

**Toorak Capital Partners, LLC v XYZ 42 Van Buren
LLC**

2024 NY Slip Op 31647(U)

May 9, 2024

Supreme Court, Kings County

Docket Number: Index No. 520043/2020

Judge: Leon Ruchelsman

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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 : CIVIL TERM: COMMERCIAL PART 8

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TOORAK CAPITAL PARTNERS, LLC,

Plaintiff,

Decision and order

- against -

Index No. 520043/2020

XYZ 42 VAN BUREN LLC, AARON JOHNSON, THE
CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD,
AND JOHN DOE NO I THROUGH JOHN DOE NO. XXX,
inclusive, the last thirty names being fictitious
and unknown to plaintiff, the persons or parties
intended being the tenants, occupants, persons,
or corporations, if any, having or claiming an
interest in or lien upon the premises described
in the complaint,

Defendants,

May 9, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendants have moved pursuant to CPLR §3211 seeking to dismiss the complaint or alternatively to stay the action pursuant to §2201. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

In July 2017 the defendant Aaron Johnson and entities he owns entered into an agreement with Cassaforte Limited whereby Cassaforte would lend money to fund various construction and development projects including one located at 42 Van Buren Street in Kings County. In an action commenced in New York Cassaforte alleged the defendants breached various agreements by refinancing the mortgage on the property without Cassaforte's prior approval. That action alleges the mortgage is unenforceable since the

entity that participated in the refinance, Sharestates Investments DACL, LLC, knew the refinance required the approval of Cassaforte. That entity assigned the mortgage to the plaintiff and the plaintiff was added as a defendant in the New York action. In this action the plaintiff asserts the defendants have defaulted under the mortgage and seek a foreclosure. On November 28, 2023 the First Department rejected the argument the mortgage was void since Sharestates Investments DACL, LLC knew that Cassaforte's consent was required. The court held that since Cassaforte received the benefits of the mortgage they were estopped from arguing they were invalid (see, Cassaforte Limited v. Pourtavoosi, 221 AD3d 525, 201 NYS3d 9 [1st Dept., 2023]).

The plaintiff has now moved seeking to lift a stay imposed pending the resolution of the New York action. The defendants oppose the motion arguing an application has been filed with the Court of Appeals and thus the stay should remain until the matter is fully resolved.

Conclusions of Law

CPLR §2201 permits a court to stay proceedings "in a proper case, upon such terms as may be just" (id).

In Assenzio v. A.O. Smith Water Products, 2015 WL 5283301 [Supreme Court New York County 2015] the court held that it was appropriate to stay an action while waiting for an appellate determination in a different case that would have a "significant

impact" in the current case. Thus, in Islay v. Garde, 2022 WL 17475676 [Supreme Court New York County 2022] the court stayed the proceedings while waiting for a decision in another case pending before the Court of Appeals. The court explained that whether the arguments before the Court of Appeals was imminent was not dispositive. Rather, the key issue was whether that determination would have a significant impact upon the stayed action. Again, in Castillo v. Saheet Construction Corp., 2022 WL 6409689 [Supreme Court Queens County 2022] the court noted that staying a proceeding while waiting for the Court of Appeals to render a decision in another matter that would impact the current litigation should be done sparingly and only when the decision is imminent. The court in Castillo (supra) stayed the action because the Court of Appeals decision would bind the parties in the present litigation.

Therefore, there is no question the appeal in the matter of Cassaforte Limited v. Pourtavoosi will have a significant impact upon this lawsuit. Indeed, the importance of that decision in this lawsuit is readily apparent. This is particularly true whereby if the Court of Appeals declines to hear the case then all appeals have been exhausted and any stay can be lifted.

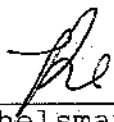
The defendants also argue that a stay should be granted on the grounds they intend to file a third amended

complaint seeking to declare the mortgage invalid based upon reasons other than those noted by the First Department. The court cannot stay any proceedings based upon intentions of parties. However, there can be little dispute that action and this action are substantially related to the extent they really should be combined in one lawsuit (see, CPLR §3211(a)(4) Aurora Loan Services LLC v. Reid, 132 AD3d 778, 17 NYS3d 894 [2d Dept., 2015]). Thus, in the event the Court of Appeals declines to hear the case, mere counterclaims in this action seem more appropriate. As noted, these issues are not before the court and the stay is solely based on the pending motion before the Court of Appeals. Therefore, the motion seeking to lift the stay is denied at this time.

So ordered.

ENTER:

DATED: May 9, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC