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| Handelsman v Braun |
| 2005 NY Slip Op 30472(U) |
| January 5, 2005 |
| Sup Ct, NY County |
| Docket Number: 603389/99 |
| Judge: Charles E. Ramos |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Charles Edward Ramos

PART 53

0603389/1999

HANDELSMAN, NEUMI

vs

BRAUN, SEYMOUR

SEQ

09

OTHER

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JAN 07 2005

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/5/05


HON. CHARLES E. RAMOS
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X
NEUMI HANDELSMAN,

Plaintiff,

Index No. 603389/99

BRUNO GOLDBERGER,

Plaintiff-Intervenor,

- against -

SEYMOUR BRAUN and BRAUN & GOLDBERGER,

Defendants.
-----X

Charles Edward Ramos, J.S.C.:

Plaintiff Neumi Handelsman and plaintiff-intervenor Bruno Goldberger are estranged spouses, currently involved in a divorce action in Israel. Defendants consist of Seymour Braun, Goldberger's brother-in-law, and their law partnership, Braun & Goldberger. Plaintiff moves for relief from the judgment and order, dated November 19, 2002 and filed November 25, 2002, that barred her from bringing any other suits against the law partnership and Braun. She alleges that amendment of the judgment is necessary in order to prevent Goldberger from continuing to misrepresent and misstate the scope of the judgment in the ongoing matrimonial action in Israel.

Plaintiff and Goldberger have two minor daughters. While together, they lived in Belgium and Israel, and Goldberger purchased two apartments in Belgium and one in France. Title to all three apartments was and is in Braun's name. After the couple separated, plaintiff commenced this action, in 1999, to obtain title to two apartments and proceeds from the sale of the

[3]
third apartment. Although Braun held title to the apartments, plaintiff claimed that her husband purchased the apartments for her and their children. In July 2001, plaintiff commenced a divorce action in Israel.

Eventually, the parties agreed to settle this action, and the settlement terms were put on the record in open court on July 24, 2002, at which time, plaintiff had different counsel. The terms were incorporated into a settlement agreement, but plaintiff refused to sign it, on the ground that the injunction therein could jeopardize her rights in the ongoing matrimonial action in Israel. Braun then moved for judgment in accordance with the settlement in court. This Court granted the motion, issuing the judgment and order at issue here.

The judgment provided that: 1) Goldberger would pay plaintiff \$450,000, the proceeds of the sale of one apartment; 2) Goldberger would transfer title to the Paris apartment to plaintiff in accordance with French law, within 20 days, or as soon as possible after plaintiff designated a French notary to effectuate the transfer; and 3) Goldberger would transfer to plaintiff the third apartment in trust for the children, in accordance with Belgian law, within 20 days, or as soon as possible after plaintiff designated a Belgian notary to effectuate the transfer, placed the apartment in a trust, and chose a trustee. The costs of transferring title to the apartments would be borne by plaintiff. If plaintiff failed within 20 days to designate the notaries or form the trust, Braun

would do so and take the expenses out of the monies awarded to plaintiff.

Goldberger was to pay the award to plaintiff's attorney, who would release the funds to her upon "the delivery by Plaintiff to Defendant and Braun & Goldberg[er] of a release enforceable under the laws of Israel, Belgium, France and the United States, containing the terms of the injunction provided herein" (Judgment at 5). The injunction provided that plaintiff was permanently enjoined from commencing or continuing any claim or action in relation to the apartments or proceeds thereof 1) against "Seymour Braun, Rochelle Braun (nee Goldberger) and Braun & Goldberger and their respective predecessors, successors, partners and assigns;" and 2) against Braun or Goldberger (Judgment, at 5).

As the judgment provides, in order to obtain the monetary award, plaintiff must sign a release that contains the injunction in the judgment. Plaintiff has not executed the release needed to obtain the monetary award, which, apparently, is in the hands of her former attorney. Neither she, nor defendant, has acted to effectuate transfer of the apartments. According to her attorney, plaintiff refuses to execute a release, because she fears that her husband will distort the language in the release to frustrate her ability to continue the action in Israel. The attorney also claims that plaintiff may need to eventually proceed against Braun, in case he is holding marital assets for her husband. She fears that the language can be misconstrued to

prevent her from recovering her share of the marital assets from Braun.

In the fall of 2003, Goldberger filed an answer to the divorce complaint. In the answer, which plaintiff includes with her motion papers, Goldberger raises the affirmative defense that the Israeli action should be dismissed, because the judgment in this action bars plaintiff from pressing any claims against him. A letter from plaintiff's attorney in Israel, to her previous attorney in this case, states that Goldberger presented a document to the Israeli court, that purportedly showed that his wife could not press any claims against him. Goldberger's actions, according to plaintiff's attorney, bear out plaintiff's fears about her husband's misuse of this judgment.

Plaintiff moves, pursuant to CPLR 5015, seeking to change the judgment so that it clearly does not apply to her husband. In addition, she wants it changed so that it clearly does not apply to Braun, or the law partnership, in regard to any property that her husband owns, or is entitled to, that is held by, or in the name of, Braun.

CPLR 5015 (a) enables the court to relieve a party from a judgment on enumerated grounds, including fraud, misrepresentation, or other misconduct of an adverse party. The fraud, misrepresentation, or other misconduct required may either occur prior to the judgment, or be the means by which the judgment was obtained (*Herskowitz v Friedlander*, 224 AD2d 305, 306 [1st Dept 1996]). Plaintiff alleges that Goldberger is

fraudulently misrepresenting the judgment in the Israeli divorce, but this fraud did not occur before the judgment, and was not instrumental in obtaining the judgment. In any event, any such fraud is out of this court's jurisdiction.

However, the court's power to relieve a party extends beyond the enumerations of CPLR 5015. First, the court possess the inherent power to open its judgments in the interests of justice, a power that does not depend upon any statute (*McMahon v City of New York*, 105 AD2d 101, 105 [1st Dept 1984]). Second, a party may properly move to resettle a judgment so that it conforms to the court's original decision, or seek correction or clarification of a judgment (see *Ansonia Assoc. v Ansonia Tenants Coalition*, 171 AD2d 411, 412 [1st Dept 1991]; *Bullion v Metropolitan Transp. Auth.*, 161 AD2d 168, 168 [1st Dept 1990]; *Geller v Board of Elections of the City of New York*, 112 AD2d 1054, 1056 [2d Dept], *affd* 65 NY2d 956 [1985]). The instant motion can be characterized as one to resettle the judgment.

Resettlement is appropriate where a party seeks to change the judgment to make it reflect the court's actual decision, and does not seek to modify any "substantive or decretal portion of the judgment" (*Bullion*, 161 AD2d at 168, quoting *Matter of Lewin v New York City Conciliation and Appeals Bd.*, 88 AD2d 516, 516 [1st Dept], *affd* 57 NY2d 760 [1982]). Resettlement must not result in unfairness or prejudice to any party (see *Solomon v City of New York*, 127 AD2d 827, 828 [2d Dept 1987]).

Turning now to the particularities of this case, the

transcript of the discussion in open court shows that the parties did not intend for the settlement agreement to release Braun from any liabilities that might arise out of his holding assets belonging to plaintiff's husband. At the hearing, plaintiff's then attorney stated "[w]e are not prepared to release [Braun] from any liabilities that might come out of him holding assets of Mr. Goldberger" (Transcript of July 24, 2002 hearing [Tr.], at 4). This Court itself stated that Braun was to be released from all acts encompassed or described in the complaint, meaning the complaint in this action and not in the Israeli action (*id.* at 5). As plaintiff correctly argues, the purpose of the judgment was to end the dispute concerning the apartments. It was not to prevent plaintiff from receiving her fair share of marital assets, just because defendants might be in possession of those assets. That would be an entirely unreasonable construction of the judgment.

Regarding Goldberger, the injunctive part of the judgment clearly provides that plaintiff may not proceed against Braun, another party, who is presumably Braun's wife and Goldberger's sister, and the law partnership. The injunction does not name Goldberger. In other places in the judgment, there are references to Goldberger as intervenor, so the omission of Goldberger in the injunction was deliberate. The statement in the injunction enjoining plaintiff from proceeding against the respective predecessors, successors, partners and assigns of the persons named therein does not apply to Goldberger. Given that

plaintiff and Goldberger were in the process of getting divorced in another action, it would not make sense for the judgment to hold that plaintiff could not proceed against him.

In addition, to deal with one of defendants' objections to this motion, the court may exercise its inherent power to relieve a party of a judgment even after the expiration of the one-year period in CPLR 5015 (see *Melendez v City of New York*, 271 AD2d 416, 416 [2d Dept 2000]; *Allen v Preston*, 123 AD2d 303, 304 [2d Dept 1986]). The hearing on the settlement ended with an agreement that the attorneys would draft an agreement.

Thereafter, this Court signed the judgment. As stated above, plaintiff refused to execute the required release. She became involved in a fee dispute with her then attorney, and he was eventually relieved as counsel. The attorney now representing plaintiff alleges that he attempted to negotiate a change to the language in the settlement, but that defendants would not agree. This Court finds this a sufficient explanation for the lapse in time from the date of the judgment to the date of this motion.

Lastly, granting this motion causes no prejudice or surprise to defendants. Plaintiff is not asking for anything new.

Therefore, this Court grants plaintiff's motion. Plaintiff is not barred from proceeding against Goldberger, or against defendants to the extent that they may possess property to which plaintiff may be entitled. Plaintiff may resettle the order using the language provided in her attorney's affirmation. Within 10 days of receiving the instant judgment, plaintiff must

submit a copy of the resettled order to this court. The resettled order must indicate that it is a resettlement of the judgment and order filed November 25, 2002.

Although the judgment provides that the release is necessary only to receiving the monetary award, plaintiff's attorney states that plaintiff must execute the release in order to obtain both title to the apartments and the money. From the attorney's statement, it appears that plaintiff has not taken steps to obtain title to the apartment, because she first wants to obtain the money. This Court raises this point, because plaintiff asks for a hearing to determine issues related to transferring the apartments, such as the most economical method of transfer and the payment of expenses pending the transfer. This Court notes first, that the judgment provides that plaintiff must bear the expense of transferring the apartments to herself. Second, this Court has no means to determine how to transfer the apartments, apart from what is provided in the judgment. If, in the future, plaintiff encounters difficulties related to the transfers, and has good reason to make another application to this Court, she may do so.

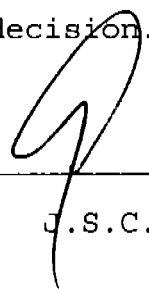
To conclude, it is

ORDERED that plaintiff's motion to resettle the judgment and order filed November 25, 2002 is granted; and it is further

ORDERED that the proposed modification of the judgment submitted by plaintiff is approved and plaintiff shall submit a judgment containing the modification to this Court and to the

other parties within 10 days of receiving this decision.

Dated:



J.S.C.

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

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