTISTS LTD.,
DAVID SCHANOES, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTISTS LTD.,
REBECCA TADIKONDA, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTISTS LTD.,
SCOTT THODE, INDIVIDUALLY AND AS AN
OFFICER OF SHUTTLEWORTH ARTIST LTD.,

Defendants

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs are cooperative corporation shareholders that own a unit in defendants' cooperative building. In an order dated July 22, 2022, upon defendants' default in answering, the court granted a permanent injunction to plaintiffs requiring defendants' specific performance of plaintiffs' proprietary lease, to relocate their heating, ventilation, and air conditioning (HVAC) unit to the building's roof or facade

according to any one of plaintiffs' proposals. NYSCEF Doc. 60. Defendants Shuttleworth Artists Ltd. and Board of Directors of Shuttleworth Artists Ltd. have moved to stay the judgment under C.P.L.R. §§ 2201 and 5519(a)(2) and (5) and (c), but withdrew their motion under C.P.L.R. § 5519(a)(5), as they are unwilling to sign any alteration agreement. Defendants also have moved to renew and reargue plaintiffs' prior motion for a default judgment. C.P.L.R. § 2221(d) and (e). For the reasons explained below, the court denies defendants' motion.

II. MANDATORY STAY

Defendants seek to stay this action pursuant to C.P.L.R. § 5519(a)(2), but have not filed an undertaking with the New York County Clerk, as the statute expressly requires. Schachter v. Sofasa LLC, 66 A.D.3d 526, 526 (1st Dep't 2009); CT Chemicals (U.S.A.) Inc. v. Vinmar Impex, Inc., 189 A.D.2d 727, 729 (1st Dep't 1993). Defendants further insist that this action is stayed automatically pursuant to C.P.L.R. § 1015, because defendant Henryson is now deceased. Plaintiffs agreed at oral argument, however, to discontinue all claims against Henryson, which allows this action to proceed against the remaining defendants. Therefore the court denies defendants' motion for a mandatory stay under C.P.L.R. §§ 1015 and 5519(a)(2).

III. DISCRETIONARY STAY

Under C.P.L.R. § 2201, the court "may grant a stay of proceedings . . . upon such terms as may be just." Similarly, C.P.L.R. § 5519(c) gives the court broad discretion to stay an action pending an appeal. In determining whether to impose a stay under either statute, the court weighs the merits of the appeal as well as any hardship or prejudice that defendants may suffer if the judgment is enforced. Da Silva v. Musso, 76 N.Y.2d 436, 443 n.4 (1990). The court also seeks to avoid inconsistent decisions and duplicative litigation and to promote judicial economy. 215 W. 84th St Owner LLC v. Ozsu, 209 A.D.3d 401, 401 (1st Dep't 2022); Uptown Healthcare Mgt., Inc. v. Rivkin Radler LLP, 116 A.D.3d 631, 631 (1st Dep't 2014); OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d 541, 541 (1st Dep't 2012).

Defendants ask the court to stay enforcement of the judgment until their appeal is decided, but do not point to any practical hardship or prejudice they may suffer from relocation of the HVAC unit absent a stay. Defendants insist that the unit's relocation may expose them to future liability to other cooperative shareholders, but defendants' position rests on their misinterpretation of plaintiffs' lease, which, contrary to defendants' contentions, expressly permits defendants to install plaintiffs' HVAC unit on the building's roof. NYSCEF Doc. 60 at 8. Plaintiffs' proposals also do not necessarily encroach on any

shareholders' rights, since the roof is not the only option plaintiffs presented. Finally, defendants' inability to identify a single shareholder that actually opposes the relocation of plaintiffs' HVAC unit undermines defendants' concern. Therefore defendants' claims of hardship and prejudice are merely speculative and thus fail to support the imposition of a discretionary stay. Even if defendants successfully appeal this court's judgment, moreover, a reversal would not require removal of the HVAC unit from the building's roof or facade, since plaintiffs do not propose to install their unit unlawfully.

Defendants also do not show how their default in answering may be excused, which also formed the basis for the court's previous decision that defendants must overcome to succeed in their appeal. Although defendants' attorney insists that the parties were discussing settlement, their negotiations did not toll defendants' time to answer the complaint. Neely v. Felicetti, 177 A.D.3d 484, 484 (1st Dep't 2019); Bank of N.Y. Mellon v. Daniels, 180 A.D.3d 738, 739 (2d Dep't 2020). Nor did defendants' attorney present a reasonable excuse that amounted to law office failure, since another attorney from the firm could have covered when the handling attorney was ill or engaged in depositions, and the firm could have requested an extension of time to answer and continued the settlement negotiations, rather than ceasing communication with plaintiffs. Pichardo-Garcia v.

Josephine's Spa Corp., 91 A.D.3d 413, 414 (1st Dep't 2012); Perez v. New York City Hous. Auth., 47 A.D.3d 505, 505 (1st Dep't 2008).

Finally, defendants utterly fail to explain why any of plaintiffs' proposals are unworkable, yet have taken no steps to comply with the court's prior order for six months, even though no stay has been in effect. Therefore the court denies defendants' motion for a discretionary stay. C.P.L.R. §§ 2201, 5519(c).

IV. RENEWAL

The additional evidence on which defendants rely for renewal of the prior motion for a default judgment, an unauthenticated notice from the New York City Fire Department, presents facts that are immaterial to the prior motion. Even were the court to consider this evidence as admissible, plaintiffs establish that the notice does not pertain to their HVAC unit, which sits inside a vault under the sidewalk, but pertains to a unit within the building's basement.

Plaintiffs also show that the notice does not constitute new evidence, since defendants received a similar notice in 2017 that provided the same information. The notice, if anything, indicates defendants' disregard of plaintiffs' concern that their HVAC unit's current location is unlawful, as the notice shows defendants' knowledge that permits were necessary and obtainable

for air conditioners in the basement, yet defendants failed to consider whether a similar permit was available for plaintiffs' HVAC unit under the sidewalk. Thus defendants' additional evidence would not change the outcome of the prior motion, as required to prevail on a motion for renewal. C.P.L.R. § 2221(e)(2); Kolchins v. Evolution Mkts., Inc., 182 A.D.3d 408, 410 (1st Dep't 2020); Eurotech Constr. Corp. v. Fischetti & Pesce, LLP, 169 A.D.3d 597, 597 (1st Dep't 2019); Redstone v. Herzer, 162 A.D.3d 583, 584 (2018); Jones v. City of New York, 146 A.D.3d 690, 691 (1st Dep't 2017).

V. REARGUMENT

The court denies defendants' motion for reargument, since defendants did not serve their motion until September 8, 2022, well past the 30 days after notice of entry of the prior order to move to reargue plaintiffs' prior motion. C.P.L.R. § 2221(d)(3); Ramirez v. 2917 Grand Concourse, 195 A.D.3d 477, 478 (1st Dep't 2021).

VI. CONCLUSION

For the reasons explained above, the court denies defendants' motion to stay this action. C.P.L.R. §§ 2201, 5519(a)(2) and (c). The court further denies defendants' motion to reargue and renew plaintiffs' motion for a default judgment. C.P.L.R. § 2221(d) and (e). Defendants shall comply with the order dated July 22, 2022, NYSCEF Doc. 60, within 90 days after

entry of this order, unless plaintiffs consent to additional time.

DATED: January 24, 2023



LUCY BILLINGS, J.S.C.

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