

Pursuit Capital Mgt., LLC v Claridge Assoc., LLC

2014 NY Slip Op 32978(U)

November 19, 2014

Supreme Court, New York County

Docket Number: 654301/12

Judge: Joan M. Kenney

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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: 8

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PURSUIT CAPITAL MANAGEMENT, LLC,

Petitioner,

Index # 654301/12

-against-

CLARIDGE ASSOCIATES, LLC, JAMISCOTT LLC,
LESLIE SCHNEIDER and LILLIAN SCHNEIDER,
and LEONARD SCHNEIDER,

Decision & Order

Respondents.

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KENNEY, JOAN, M., J.

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Papers considered in review of this motion seeking to reargue
this Court *ex parte* Order granting a temporary restraining Order:

Papers	Numbered
Order to Show Cause, Petition, and Exhibits	1-15
Affirmation in Opposition with Exhibits, and Memo of Law	
Affidavits in Opposition with Exhibits, and Memorandum of Law in Opposition	17-27

Defendants collectively, seek, *inter alia*, an Order pursuant to CPLR 6301 granting injunctive relief against non-party, Northeast Capital Management LLC (Northeast).

FACTUAL BACKGROUND

The facts of this case have been recited in this Court's decision dated, June 25, 2014, and will not be repeated in detail here. All of the parties and non-parties are assumed to have knowledge of the facts and procedural history of this matter. This Court has denied plaintiff's application to implicate Northeast as

a necessary party to the captioned arbitration and this action three times. Defendants' current application was submitted for signature without notice to Northeast.

The papers presented in opposition, include affidavits from people with knowledge of Northeast's position and litigation posture relative to the captioned action. Virtually all of defendants' allegations that suggest Northeast somehow violated this Court's June 25, 2014 decision, by transferring funds prior to the date of the decision, have been refuted and/or denied outright as fabrications.

DISCUSSION

CPLR 6301 sets forth the grounds for preliminary injunction and temporary restraining order:

A preliminary injunction may be granted in any action where it appears that 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, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the

hearing can be had.

A party moving for a preliminary injunction must demonstrate by clear and convincing evidence a right to the remedy sought (*W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]). Furthermore, that party must establish, (1) a likelihood of success on the merits of the underlying claim; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of the equities tipping in its favor (see *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Olympic Tower Condominium v Coccoziello*, 306 AD2d 159 [1st Dept 2003], citing, *Doe v Axelrod*, 73 NY2d 748, 750 [1988]). This Court finds that defendants have failed to satisfy the three-pronged test for the granting of a preliminary injunction, nor have they met their burden of proof. Notably, defendants have been unable to show that the irreparable harm is 'imminent, not remote or speculative' (citations omitted). Moreover, '[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm' (*Olympic Tower Condominium, supra*).

The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court (*Family-Friendly Media, Inc. v Recorder Television Network*, 74 AD3d 738 [2nd Dept 2010]).

"[A] mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the

ultimate relief sought as a final judgment, is granted only in 'unusual' situations, 'where the granting of the relief is essential to maintain the status quo pending trial of the action'" (citations omitted) (*Jones v Park Front Apartments, LLC*, 73 AD3d 612 [1st Dept 2010]). Defendants have not accomplished any of the foregoing with these papers. "[W]here conflicting affidavits raise sharp issues of fact," injunctive relief should not be granted *Lehey v Goldburt*, 90 AD3d 410 (1st Dept 2011).

Defendants seek additional relief in it's application. This Court has considered the merits of the arguments made in support of holding Northeastern in contempt, and find them to be unpersuasive. The branch of defendants' motion seeking to amend the caption to the following is granted, consequently the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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PURSUIT CAPITAL MANAGEMENT, LLC,

Plaintiff,

-against-

CLARIDGE ASSOCIATES, LLC, JAMISCOTT LLC,
LESLIE SCHNEIDER and LILLIAN SCHNEIDER,
individually and as EXECUTOR OF THE
ESTATE OF LEONARD SCHNEIDER,

Defendants.
-----X

Accordingly, it is
ORDERED that, the temporary restraining Order signed by this

Court on October 29, 2014, is vacated; and it is further

ORDERED that, with the exception of the caption change the balance of defendants' application is also denied.

Dated: November 19, 2014

E N T E R:



Hon. Joan M. Kenney
J.S.C.