

Ninth Ave. Realty, LLC v Guenancia

2013 NY Slip Op 33675(U)

September 4, 2013

Sup Ct, New York County

Docket Number: 102725/10

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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NINTH AVENUE REALTY, LLC,

Plaintiff,

- against -

GEORGE M. GUENANCIA AND GERARD BLANES,
Defendants.

FILED

SEP 06 2013

NEW YORK
COUNTY CLERK'S OFFICE

Index No.
102725/10

DECISION
and ORDER

Art. 06
§ 57

-----X
HON. EILEEN A. RAKOWER

Plaintiff Ninth Avenue Realty, LLC ("Plaintiff") holds judgments against defendants George M. Guenancia ("Guenancia") and Gerard Blanes ("Blanes") arising from the Guaranty executed by both of them for unpaid rent on a lease. Plaintiff previously made a motion, pursuant to CPLR §5225(a), seeking the turnover of Guenancia's shares in Laurel Lee Rest. Inc. ("Laurel Lee"). The Court granted that motion, directing Guenancia to "transfer his stock to Laurel Lee Rest. Inc., which total 50% of the company, to the New York City Marshall for the purpose of selling said property in order to satisfy Plaintiff's judgment against Georges M. Guenancia."

Plaintiff now moves by Order to Show Cause for an Order:

- (a) pursuant to CPLR §602 to consolidate the case entitled *Ninth Avenue Realty, LLC vs. Gerard Blanes*, Index No. 651365/10, pending in Supreme Court with this action;
- (b) pursuant to CPLR §5225(a), directing Blanes to transfer the shares of stock that he owns in Laurel Lee, to any New York City Sheriff, for the purpose of selling said personal property in order to satisfy Plaintiff's judgment against Blanes; and
- (c) directing Guenancia, in his capacity as an officer of Laurel Lee, to issue shares of stock in Laurel Lee to himself and Mr. Blanes representing their fifty percent interest each in Laurel Lee, and to bring those shares with him to Court

on the return date of the Motion and if he fails to do so, an Order empowering any New York City Marshal and/or New York City Sheriff to sell the interests of Blanes and Guenancia in Laurel Lee, representing 100% of the company, at a public auction, pursuant to CPLR §5233, or alternatively, an Order appointing Plaintiff's officer Mark Scharfman as a Receiver of Laurel Lee for the sole purpose of issuing those shares of stock in the name of the judgment debtors and transferring those shares so that they can be sold at a public auction to satisfy the judgments of said debtors.

Consolidation

Plaintiff commenced the first action, *Ninth Avenue Realty, LLC, v. George M. Guenancia and Gerard Blanes*, Index No. 102725/10, by Summons and Complaint dated February 26, 2010 (Action No. 1) seeking to recover from defendants Guenancia and Blanes under the terms of a May 6, 2008 Guaranty that they had executed in connection with the May 6, 2008 lease of Blague Corp., a tenant of Plaintiff. The first count sought judgment in the amount of \$93,833.34 and the second count sought the additional amount of \$50,000 for recapture of the rent concession granted to Blague under the Lease. Judgment in favor of Plaintiff was entered on August 1, 2011 in Action No. 1 against Guenancia only in the amount of \$93,833.34, plus interest, attorneys' fees, and disbursement, in an amount totaling \$112,414.65.

Plaintiff commenced the second action, *Ninth Avenue Realty, LLC v. Gerard Blanes*, Index No. No. 651365/10, by Summons and Complaint dated August 25, 2010 (Action No. 2) to recover from defendant Gerard Blanes pursuant to the May 6, 2008 Guaranty executed by Blanes in connection with the May 6, 2008 Blague Lease. The first count sought judgment in the amount of \$93,833.34 and the second count sought the additional amount of \$50,000 for recapture of the rent concession granted to Blague under the Lease. Judgment in favor of Plaintiff was entered on June 2, 2013 in Action No. 2 against Blanes in the amount of \$112,414.65.

CPLR §602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact even post judgment. There is a preference for consolidation in the interest of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. (*Progressive Ins. Co. v. Vasquez*, 10 AD3d 518, 782 NYS2d 21 [1st Dept 2004]).

Both Actions No. 1. and No. 2 arose out of the terms of the same Guaranty executed by Defendants and Judgments have now been entered in both actions. Plaintiff's efforts to enforce those Judgments involve common questions of law and fact - i.e. the assets available to satisfy those Judgements include both defendants' ownership of stock in a closely held corporation, Laurel Lee.

Transfer of Share and Appointment of Receiver

CPLR §5225(a) provides in relevant part:

Upon motion of the judgment creditor . . . where it is shown that the judgment debtor is in possession or custody or money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money . . . to the judgment creditor, and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property . . . to a designates sheriff.

“Corporate shares are personal property subject to CPLR Article 52's enforcement procedures.” *Kissin v. Good*, 2008 N.Y. Misc. Lexis 7945, *5 (Sup. Ct., New York County, 2008).

Upon motion by a judgment creditor, the court may appoint a receiver to manage or sell property in which the judgment debtor has an interest for the purpose of satisfying an outstanding judgment. CPLR §5228(a). *See Chlopecki v. Chlopecki*, 296 A.D. 2d 640, 641 (3d Dept 2002). Significantly, in determining whether the appointment of a receiver constitutes a provident exercise of discretion, “courts have considered the ‘alternative remedies available to the creditor ...; [and] (2) the degree to which receivership will increase the likelihood of satisfaction.’” *Chlopecki*, 296 A.D. 2d at 641. The appointment of a receiver, is entirely a matter of discretion. *Drucker v. Drucker*, 53 Misc.2d 446, 447, 278 N.Y.S.2d 645 (Sup.Ct., Queens Co.1967).

In opposition, Blanes contends that he does not own a 50% percent interest as Plaintiff alleges, but rather owns a 5% percent interest in Laurel Lee, and his wife Michelle owns a 45% interest. Aside from his affidavit, Blanes does not provide any supporting documentation. Blanes further contends that shares of stock in Laurel Lee have never been issued, and there are no shares of stock to transfer to Plaintiff.

After oral argument on August 13, 2013 and upon a review of the parties' submission, it is hereby

ORDERED that Plaintiff's motion is granted and the above captioned action bearing index number 102725/10 is consolidated with the case entitled *Ninth Avenue Realty, LLC vs. Gerard Blanes*, Index No. 651365/10, under Index No. 102725/10, and the consolidated action shall bear the following caption:

NINTH AVENUE REALTY, LLC,	Index No. 102725/10
Plaintiff,	
-against-	
GEORGE M. GUENANCIA and GERARD BLANES,	
Defendants.	

And it is further,

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that Eric Anderson, 261 Broadway, Apt. #6B, New York, NY 10007, (917) 392-0382, be and hereby is appointed temporary receiver Laurel Lee Rest., Inc., to take over the books and records of Laurel Lee Rest. Inc. for the sole purpose of issuing those shares of stock commensurate with documented ownership of the corporation and transfer those shares of stock allocated to George Guenancia and Gerard Blanes to the New York City Sheriff so that the certificates can be sold at public auction pursuant to CPLR §5233 to satisfy Plaintiff's judgments against said

debtors/defendants.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: 9/4/13



EILEEN A. RAKOWER, J.S.C.

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