Burns St. Owners Corp. v Todorovich
2023 NY Slip Op 35122(U)
December 1, 2023
Supreme Court, Queens County
Docket Number: Index No. 716682/2022
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS** IAS PART 4
Justice

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BURNS STREET OWNERS CORP.,

Plaintiff(s),

-against-

STEVEN TODOROVICH, ANA TODOROVICH, JOHN DOE, and JANE DOE. Names of Respondents, John Doe and Jane Doe are fictitious and unknown to Petitioner. The persons intended being those in possession of the premises herein described.

Defendant(s).

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Index No.: 716682/2022

Motion Date: : September 5, 2023

Motion Cal. No.:

Motion Seq. No.: 2

The following papers numbered EF 32-42 read on this motion by plaintiff; (1) pursuant to CPLR §6201 for an Order of Attachment against the defendants; and (2) pursuant to CPLR §6311 enjoining and restraining the defendants, their agents, servants, employees, and all persons acting on their behalf from assigning, disposing of, encumbering, or secreting property including, without limitation, the proceeds of the sale of the property located at 712 Elizabeth St, Utica, New York 13501 (the "Utica Property") and selling or transferring their real property located at 116 Ruffed Grouse Rd, Bushkill, Pennsylvania 18324 (the "Pennsylvania Property"); and for such further and other relief as this to Court may be deemed just, proper and equitable.

	PAPERS NUMBERED
Notice of Motion Affid.-Exhibits...............................	EF 32-42

Upon the foregoing papers, it is ordered, that this motion is determined as follows:

Plaintiff filed this motion seeking an Order pursuant to CPLR §6201 for an Order of Attachment against the defendants; and pursuant to CPLR §6311 enjoining and restraining the defendants, the agents, servants, employees, and all persons acting on their behalf from assigning, disposing of, encumbering, or secreting property including, without limitation, the proceeds of the sale of their property located at 712 Elizabeth St, Utica, New York 13501 (the "Utica Property"); and selling or transferring their real property located at 116 Ruffed Grouse Rd, Bushkill, Pennsylvania 18324 (the "Pennsylvania Property"). In support of plaintiff's motion, plaintiff submits an attorney affirmation, an affidavit from Mr. Craig Bonheur, a copy of the Summons and Complaint, a copy of the deed for real property located in 712 Elizabeth St, Utica, New York 13501; and a copy of deed for real property located 116 Ruffed Grouse Rd, Bushkill, Pennsylvania 18324.

A preliminary injunction may not be obtained to preserve assets as security for a potential monetary judgment even if the evidence shows that a party intends to frustrate any judgment by making it uncollectible (*Fatima v Twenty Seven-Twenty Four Realty Corp.*, 65 AD3d 1079 [2009]; *Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 545 [2000]; *Dinner Club Corp. v Hamlet on Olde Oyster Bay Homeowners Assn., Inc.*, 21 AD3d 777, 778 [2005]). Thus, the branch of plaintiff's motion seeking a preliminary injunction or restraining order pursuant to CPLR §6311 is denied.

Plaintiff also seeks an Order pursuant to CPLR §6201 for an Order of attachment. §6201 reads in relevant part:

> "An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:
>
> 1. the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state; or
>
> 2. the defendant resides or is domiciled in the state and cannot be personally served despite diligent efforts to do so; or
>
> 3. the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts; or
>
> 4. the action is brought by the victim or the representative of the victim of a crime, as defined in subdivision six of section six hundred twenty-one of the executive law, against the person or the legal representative or assignee of the person convicted of

> committing such crime and seeks to recover damages sustained as a result of such crime pursuant to section six hundred thirty-two-a of the executive law; or
>
> 5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53."

In addition, CPLR §6212(a) provides that, "for an order of attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in [CPLR] section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff." *651 Bay St., LLC v Discenza,* 189 AD3d 952, 953 [2020]). "Attachment is considered a harsh remedy and CPLR 6201 is strictly construed in favor of those against whom it may be employed" (see *Grafstein v Schwartz*, 100 AD3d 699, 699 [2012]).

Here, plaintiff contends that while having knowledge of these proceedings, defendants have refused to answer in this proceeding while disposing of one of the two known assets to be in their possession. Plaintiff further contends that if defendants were to complete a sale of the second asset, it would make recovery against defendants impossible for plaintiff to recover on a potential money judgment. Plaintiff submits an affirmation from his attorney and affidavit from Mr. Craig Bonheur an authorized agent of plaintiff. Mr. Bonheur states in his affidavit that "there is reason to believe that Defendants are currently attempting to circumvent the legal process using the corporate form and attempting to dispose of assets before a judgment can be rendered against them. On March 9, 2023, Defendant Steven Todorovic transferred the title of the Utica property, in a blatant attempt to dispose of assets before a judgment can be rendered in Plaintiff's favor. Upon information and belief, Defendants continue to own their Pennsylvania Property."

This Court finds that plaintiff's contention that the defendants are attempting to defraud creditors or frustrate enforcement of a possible judgment against them is devoid of evidentiary support (*see 651 Bay St., LLC v Discenza,* 189 AD3d 952 [2020]). "The fact that the affidavits in support of an attachment contain allegations raising a suspicion of an intent to defraud is not enough" *(id*). It must appear that such fraudulent intent really existed in the defendant's mind and the mere removal, assignment or other disposition of property is not grounds for attachment" (*id*). Consequently, the branch of plaintiff's motion seeking an Order pursuant to CPLR § 6201 is denied.

Accordingly, the plaintiff's motion is denied in its entirety. The temporary restraining order and stay set forth in the Order of the Court dated September 1, 2023, is hereby vacated.

Dated: 12/1/23

MARGUERITE A. GRAYS
J.S.C.

FILED
12/4/2023 TA
COUNTY CLERK
QUEENS COUNTY