

AJG Parkview Corp . v Calabrese

2015 NY Slip Op 32962(U)

August 24, 2015

Supreme Court, Nassau County

Docket Number: 605226/15

Judge: Stephen A. Bucaria

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

ORIGINAL

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

In the matter of the Petition of AJG PARKVIEW
CORP., individually and as a Member and
Creditor of PARKVIEW AT SALISBURY LLC,

INDEX No. 605226/15

MOTION DATE: Aug. 24, 2015
Motion Sequence # 001

Petitioner,

-against-

JAMES CALABRESE, individually and as a
member of PARKVIEW AT SALISBURY, LLC,
CALABRESE BROS. DEVELOPMENT CORP.,
BREEZE BROS. ALUMINUM & VINYL
SIDING CO., INC., CALABRESE BROTHERS
CONSTRUCTION CO., JOHN DOE 1-5, JANE
DOE 1-5, XYZ CORP. and JAMES MARKOTSIS,

Respondents.

For judicial dissolution of PARKVIEW AT SALISBURY,
LLC, pursuant to Article VII of the New York State
Limited Liability Company Law, which ancillary relief
including surcharge and damages against Respondent(s),
and an Order(s) pursuant to Article 10 of the New York
Debtor & Creditor Law setting aside and/or disregarding
and levying upon fraudulent conveyance(s) by
Respondents.

The following papers read on this motion:

Order to Show Cause..... X
 Affirmation in Opposition..... X

WHEREAS, in this proceeding for the judicial dissolution of Parkview At Salisbury, LLC, petitioner AJG Parkview Corp. has moved for the appointment of a Receiver of the assets of the company, including the 30-unit condominium project located at 596 and 608 Carmen Avenue, East Meadow, New York; and

WHEREAS, counsel for all parties have appeared and been heard on the application; and

WHEREAS, it appears that Plaintiff is entitled to the Appointment of a Receiver pursuant to Civil Practice Law and Rules § 6401, and that in the absence of such appointment, the property which is the subject of this action is likely to deteriorate, and thereby reduce the value thereof; and

NOW, upon application of petitioner, it is:

ORDERED, that Gerard Fishberg, fiduciary # 661947, 100 Quentin Roosevelt Blvd, Garden City, New York 11530 (516) 357-3703 is appointed Receiver to sequester and take possession of the assets of Parkview At Salisbury, LLC upon his executing and filing with the Clerk of this Court an oath to faithfully perform his duties and of a bond in the sum of ~~\$1,000,000~~ . with sufficient sureties, conditioned on the faithful discharge of his duties as such Receiver herein:

both tangible and intangible property and all obligations, rents, issues, profits and income therefrom; and it is further

ORDERED, that Receiver is authorized to take possession of the books and records of the company applicable to any business activity conducted in connection with said property during the period from and after July 18, 2013 to the present, including but not limited to sales contracts, account ledgers, check books, banking records, banking records, invoices, contracts, tax returns and related records which are needed to determine any present right or obligation with regard to said Properties; and it is further

ORDERED, that the parties to this action and James Markotis, Esq. shall forthwith turn over to the Receiver all such books and records and all funds derived from the operation of the aforesaid properties; and it is further

ORDERED, that the Receiver hereby is empowered and authorized to institute and carry on all legal proceedings necessary for the protection of the Properties or to recover possession of the whole, or any part thereof, and to employ counsel therefor, which counsel shall be first approved by further Order of this Court; and it is further

ORDERED, that Receiver shall forthwith deposit all monies received by him at the time he receives them in his own name as Receiver in **TD BANK** (which accounts shall reference the name of this action), and shall make withdrawals from the accounts for payments to be made in the ordinary course of the operation of the property. Such payments

in the ordinary course of operation shall include, without limitation, monthly payments (or such other periodic payments as may be specified in the loan documents) of interest and principal, but not prepayments, in accordance with the currently existing terms of mortgage loan agreements or promissory notes associated with mortgage instruments that have heretofore been duly recorded against either the property and other operating expenses and payments set forth hereafter; and it is further

ORDERED, that Receiver shall furnish to the representatives of the petitioner and respondent James Calabrese monthly statements showing all receipts and expenditures, together with a photocopy of the monthly statement Receiver shall have received from the above-named depository; and it is further

ORDERED, that the Receiver is hereby authorized to make such repairs as are necessary for the preservation of the said Properties; provided, however, that no funds in excess of \$25,000.00 shall be disbursed for non-emergency capital improvements except upon further Order of this Court; and it is further

ORDERED, that the Receiver is authorized to keep the property insured against loss or damage by fire, and in repair; to pay monthly payments (or such other periodic payments as may be specified in the loan documents) of interest and principal, but not prepayments, in accordance with the currently existing terms of mortgage loan agreements and related loan documents which are liens of record against either of the Properties; to pay the taxes,

assessments and water rates thereon; to comply with all requirements of any municipal department or other authority of the Village of East Meadow; and to procure such liability insurance as may be necessary or appropriate, including coverage for the Receiver; and it is further

ORDERED, that the Receiver, after paying the expenses of the management and care of said Properties as above provided shall retain the balance of the monies which may come into his hand until such further Order of the Court; and it is further

ORDERED, that any sales contract deposits shall be delivered to the Receiver; and it is further

ORDERED, that the Receiver is authorized to forthwith take charge and enter into the possession of the Properties and any person currently in possession of the Properties, or any portion thereof, upon demand of the Receiver, shall surrender and deliver such property to the Receiver; and it is further

ORDERED, that the Receiver shall maintain and run and preserve the Properties in a commercially reasonable manner until discharged; and it is further

ORDERED, that the Receiver may at any time apply to this Court for an order or other direction to enable him to fulfill his duties hereunder; and it is further

ORDERED, that the parties and James Markotis, Esq. and their agents, officers, employees and contractors are hereby directed to deliver and attorn to the Receiver all sales

contracts, shareholder lists, and all other papers affecting the operation of the Properties including, without limitation, agreements, contracts, recognition agreements, corporate bylaws, tax bills, correspondence, notices, registration statements, tenants, securities, shareholders, escrows, memoranda of any kind relating to the leasing or renting of any of the Properties, and list of current rent or other monies, and arrears relating to space in the Properties; and it is further

ORDERED, that Receiver shall not incur any obligations in excess of the funds in hand in the Account; and it is further

ORDERED, that the Receiver shall receive, collect and review all mail addressed to the parties and James Markotis concerning the Properties, other than from their attorneys of record, and are authorized to remove from such mail all checks payable to such persons as sales deposits or other payments, charges or fees; and are authorized to endorse any and all such checks and to deposit same in accounts established by the Receiver for the Receivership estate; and any such mail reviewed by Receiver shall be promptly made available to the persons to whom it is addressed after such review; and it is further

ORDERED, that by accepting this appointment, the Receiver certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36) including, but not limited to Section 36.2 (c) (“Disqualification from Appointment”), and Section 36.2 (d) (“Limitations on Appointments based upon Compensation”); and it is further

ORDERED, that the Properties shall not be sold by the Receiver without further Order of this Court, which Court shall set the commission or compensation of the Receiver in connection with such sale; and it is further

ORDERED, that the Receiver shall be entitled to commissions pursuant to CPLR Section 8004, subject to approval of this Court, and that the Receiver may make application to the Court for approval of payment thereof; and it is

ORDERED, that the premium cost for the Receiver's bond shall be advanced by petitioner; and it is further

ORDERED, that notwithstanding any other provision of this order to the contrary, the Receiver shall not appoint any property manager, attorney, appraiser, accountant, agent, auctioneer or other secondary appointment without prior authorization of this Court; and it is further

ORDERED, that Receiver shall keep an open written account of income and disbursements, which shall be open for inspection at his office at all reasonable times by the petitioner, and by any parties whose rights are affected by the litigation. Such accounts shall reflect the name and address of the depository of all received funds; and it is further

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ORDERED, that copies of any application to the Court by the Receiver shall be served upon the parties and upon James Markotis by email; and it is further

ORDERED, that a copy of this Order shall be personally served upon the parties and upon James Markotis in accordance with the provisions of the CPLR.

Dated 24 August 2015

Stephen A. Bucaria
J.S.C.

ENTERED

SEP 04 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE