

Steinmetz v Fleishman

2023 NY Slip Op 31181(U)

April 13, 2023

Supreme Court, Kings County

Docket Number: Index No. 526291/2020

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9**

_____X

NAFTALI STEINMETZ,

Petitioner,

DECISION / ORDER

-against-

**Index No. 526291/2020
Motion Seq. No. 3
Date Submitted: 3/31/23**

**YAAKOV YOCHANAN FLEISHMAN
a/k/a JACOB FLEISHMAN
a/k/a YANKY FLEISHMAN,
a/k/a YAAKOV YOCHANAN FLEISCHMAN
a/k/a JACOB FLEISCHMAN
a/k/a YANKY FLEISCHMAN,**

Respondent.

_____X

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of non-party Toby Fleischman's motion to intervene and for related relief

Papers	NYSCEF Doc.
Order to Show Cause, Affirmation and Exhibits Annexed.....	<u>15-37</u>
Affirmation and Affidavit in Opposition and Exhibits Annexed.....	<u>38-50</u>
Reply	<u>51-54</u>

**Upon the foregoing cited papers, the Decision/Order on this motion is
as follows:**

The petitioner commenced this proceeding on December 31, 2020 pursuant to CPLR article 75 to confirm an arbitration award rendered in his favor against respondent by a Beit Din rabbinical court. Respondent appeared by counsel and did not oppose the petition. A judgment was entered on November 5, 2021 confirming the award, which was served by petitioner with notice of entry.

The substance of the matter was a dispute over a cooperative apartment (#9) in an HDFC, a limited equity cooperative, known as 104 Division Avenue HDFC and located at 104 Division Avenue in Brooklyn, NY. The rabbinical court determined that the ownership should be held by petitioner, and that respondent should sign any documents required to

effectuate the transfer of ownership to petitioner or any other person he designates. This court added language that “any transfer of the stock and lease is subject to the cooperative board’s approval,” and signed the judgment. The judgment was entered on November 5, 2021 [Doc 13]. This special proceeding was then finished.

On February 27, 2023, non-party Toby Fleischman, by counsel, filed a proposed order to show cause which stated that she was seeking an order “restoring this case to the motion calendar” and “allowing Toby Fleischman to intervene as a respondent in this action” and “vacating the decisions of this court” (presumably the decision and the judgment) and “staying all proceedings in the Kings County Landlord and Tenant Court under Inc. LT313353/22.” On the date the order to show cause was scheduled to be heard with regard to the stay requested, petitioner’s attorney e-filed a letter [Doc 33] asking the court to deny the stay of the eviction proceeding, and to permit him to be heard “in opposition to the motion” (regarding the application for a stay). Upon reading the affidavit provided by Ms. Toby Fleischman, Doc 18, the court learned that in 2018, before this special proceeding was commenced, she had commenced a divorce action against the respondent herein (Ind. 53848/18).

The court declined to sign the order to show cause, and stated thereon “This Article 75 proceeding, to confirm the award of a rabbinical court, resulted in a judgment in 2021. It is over. There is no basis to intervene. The sole owner of the apartment was defendant. His wife, now his former wife¹, was not a necessary party. If Mr. Fleischman violated the automatic stay provisions in the divorce proceeding, or otherwise committed any

¹ She is not his former wife, as they are not divorced. This was the court’s misunderstanding. In her affidavit, Ms. Fleischman states that they settled the divorce in 2021. Ordinarily, the proposed judgment must be submitted within 60 days of the Inquest before the matrimonial judge or the divorce action is deemed abandoned.

wrongdoing in the divorce proceeding, (Doc 24, which must be sealed, indicates he agreed to give her the apartment at issue after the judgment was entered based upon the rabbinical court decision) she may bring him back to court in the divorce proceeding. She cannot reopen this special proceeding.”

Ms. Fleischman’s attorney went to the Appellate Division, and they determined that the order to show cause should have been signed, and that it should be heard, by order dated March 6, 2023. This order states “the order to show cause is returnable on the 23rd day of March, 2023; and it is further, ORDERED that pending the hearing and determination of this motion, enforcement of the judgment dated November 1, 2021, including but not limited to the proceedings in Kings County Housing Court case #LT313353-22-KI, are stayed; and it is further, ORDERED that service of a copy of this order to show cause and the papers upon which it was made upon counsel for the petitioner and the respondent by filing on NYSCEF on or before March 7, 2023, shall be deemed sufficient service thereof.”

The gist of the papers from petitioner in opposition is that Ms. Fleischman has remarried, does not live in the apartment, and that she can be compensated by Mr. Fleischman with money so Mr. Steinmetz, the petitioner, should be permitted to keep the apartment.

On March 23, 2023, the attorneys for Ms. Fleischman and for petitioner appeared before the court, along with Ms. Fleischman, who was sworn in and gave testimony. She testified that she has resided in this cooperative apartment since 2008, and that she still resides there, contrary to the allegations in the petitioner’s papers. She testified that the parties are not divorced yet, and that Mr. Fleischman had agreed in their settlement agreement in the matrimonial action to transfer the apartment to her. She acknowledged

that Mr. Fleischman (apparently spelled with and without the “c”) was the sole owner of their marital residence, this cooperative apartment, and that he executed an assignment of his interest in the apartment simultaneously with the execution of the settlement agreement, which the parties were allocuted on, in open court, in conjunction with the “Inquest” which was held before Part 5J on December 20, 2021 in the matter *Toby Fleischman v Jacob Fleischman, Ind.* 53848/2018.

Ms. Fleischman’s attorney then stated that she has not submitted a proposed judgment of divorce based on the settlement, primarily because of the issue with the apartment. She averred that the apartment corporation has not removed Mr. Fleischman from title to the stock and lease for the apartment, in fact, as she notified counsel for the apartment corporation of the divorce agreement. The court asked the petitioner’s attorney to confirm this, and he did so. The apartment corporation has refused to put either Ms. Fleischman or Mr. Steinmetz in title to the coop apartment until there is a court order clarifying who should own it, presumably in the matrimonial action. Consequently, Mr. Steinmetz cannot prevail in the Housing Court action, as he does not own the apartment. He does have a judgment in this index number, however, and it would appear that, in light of these new issues which have arisen, enforcement of that judgment must now be stayed.

It also appears that despite the fact that the Fleischmans moved into the apartment in 2008, Mr. Fleischman did not become the owner until 2014. It was averred that he became the owner at Mr. Steinmetz’ request, as Mr. Steinmetz would not have qualified to purchase the apartment. It is alleged by Ms. Fleischman’s attorney [Doc 53 and statements in the record] that Mr. Steinmetz is a real estate investor, and owns several properties.

The fact that someone had to have paid something to someone at the closing in 2014 seems to have eluded counsel, as there is no evidence in these papers that the apartment would be adjudicated marital property. Did Mr. Fleischman use marital assets to pay the monthly expenses? Were there coop assessments that he paid? Is there a cooperative loan which is a lien on the shares for the apartment? Nothing is offered on this point. Ms. Fleischman's attorney simply has concluded that if it was in Mr. Fleischman's name, it had to be marital property.

At the conclusion of the hearing/oral argument, counsel for Ms. Fleischman requested a week to prepare and submit a memorandum of law. Counsel has done so, and it is at Document 51. Petitioner's memo of law is at Document 50. Mr. Fleischman has not submitted any papers nor has he appeared in connection with this motion.

The court makes the following findings. First, Mr. Steinmetz cannot prevail in Housing Court, as he does not have proof that he owns the apartment, which would be a stock certificate and a proprietary lease with his name on it, and he should discontinue the Housing Court case. Not only was it improperly brought, it is possibly harassment of Ms. Fleischman.

Second, this special proceeding is over. The court's confirming the arbitration award was a ministerial act, both because of the wording of the statute (CPLR 7510) and because it was not opposed by Mr. Fleischman (see *Matter of Bernstein Family Ltd. P'ship v Sovereign Partners, L.P.*, 66 AD3d 1 [1st Dept 2009]). However, enforcement of the judgment must be stayed because of the apparent misrepresentation by Mr. Fleischman in his matrimonial action, where he represented that the coop apartment was the "marital residence" and therefore implied that it was marital property. Further, he signed an assignment of all of his right, title and interest in the apartment to Ms. Fleischman after the

judgment was entered in this special proceeding, in conjunction with the settlement agreement presented to the matrimonial judge. If in fact the apartment is determined to be marital property, his failure to oppose the petition in the instant matter can be construed by the matrimonial judge to have been a violation of the automatic orders statute.²

In conclusion, the branch of the order to show cause which seeks an order “restoring this case to the motion calendar” is denied as it is now academic; the branch of the order to show cause which seeks an order permitting Toby Fleischman to “intervene as a respondent in this action” [sic] is denied; the branch of the order to show cause which seeks an order “vacating the decisions of this court filed 8/18/21 and 11/5/21 pursuant to CPLR 5015” is denied; and the branch of the order to show cause for an order staying all proceedings in the Landlord and Tenant Court is denied.

Under the rubric of the branch of the order to show cause which seeks “such other relief as this court may deem just and proper,”

IT IS ORDERED that any enforcement of the judgment that was entered in this special proceeding on November 5, 2021 is **stayed** pending further order of this court. The apartment corporation, 104 Division Avenue HDFC, is **ORDERED** to keep the stock and lease in the name of Jacob Fleischman [Doc 25] pending further order of the court.

The matrimonial court must determine whether the cooperative apartment at issue, apartment #9 at 104 Division Avenue, Brooklyn, NY, is marital property. If it is determined

² Domestic Relations Law § 236 [B] [2] [b]. In 2009, the New York Legislature amended the Domestic Relations Law to provide, upon commencement of a divorce action, for automatic orders restraining the parties from transferring or disposing of marital assets, without written consent of the other party or consent of the court. As described in a letter from the Chair of the Assembly Judiciary Committee to the Governor, the automatic orders were intended to address the hardship to one spouse caused by unilateral dissipation of marital assets upon commencement of divorce proceedings (see *El-Dehdan v El-Dehdan*, 26 NY3d 19 [2015]).

to be marital property, Ms. Fleishman may return to this court to seek an order permitting her to intervene for the sole purpose of moving to vacate the judgment entered herein, and to vacate the decision issued on the petition which confirmed the arbitration award. If the apartment is determined to not be marital property, Mr. Steinmetz may return to this court to seek an order lifting the stay of enforcement; and it is further

ORDERED that while the stay is pending, Ms. Fleischman shall be solely responsible for any maintenance fees or assessments due to the apartment corporation. This does not of course prohibit the judge in the matrimonial action from directing that Mr. Fleischman must pay Ms. Fleischman child support or spousal maintenance or *pendente lite* payments. It means that Mr. Steinmetz is not obligated to make these payments to the apartment corporation while he is not the owner of the apartment and has no rights to sell it or rent it; and it is further

ORDERED that the temporary stay of the Housing Court action granted by the Appellate Division with the Order to Show Cause dated March 6, 2023 is hereby vacated; and it is further

ORDERED that counsel for Ms. Fleischman shall, within 10 days of the date of the decision and order on this motion, serve a copy of this order with notice of entry on petitioner's attorney, respondent's attorney, and the apartment corporation or its attorneys.

All requests for relief not specifically addressed herein are **DENIED**

This shall constitute the decision and order of the court.

Dated: April 13, 2023

ENTER:



Hon. Debra Silber, J.S.C