

Born to Build LLC v 1141 Realty LLC

2013 NY Slip Op 30340(U)

February 6, 2013

Sup Ct, New York County

Docket Number: 108128/2011

Judge: Lucy Billings

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

PRESENT: LLOYD BILLINGS
J.S.C. Justice

PART 46

Born To Build LLC

INDEX NO. 108128/11

- v -

MOTION DATE _____

MOTION SEQ. NO. 3

1141 REALTY LLC, ET AL.

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 ...

PAPERS NUMBERED

1

Answering Affidavits — Exhibits _____

2-6

Replying Affidavits _____

7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ :

The court denies petitioner's motion for a preliminary injunction and notice of pendency, denies its motion for an expedited trial without prejudice, and grants its motion to substitute defendants, pursuant to the accompanying decision. C.P.L.R. § 1024, 6.312(2) 6501.

FILED
FEB 15 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/6/13

Lloyd Billings

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
COUNTY OF NEW YORK: IAS PART 46

-----X
BORN TO BUILD LLC,

Petitioner

Index No. 108128/2011

- against -

1141 REALTY LLC, KUANG CHIH LI a/k/a
KENNY LI, and JOHN DOES 1 through 10
(the persons intended being other
individuals or entities claiming
ownership interests in 1141 Realty LLC)

Respondents

DECISION AND ORDER

FILED

FEB 15 2013

**NEW YORK
COUNTY CLERKS OFFICE**

LUCY BILLINGS, J.:

In this proceeding to dissolve respondent 1141 Realty LLC, petitioner moves again for a preliminary injunction prohibiting respondent LLC from transferring its ownership interest in 1141 Broadway, New York County, the location of the Flatiron Hotel, or requiring the surplus proceeds of any such transfer after satisfaction of liens on the property to be deposited in the court. C.P.L.R. §§ 6301, 6311(a), 6312(a). While petitioner has alleged sufficient facts to survive 1141 Realty's motion to dismiss the petition, C.P.L.R. § 3211(a)(1) and (7), petitioner fails to satisfy its burden to show a likelihood of actual success on the merits of the petition. C.P.L.R. § 6312(a). The court permitted petitioner to conduct disclosure relevant to petitioner's central claim that Ibrahim Saleh was a member of 1141 Realty when petitioner purchased his membership interest at a New York City Marshal's sale, yet petitioner still presents

nothing more than it started with to substantiate that claim.

Petitioner raises many questions about 1141 Realty's evidence regarding its membership, management, ownership, operations, and disposition of its income and assets, but the only evidence supporting Saleh's membership interest remains as follows. (1) Saleh, whom 1141 Realty claims was its employee, was a guarantor of a mortgage on the hotel at 1141 Broadway. (2) Jagdish Vaswani, who now claims to own 95% of Main Team Trading Ltd., which owns Main Team Hotel LLC, which in turn owns 1141 Realty, referred to Saleh as "boss." Petitioner's other evidence that Saleh acted as 1141 Realty's owner, such as witnesses' observations of and personal interactions with him and his negotiation of transactions for 1141 Realty, are consistent with 1141 Realty's claim that he was employed as its manager.

Consequently, the court denies petitioner's motion for a preliminary injunction. C.P.L.R. § 6312(a); Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 N.Y.3d 839, 840 (2005). The court also denies petitioner's motion insofar as it seeks to file a notice of pendency. This proceeding does not specifically or necessarily seek to affect the title to 1141 Broadway, but instead seeks simply to divide 1141 Realty LLC's assets, whatever they may be. C.P.L.R. § 6501. Both the injunctive relief requested and the notice of pendency are particularly unwarranted given the pendency of a foreclosure action against 1141 Realty pertaining to 1141 Broadway. If petitioner seeks to affect that foreclosure or the proceeds of any foreclosure sale, petitioner's

remedy is in that action.

The court grants petitioner's motion insofar as it seeks to substitute Main Team Hotel LLC, the owner of 1141 Realty, and Ming Chu Company, Ltd., a former owner, for John Does 1-10 as defendants in this action without opposition, on the condition that petitioner serves an amended summons and complaint and this order with notice of its entry on the new defendants. C.P.L.R. §§ 305(a), 311(a)(1), 311-a(a), 1024, 3025(b). The caption of this action shall be:

-----x

BORN TO BUILD LLC,

Petitioner

- against -

1141 REALTY LLC, KUANG CHIH LI a/k/a
KENNY LI, MAIN TEAM HOTEL LLC, and MING
CHU COMPANY, LTD.,

Respondents

-----x

Regarding petitioner's request to try this proceeding on an expedited basis, the court provided petitioner that opportunity, after the new defendants have been provided an opportunity to answer. Petitioner responded that it may seek additional relief in the interim, which may postpone the trial further. Therefore the court denies petitioner's motion insofar as it seeks an expedited trial, without prejudice to a future request for that relief.

As set forth above, the court also denies petitioner's

motion for a preliminary injunction and notice of pendency, but grants its motion to substitute defendants. This decision constitutes the court's order.

DATED: February 6, 2012

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED
FEB 15 2013
NEW YORK
COUNTY CLERK'S OFFICE