

Metropolitan Lofts of NY, LLC v JZ Capital Partners

2024 NY Slip Op 34688(U)

November 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 521103/2020

Judge: Heela D. Capell

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of November, 2024.

P R E S E N T:
HON. HEELA D. CAPELL,

Justice.

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METROPOLITAN LOFTS OF NY, LLC,

Index No.: 521103/2020

Plaintiff,

Mot. Seq. No.: 16-19

-against-

Cal. No.: 30-33

JZ CAPITAL PARTNERS, BEN BERNSTEIN,
BEN STOKES, REDSKY JZ ROEBLING LLC,
ROEBLING INVESTORS, LLC, ROEBLING
HOLDINGS, LLC, REDSKY CAPITAL LLC,
FIRST AMERICAN TITLE INSURANCE
COMPANY, US REAL ESTATE CREDIT
HOLDINGS III-A, LP, and US REAL ESTATE
CREDIT HOLDINGS III-a GP LIMITED,

Defendants.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Order to Show Cause and Affidavits (Affirmations) Annexed	350-359, 361-384, 386-388, 391-403
Opposing Affidavits/Answer (Affirmations)	360, 385, 404-432
Affidavits/ Affirmations in Reply	433-435

In this action, Metropolitan Lofts of NY, LLC, (“Plaintiff”) seeks monetary damages and a constructive trust with respect to a certain parcel of real property known as 143-157 Roebling Street a/k/a 1-19 Hope Street and 320-336 Metropolitan Avenue, Brooklyn, New York, (“Subject Premises”). Plaintiff’s claims arise out of a contract to purchase the Subject Premises from non-party Metroeb Realty 1, LLC, who ultimately sold the Subject Premises to defendant RedSky JZ

Roebing, LLC. This case has an extensive procedural history and the parties are also litigating an action under Index No. 503441/2012 entitled *Metropolitan Lofts of NY, LLC v Metroeb Realty I, LLC et al.* The parties have currently filed at least 19 moving papers in this case. This decision addresses Motion Sequence numbers 16 through 19.

In motion Sequence numbers 18 and 19, Plaintiff seeks a preliminary injunction barring the transfer, encumbrance or disposal of the Subject Premises pending the outcome of the pending traverse hearing in this case. A preliminary injunction is appropriate where “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” (CPLR 6301). The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). “The decision as to whether to grant or deny a preliminary injunction rests in the sound discretion of the court hearing the motion” (*Chana v Machon Chana Women’s Inst., Inc.*, 162 AD3d 635 [2d Dept 2018]).

On November 1, 2022, Judge Velasquez granted a motion to dismiss interposed by US Real Estate Credit Holding III-A, LP and US Real Estate Credit Holding III-A GP Limited (“Lender Defendants”) and as such they are no longer parties to this case (NY St Cts Elec Filing [NYSCEF] Doc No. 161). Therefore, this court lacks jurisdiction to award a preliminary injunction as against them. Furthermore, defendant RedSky JZ Roebing, LLC transferred the Subject Premises to 143 Roebing Pref Investor, LLC, a non-party, and as such no longer owns the Subject Premises (NYSCEF Doc No. 431). Accordingly, RedSky JZ Roebing, LLC argues that a preliminary injunction would be moot against them and related defendants Benjamin Bernstein, Benjamin Stokes, Roebing Investors, LLC, Roebing Holdings, LLC, RedSky

Capital, LLC, and JZ Capital Partners Limited (collectively “Former Owner Defendants”). In their reply papers, Plaintiff does not dispute this allegation.

Furthermore, even if this court were able to award a preliminary injunction against these remaining Former Owner Defendants, Plaintiff is unable to show a likelihood of success on the merits of the one equitable claim asserted against these parties, for a constructive trust. On December 9, 2020, the Second Department ruled that RedSky Capital, LLC, was a bona fide purchaser for value entitled to rely upon the protections of CPLR 5523 and Plaintiff would have to content itself with “other remedies” (*Metro. Lofts of NY, LLC v Metroeb Realty I, LLC*, 189 AD3d 1024 [2d Dept 2020]). Furthermore, in the instant case, Judge Velasquez dismissed the constructive trust claim against the Lending Defendants in a decision dated November 1, 2022 (NYSCEF Doc. No 161 at 10-11) and vacated the Notice of Pendency on April 26, 2023 (NYSCEF Doc. No 223). As there are no other equitable claims asserted in this case, a preliminary injunction is inappropriate when monetary damages are sought (*Walsh v Design Concepts*, 221 AD2d 454 [2d Dept 1995][“Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient”]).

Plaintiff’s order to show cause to stay any enforcement of this Court’s July 1, 2024 decision for a period of ten days to enable Plaintiff adequate time to appeal and seek stay relief (Motion Sequence # 16) is denied as moot as over three months have passed since the date of the decision. Plaintiff’s order to show cause to reargue (Motion Sequence # 17) is also denied. This court will adhere to its previous determination.

Accordingly, it is ORDERED:

Plaintiff's order to show cause (Mot. Seq. No. 16) for an order reinstating the notice of pendency *nunc pro tunc* or staying the effects of this courts July 1, 2024 decision and order is DENIED; and it is further

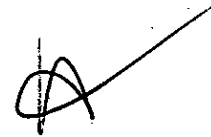
ORDERED that Plaintiff's order to show cause (Mot. Seq. 17) for an order reinstating the notice of pendency *nunc pro tunc* and granting leave to reargue The Decision is DENIED; and it is further

ORDERED that Plaintiff's order to show cause (Mot. Seq. 18) for an order barring the transfer, encumbrance or disposal of the Subject Premises is DENIED; and it is further

ORDERED that Plaintiff's order to show cause (Mot. Seq. 19) for an order supplementing the temporary restraining order granted by the Appellate Division with additional defendants is DENIED; and it is further

ORDERED that the temporary restraining order is lifted and all stays are vacated.

This constitutes the decision and order of the court.



Dated: Brooklyn, New York

HON. HEELA D. CAPELL, J.S.C.

HON. HEELA D. CAPELL, J.S.C.

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