

Doubet, LLC v 455 Central Park West, LLC
2012 NY Slip Op 31445(U)
May 24, 2012
Sup Ct, New York County
Docket Number: 112002/11
Judge: Joan B. Lobis
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Lobis
Justice

PART 6

Doubets LLC
455 Central Park
West, L.L.C., ET AL.

INDEX NO. 112002/11
MOTION DATE 3/13/12
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-6

7-17

18-20

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

MAY 31 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/24/12

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X

DOUBET, LLC,

Petitioner,

Index No. 112002/11

-against-

Decision and Order

455 CENTRAL PARK WEST, L.L.C., and
455 CPW, L.L.C.,

FILED

Respondents.

MAY 31 2012

-----X

JOAN B. LOBIS, J.S.C.:

**NEW YORK
COUNTY CLERK'S OFFICE**

Motion Sequence Numbers 001, 002, and 003 are hereby consolidated for disposition.

In Motion Sequence Number 001, petitioner Doubet, LLC ("Doubet") brings this petition by way of an order to show cause, seeking a judgment setting aside the transfer from respondent 455 Central Park West, L.L.C. ("455 Central Park West") to respondent 455 CPW L.L.C. ("455 CPW") of three (3) residential condominium units and a garage condominium unit (the "Units") located at 455 Central Park West in Manhattan (the "Property"); an order temporarily restraining any sale, transfer, or encumbrance of the Units pending a determination of the petition; and an order directing that any proceeds from the sale of the Units be turned over to petitioner to satisfy a prior judgment against 455 Central Park West. In Motion Sequence Number 002, respondents move for an order dismissing the petition and lifting any temporary restraints on the sale of the Units. In Motion Sequence Number 003, petitioner moves for an order, pursuant to C.P.L.R. § 1003 and Rule 3025, granting it leave to add AMT CADC Venture, LLC ("AMT") as a party respondent, to amend its petition accordingly, and to serve a supplemental notice of petition and amended petition upon AMT; pursuant to C.P.L.R. § 602(a), consolidating a foreclosure action captioned AMT CADC Venture, LLC v. 455 CPW, L.L.C., et. al., Index No. 810109/11, pending before the Honorable Lucy Billings,

with the above-captioned action; and granting petitioner a default judgment against respondents. That branch of Motion Sequence Number 003, by which petitioner seeks to add AMT as a party, is unopposed and is granted.

The origins of petitioner's claims go back to the 1990's, when an individual named Morris Silver acquired a series of judgments in Nassau County against his business associate Douglas F. Palermo. Sometime in 2000, Mr. Silver assigned the judgments to his wife, who in turn assigned them to petitioner, an entity in which Mr. Silver has a controlling interest. Respondent 455 Central Park West was an owner of and the sponsor of the Property. Mr. Palermo entered into an agreement with 455 Central Park West for brokerage fees in connection with the sale of units at the Property to Columbia University ("Columbia"). Mr. Palermo was due \$1,564,816 once Columbia closed on the purchase of a number of units. In February 2003, petitioner served 455 Central Park West with restraining notices pertaining to the sale of the Property's units. On July 29, 2004, Columbia closed on the units. On October 14, 2005, Mr. Palermo filed a voluntary bankruptcy petition under Chapter 7.

In March 2007, petitioner filed a turnover proceeding (the "Turnover Proceeding") against the Trustees of Columbia University, respondent 455 Central Park West, MCL Companies of Chicago, Inc. ("MCL"), and Daniel E. McLean, for violating the restraining notices. See Doubet, LLC v. Trustees of Columbia Univ., et al, Index Number 401544/2007. Mr. McLean is a principal of 455 Central Park West, and he, MCL, and 455 Central Park West were the collective owners and developers of the Property. The Turnover Proceeding was initially assigned to the Honorable Edward H. Lehner. On August 28, 2007, Justice Lehner granted a motion to dismiss the Turnover

Proceeding, holding that, at the time of the restraining notices, Mr. Palermo's brokerage commission was contingent on the closing of the sale of the units of the Property and was not a valid predicate for the restraining notices. In his subsequent decision and order dated February 15, 2007, Justice Lehner granted Doubet's motion for leave to reargue the dismissal and reinstated the petition against 455 Central Park West, MCL, and Mr. McLean, based on the then-recent decision of J.P.Morgan Chase Bank, N.A. v. Motorola, Inc., 47 A.D.3d 293 (1st Dep't 2007). Subsequently, the Turnover Proceeding was reassigned to the Honorable Michael Stallman, who, in a decision, order, and judgment dated July 6, 2011, granted Doubet's petition and awarded Doubet a judgment in the amount of \$1,546,816, plus costs. On July 20, 2011, a total judgment of \$1,565,401 in favor of Doubet was entered in the County Clerk's office.

While these events were unfolding, the developers were negotiating a deal to refinance the existing mortgage debt and borrow additional money. According to AMT's papers, as part of a 2005 refinancing of a \$27 million pre-existing debt and the extension of \$6 million in new monies, the lender, Citigroup Global Markets Realty Corporation ("Citigroup") required 455 Central Park West to transfer title of the mortgaged premises to an entity created to be "bankruptcy remote." This bankruptcy-remote entity was 455 CPW, a wholly-owned subsidiary of 455 Central Park West. Following that transaction, there were additional changes in the structure of the debt. A portion of the Citigroup loan was refinanced with Marathon Structured Finance Fund LP and an additional \$10.5 million was extended to 455 CPW. This loan was later assigned to LaSalle Bank National Association ("LaSalle") as trustee. The LaSalle mortgage loan was later refinanced with Am Trust Bank ("Am Trust") and an additional \$8.8 million was extended to 455 CPW. Eventually, the Federal Deposit Insurance Corporation ("FDIC") was appointed receiver of Am Trust's assets.

On August 13, 2010, AMT bought the Am Trust mortgage loan from the FDIC. On March 29, 2011, AMT commenced a foreclosure action against 455 CPW, which is the action before Justice Billings.

When petitioner presented its order to show cause in October 2011, this court granted a temporary stay of any sale, transfer, or encumbrance of the Units. Following oral argument on March 13, 2012, however, this court vacated the temporary restraining order since it was unlikely that Doubet could prevail on its claim of a fraudulent conveyance giving rise to an annulment of the transfer from 455 Central Park West to 455 CPW. For the following reasons, the petition is denied and the proceeding is dismissed; the court need not reach the other issues with the exception of joining AMT as a party respondent as sought in Motion Sequence Number 003.

Petitioner seeks to set aside the transfer from 455 Central Park West to 455 CPW on the grounds that the transfer violated the restraining notice, was made without fair consideration, and rendered 455 Central Park West insolvent, thereby violating Debtor and Creditor Law § 273. Specifically, petitioner argues that the transfer to a bankruptcy-remote entity—the wholly-owned subsidiary 455 CPW—was not made for fair consideration, notwithstanding the value gained from the Citigroup refinancing. This argument is unavailing; the new terms and cash that respondents received upon the refinancing and the forbearance on foreclosure were fair consideration for the conveyance. Not only was petitioner not a creditor of 455 Central Park West at the time of the transaction, but 455 Central Park West, as owner of 455 CPW, continued to have an interest in the Property and was not insolvent.

Moreover, AMT is a purchaser for value and has taken its interest notwithstanding any fraud as to Doubet and, with its foreclosure action, has a superior lien to a later-in-time judgment. The action that petitioner asks the court to take cannot be taken in violation of the rights of the superior lien holder. Petitioner has not made out a cause of action for a fraudulent conveyance or for setting aside the transfer. The cross motion to dismiss the petition is granted. All other requests for relief are denied. Accordingly, it is hereby

ORDERED that the petition (Motion Sequence Number 001) is denied; and it is further

ORDERED that respondents' cross motion to dismiss the petition (Motion Sequence Number 002) is granted, the petition is dismissed, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that the branch of Motion Sequence Number 003 seeking to add AMT CADC Venture, LLC, as a party defendant, is granted; and it is further

ORDERED that any other relief requested is denied.


Dated: May 24, 2012

FILED

MAY 31 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

ENTER:



JOAN B. LOBIS, J.S.C.