

Good Gateway, LLC v Thakkar
2023 NY Slip Op 33926(U)
November 2, 2023
Supreme Court, New York County
Docket Number: Index No. 160660/2016
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

GOOD GATEWAY, LLC, SEG GATEWAY, LLC,

Plaintiffs,

- v -

ROHAN THAKKAR, SOLANI C. THAKKAR, CHITTRANJAN
THAKKAR, SHOPS AT NEW HOPE, LLC,

Defendants.

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INDEX NO. 160660/2016

MOTION DATE 07/28/2023

MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT .

In this fraudulent transfer action, a temporary receiver was appointed by decision and order dated July 29, 2020 (NYSCEF Doc No 160) to among other things, lease, collect rent, clear title, market, and sell condominium unit 32E at 400 Fifth Avenue, New York, NY owned by defendants. The temporary receiver now moves to modify the undertaking order dated December 19, 2022 (NYSCEF Doc No 336) claiming that the monies then transferred to him are no longer sufficient to perform his duties as receiver.

DISCUSSION

The temporary receiver requests that the undertaking order be modified. The December 19, 2022 undertaking order requires defendants to:

- (a) [post] a bond or cash in an amount of \$500,000, to protect the Receiver's estate from waste by any diminution in value of the unit . . . ; and
- (b) as a condition for the continuation of the stay upon execution, that Defendants pay the amounts of (i) \$40,000 to the Temporary Receiver within five (5) days of the issuance of an order setting the undertaking, to enable the Temporary Receiver to pay the 2023 real property taxes . . . ; (ii) \$250,723.89 to the Temporary Receiver

within five (5) days of the issuance of an order setting the undertaking, to enable the Temporary Receiver to cure the deficiencies in the mortgage (id.); and (iii) \$14,000 to the Temporary Receiver on or before the first day of each month, to enable the Temporary Receiver to pay the monthly carrying costs.

(Order Post Undertaking, NYSCEF Doc No 336)

The temporary receiver now requests that the undertaking order be modified by:

- (a) increasing the monthly undertaking amount to no less than \$23,000 to cover the monthly payments owed on the mortgage and to the homeowners' association; and
- (b) requiring the payment of an additional \$20,000 on or before December 1, 2023 to cover the real estate taxes; and
- (c) granting such other and further relief as the Court deems just and proper.

(Affirmation of Jeffrey A. Wurst, NYSCEF Doc No 346)

In making this request the temporary receiver specifies several increases in expenses that he has incurred while managing the property (*Id.*). First, the receiver points to the increase in the amount that he was required to pay Deutsche Bank on January 10, 2023 (Wurst Reply Affirmation in Further Support, NYSCEF Doc No 356 ¶ 4). The receiver paid Deutsche Bank a \$206,698.18. The receiver argues that this indicates an increase in the amount that was owed when the original order was issued which remains unaccounted for. The receiver points out that the amount owed to Deutsche Bank on December 19, 2022 was \$196,904.92. (*Id.*, see also Exhibit A, NYSCEF Doc No 333 [email showing confirmation of \$196,904.92 figure]). It is true that the lump sum payment of \$250,723.89 was calculated by combining the \$196,904.92 owed in outstanding mortgage payments through December 2022 and the \$53,818.97 owed in real estate taxes through December 2022 (*Id.*) However, there is no unaccounted discrepancy between the \$206,698.18 payment to Deutsche Bank and the \$196,904.92 figure.

The reason for the discrepancy in these figures is revealed when the difference between the figures is calculated. The \$206,698.18 payment on January 10, 2023 represents the \$196,904.92 amount in arrears through December 2022 plus the January 2023 mortgage payment due in the amount of \$9,793.26. Indeed, the defendants accounted for this difference in their original payment to the receiver on December 22, 2022 as indicated in the receiver's first report (First Interim Report of Temporary Receiver, NYSCEF Doc No 343). On December 22, 2022 plaintiffs made a payment of lump sum payment of \$304,723.89 to the receiver (*Id.*). This was the amount due under the December 19, 2022 undertaking order of \$40,000 for real estate taxes, \$250,723.89 in delinquent mortgage payments, plus \$14,000 representing January 2023's carrying costs.

Therefore, there is no discrepancy between the amount that was owed to Deutsche Bank and the amounts that were paid by the defendants. Consequently, the receiver is not entitled to an increase in payment regarding this payment.

In further support of his motion to amend the undertaking order the receiver notes that the property's monthly carrying charges, comprised of both the mortgage payment and the common charges made to the Homeowner's Association have increased "from nearly \$12,500.00 in December 2022 ... to over \$17,000.00 in April 2023" (Wurst Reply Affirmation in Further Support, NYSCEF Doc No 356 ¶ 5). Indeed, the monthly payments made to Deutsche Bank starting in April 2023 were \$14,278.17 compared to monthly payments of \$9,793.26 in the preceding months (First Interim Report of Temporary Receiver, NYSCEF Doc No 343).

However, as defendants point out and the receiver admits, this monthly increase of \$4,44.91 was due to an agreement between Deutsche Bank and the receiver to "term out" the \$53,818.97 in real estate taxes which defendants owed on the property when the undertaking

order was issued (Affirmation of Jeffrey A. Wurst, NYSCEF Doc No 346 ¶ 3). This \$53,818.97 was already accounted for in the original undertaking order when the court granted the lump payment of \$250,723.89 to be made to the receiver (*see* Wurst Affirmation in Response to Fix Amount of Understanding, NYSCEF Doc No 332 ¶ 4 [containing a breakdown of the requested \$250,723.89 including the \$53,818.97 owed to cover the real estate taxes which defendants owed to Deutsche Bank]).

Since defendants have already made this payment in compliance with the original undertaking order the increase in monthly payments to Deutsche Bank have already been accounted for in the lump sum payment. The monies the receiver currently holds were earmarked to make this payment and therefore modification of the original order would be improper under these circumstances.

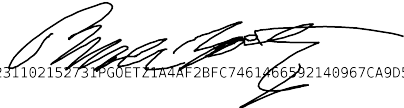
The receiver also argues that there has been an increase in the monthly payments made to the homeowner's association. It is true that the monthly payment to the homeowner's association was \$2,645.94 at the time of the undertaking order and has subsequently increased to \$2,763.24 (*Id.* at ¶ 3; *see also* Exhibit 2, NYSCEF Doc No 348). However, this increase was anticipated and was accounted for in the original undertaking order. In the receiver's affirmation requesting monthly \$14,000 payments, the receiver attributed \$3,000 of this \$14,000 to be to monthly payments made to the homeowner's association (Wurst Affirmation in Response to Fix Amount of Understanding, NYSCEF Doc No 332 ¶ 3). This amount exceeds the current monthly charges being paid to the homeowner's association and thus it would be improper to modify the original order under these circumstances.

The receiver further argues that "the 5% interest rate on the mortgage will be adjusted in October 2023, which will further increase the amount of the monthly mortgage payments" and

thus the monthly payments from defendants should be modified to cover the expected increase in costs (Affirmation of Jeffrey A. Wurst. NYSCEF Doc No 346 ¶ 3). However, this increase was also anticipated in the original order. “Accordingly, inasmuch as interest rates continue to rise, it is respectfully requested that the monthly amount attributable to interest and other amounts payable to the bank be set at \$10,000” (Wurst Affirmation in Response to Fix Amount of Understanding, NYSCEF Doc No 332 ¶ 5). The undertaking order granted monthly payments of \$14,000 which accounts for the \$3,000 attributable to charges to the homeowner’s association, \$10,000 attributable to mortgage payments, plus and additional \$1,000 per month for other charges which the receiver may encounter. However, even if these potential increases were not accounted for the receiver’s reliance on a predicted increase in mortgage rates is premature at this time. If the mortgage rate does rise to an amount which exceeds the allotted amount for monthly charges in the original undertaking order, then the receiver is free to move to amend the order at that time.

Accordingly, it is:

ORDERED the motion is denied in its entirety.


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11/2/2023

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

☒

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

PAUL A. GOETZ, J.S.C.