

Huiping Dong v Howe

2023 NY Slip Op 33717(U)

October 12, 2023

Supreme Court, New York County

Docket Number: Index No. 651906/2019

Judge: Louis L. Nock

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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:	<u>HON. LOUIS L. NOCK</u>	PART	38M
	<i>Justice</i>		
-----X		INDEX NO.	<u>651906/2019</u>
HUIPING DONG,		MOTION DATE	<u>04/25/2023, 05/04/2023</u>
Plaintiff,		MOTION SEQ. NO.	<u>007 008</u>
- v -			
TINA YU HOWE,		DECISION + ORDER ON MOTION	
Defendant.			
-----X			

The following e-filed documents, listed by NYSCEF document numbers (Motion 007) 112, 113, 114, 115, 116, 117, 118, and 133 were read on this motion for A STAY.

The following e-filed documents, listed by NYSCEF document numbers (Motion 008) 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 134, and 135 were read on this motion for A STAY.

LOUIS L. NOCK, J.

Upon the foregoing documents, the motions by defendant to stay enforcement of the judgment entered in favor of plaintiff pending an appeal (Mot. Seq. No. 007), and by nonparty Ying Chen (“Chen”) for a limited stay of a Sheriff’s sale of particular real property in satisfaction of the judgment (Mot. Seq. No. 008), are consolidated for disposition.

On July 19, 2022, the Clerk of the Court entered judgment in favor of plaintiff and against defendant in the amount of \$828,142.54 (judgment, NYSCEF Doc. No. 83). A subsequent motion to vacate the court’s decision granting summary judgment to plaintiff was made and denied on January 13, 2023 (decision and order, NYSCEF Doc. No. 109), and defendant filed a notice of appeal the same day (notice of appeal, NYSCEF Doc. No. 111). Subsequently, the Sheriff of the City of New York served on defendant a notice of Sheriff’s Sale of the property located at 1018 38th Street, Brooklyn, New York 11219, indexed in the New

York City Registrar's office as Block 5288, Lot 14, in satisfaction of the judgment, said sale to be held on May 10, 2023 (NYSCEF Doc. No. 116). The instant applications followed.

Subsequent to the briefing and hearing of the instant motions, the Appellate Division, First Department, decided defendant's appeal and affirmed this court's order denying the motion to vacate the summary judgment decision (*Dong v Howe*, -- AD3d --, 2023 NY Slip Op 04716 [1st Dept 2023]). Accordingly, defendant's motion for a stay pending appeal must be dismissed as moot.

Chen's motion, however, does not rely on a pending appeal. As set forth in the papers filed in support of the motion, Chen has sued defendant in an action captioned *Zheng et al. v Howe, et al.*, Index No. 516312/2021, pending in Supreme Court, Kings County. During the pendency of that action, defendant herein is alleged to have surreptitiously, and in violation of an order of the court, conveyed the property that is the subject of the Sheriff's sale from an LLC to herself (Chen aff., NYSCEF Doc. No. 120, ¶ 13). The issue of the ownership of the property remains to be decided in the Kings County action.

"Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just" (CPLR 2201). Whether to grant a stay is committed to the sound discretion of the court (*Miller v New York City Hous. Auth.*, 171 AD3d 507, 508 [1st Dept 2019]). "A stay of one action pending the outcome of another is appropriate only where the decision in one will determine all the questions in the other, and where the judgment in one trial will dispose of the controversy in both actions" (*Eisner v Goldberger*, 28 AD3d 354, 354 [1st Dept 2006] [internal citation omitted]). Here, the request for a stay is limited to the property subject to the Sheriff's Sale notice, and otherwise does not seek to impede enforcement of the judgment. The Kings County action will establish

ownership of the subject property, which will determine whether or not the Sheriff may auction it off in satisfaction of the judgment. Were this court to allow the sale to go forward, Chen would be irreparably harmed, in that a judgment in the Kings County action in Chen's favor would be for naught if the property has been sold in the interim (*Soldiers', Sailors', Marines' and Airmen's Club, Inc. v Carlton Regency Corp.*, 128 AD3d 593, 594 [1st Dept 2015] ["The court did not improvidently exercise its discretion in issuing the stay pending resolution of this litigation concerning the parties' rights under the various agreements, in light of the irreparable harm that eviction proceedings, and certainly eviction, would cause the Club and the uncertainty of the parties' rights"]). In addition, the court notes that plaintiff, the judgment creditor, does not oppose such a limited stay (Yudin affirmation, NYSCEF Doc. No. 135, ¶ 3).

Accordingly, it is hereby

ORDERED that defendant's motion for a stay of enforcement of the judgment in this action pending appeal (Mot. Seq. No. 007) is denied as moot; and it is further

ORDERED that nonparty Ying Chen's motion for a limited stay of enforcement (Mot. Seq. No. 008) is granted to the extent of staying the Sheriff's Sale/auction of that certain real property known as 1018 38th Street, Brooklyn, New York 11219, indexed in the New York City Registrar's office as Block 5288, Lot 14, pursuant to the judgment entered herein, pending a final determination of *Zheng et al. v Howe, et al.*, Index No. 516312/2021, pending before Supreme Court, Kings County; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this limited stay upon a final determination of *Zheng et al. v Howe, et al.*, Index No. 516312/2021, pending before Supreme Court, Kings County; and it is further

ORDERED that the nonparty movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office within ten days from entry and the Clerk shall mark the Sheriff’s Sale stayed as herein provided; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office 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).

This constitutes the decision and order of the court.

ENTER:



<u>10/12/2023</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE