

Javeed v Singh
2023 NY Slip Op 31561(U)
May 2, 2023
Supreme Court, Kings County
Docket Number: Index No. 526110/2022
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 526110/2022
Motion Date: April 3, 2023
Mot. Seq. No.:1

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ARSLAN JAVEED, father and natural guardian A.A., an
infant under the age of 14 years and ARSLAN JAVEED,
individually,

Plaintiffs,

-against-

DECISION/ORDER

PRITPAL SINGH, SATPAL SINGH, PARAMJIT SINGH,

Defendants.

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The following papers, which are e-filed with NYCEF as items 7-17, 26-36, were read on
this motion:

The plaintiffs move by Order to Show Cause for an order granting the following relief

1. Pursuant to CPLR §6301, issuing a temporary restraining order and preliminary injunction to prevent Defendants from disposing of, selling, assigning, encumbering and/or otherwise transferring possession of the real property located at 4545 Kings Highway, Brooklyn, NY 11234, pending the hearing and determination of this motion;
2. Pursuant to CPLR §6301, issuing a temporary restraining order and preliminary injunction to prevent Defendants from disposing of, selling, assigning, encumbering and/or otherwise transferring possession of the real property located at 4545 Kings Highway, Brooklyn, NY 11234, during the pendency of this action;
3. Pursuant to CPLR §6301, issuing a temporary restraining order and preliminary injunction to prevent Defendants from disposing of, selling, assigning, encumbering and/or otherwise transferring possession of any other real property owned by Pritpal Singh and/or Paramjit Singh during the pendency of this motion;
4. Pursuant to CPLR §6301, issuing a temporary restraining order and preliminary injunction to prevent Defendants from disposing of, selling, assigning, encumbering and/or otherwise transferring possession of any other real

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2023 MAY -4 AM 9:19

property owned by Pritpal Singh and/or Paramjit Singh, during the pendency of this action, and

5. Granting such other and further relief as this Court may seem just and proper. No prior application for the relief sought herein has been made to this Court or any Court.

Background:

The plaintiffs commenced the instant action seeking to recover money damages for severe, disabling, and disfiguring injuries they claim the suffered as a result of a fire that occurred on June 5, 2022, in their first-floor apartment of a residential building located at 4545 Kings Highway, Brooklyn, New York. Plaintiffs' counsel advises that the wife of the plaintiff, Arslan Javeed, who is also the infant plaintiff's mother, perished in the fire and her Estate will be added as a plaintiff in this action once an administrator is appointed. The plaintiffs allege the fire was due to defendants' negligence.

At the time of the fire, defendant Pritpal Singh was the owner of the building having acquired title from defendants Satpal Singh and Pritpal by Quitclaim Deed dated September 22, 2021. On or about June 28, 2022, Otsego Mutual Fire Insurance Company ("Otsego"), defendant Singh's liability carrier disclaimed coverage for the occurrence claiming that the policy was fraudulently procured based upon a material misrepresentation as to the number of rental units in the property. Otsego maintained that the property is a three family, instead of two family, as the defendant allegedly claimed in the application for coverage.

Although there was a 15-year mortgage on the property at the time of the fire, with a due date of October 1, 2036, following the fire, Pritpal Singh, satisfied the mortgage. A satisfaction of mortgage was filed as of October 3, 2022. The plaintiffs claim that this constitutes proof that defendant Singh is intending to convey the property in the near future.

The plaintiff now seeks a preliminary injunction enjoining the defendant from transferring the property in question, or any other property that he owns, to preserve his assets as security for a potential monetary judgment.

CPLR 6301, in relevant part, provides:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff . . . (*emphasis added*).

In *Buckley v. McAteer*, 210 A.D.3d 1044, 1045, 179 N.Y.S.3d 329, 331 (2nd Dep't 2022), citing Siegel & Connors, N.Y. Prac § 327 [6th ed June 2022 Update]), the Court held that "[s]ince CPLR 6301 'requires a specific 'subject matter,' an action for money only does not qualify.'" The Court in *Buckley*, *supra*, thus held that that plaintiff in that action, who had not secured a judgment against the defendants, could not obtain a preliminary injunction pursuant to CPLR 6301 "to preserve assets as security for a potential monetary judgment even if the evidence show[ed] that [the defendants] intend[ed] to frustrate any judgment by making it uncollectible" (*Buckley*, 210 A.D.3d at 1045, 179 N.Y.S.3d at 332 [citing *Fatima v. Twenty Seven–Twenty Four Realty Corp.*, 65 A.D.3d 1079, 1079, 885 N.Y.S.2d 224; *see Credit Agricole Indosuez v. Rossiyskiy Kredit Bank*, 94 N.Y.2d 541, 708 N.Y.S.2d 26, 729 N.E.2d 683]; *see also McAteer v. McAteer*, 210 A.D.3d 1068, 1069, 177 N.Y.S.3d 488, 489 (2022)).

In sum, since the plaintiffs are only seeking monetary damages and have no legal interest in the subject building, or in any other building that may be owned by the defendants, they are not entitled to the preliminary injunction.

Accordingly, it is hereby

ORDRED that the motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: May 2, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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