

Eulisis Capital, LLC v Beltrami
2016 NY Slip Op 31636(U)
August 24, 2016
Supreme Court, New York County
Docket Number: 850030/14
Judge: Joan M. Kenney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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EULISIS CAPITAL, LLC,

Plaintiff,

Index #
850030/14

-against-

MICHAEL BELTRAMI, CORNELIUS B. SPIERING,
JAN PIETER VAN VUREN as foreign guardian
for CORNELIUS B. SPIERING, UNITED STATES
OF AMERICA - INTERNAL REVENUE SERVICE,
NEW YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, "JOHN DOES" and "JANE
DOES," said names being fictitious
parties intended being possible tenants
or occupants of the premises, and
corporations, or other entities or persons
who claim, or may claim, a lien against
the premises,

Decision & Order

Defendants.

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KENNEY, JOAN, M., J.S.C.

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For Defendant Cornelius B. Speiring
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Receiver
Bedford & Soumas LLP
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For Defendant Michael Beltrami
Walter Jennings, Esq.
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Papers considered in review of this motion seeking an Order
setting the compensation for the Court appointed receiver:

Papers	Numbered
Order to Show Cause, Affirmation, Exhibits	1-8
Affirmation in Opposition, Affidavit, Exhibits	9-15
Affirmation in Opposition	16
Reply Affirmation, Affidavit and Exhibits	17-23

In this foreclosure action, Gregory Soumas, Esq., the Receiver
named herein on March 29, 2016, moves for an Order setting his

compensation for services rendered in connection with the property located at 36 Commerce Street, New York, New York 10014.

This action was commenced on January 30, 2014. After service of the pleadings, Beltrami served an answer and a notice of appearance by counsel. On August 5, 2014, plaintiff moved for, *inter alia*, summary judgment and for the appointment of a referee to compute. Before this motion could be decided, Beltrami died and the case was stayed on October 7, 2014, until a proper representative could be substituted for the decedent. On May 15, 2015 the stay was vacated, the caption amended and the parties were ordered to appear for a preliminary conference. On or after July 14, 2015, Beltrami's attorney moved to have this entire matter removed to Surrogate's Court.¹ This motion was denied.

On August 26, 2015, Beltrami moved for summary judgment seeking dismissal, based upon the notion that the chain of title to the promissory note was defective. Such was far from the case, and the motion was denied. On September 18, 2015, plaintiff moved for *inter alia*, for summary judgment, appointment of a referee and receiver and a default judgment against the non-appearing parties. Only Beltrami opposed the motion, and only once did counsel

¹In the meantime, yet another attorney needed to get involved because neither Spiering's nor his guardian were domiciliaries of New York State, therefore Elaine Nissen, Esq. had to substitute in as an ancillary guardian for Spiering. This motion was granted on September 15, 2015, even though Elaine Nissen is not listed on the Part 36 approved list of fiduciaries.

indicate that the property was being listed as a rental property and not for sale. On March 28, 2016, plaintiff's motion was granted and the Receiver was appointed. It is noted that Speiring's ancillary guardian never attempted to inform this Court that she was attempting to sell the property, a six story townhouse in one of the most sought after neighborhoods in New York City. In the meantime the Receiver retained a real estate broker and took possession of the property. What the Receiver discovered when he entered the premises with the real estate broker was a premises that was not in a habitable state on or about April 3, 2016. The real estate broker determined that until certain repairs were made to the building it could not be leased for the full fair market value.

Plaintiff was made aware of the condition of the property and after extensive conferences with the Receiver, paid all the expenses incurred to make repairs to the premises.² Concurrently with the repairs, the Receiver prepared and consulted with plaintiff regarding the terms and conditions to be included in the lease and the amount of rent to be sought, approximately \$17,500.00 per month. The real estate broker marketed the building for rent and met with "multiple prospective lessees," and as a "direct

²Notably, when the closing of the property occurred Beltrami reimbursed plaintiff for the repairs that were made to the premises at the direction of the Receiver, as well as, plaintiff's attorneys' fees.

result of [his] efforts, [he] found a lessee who was financially qualified ... and who was ready, willing, and able to execute a two year lease for the subject premises." Thereafter, the Receiver was sent an invoice from the real estate broker for services rendered in the amount of \$17,950.00.

The building was sold to a third party who ultimately closed title on or about June 2, 2016. But not before Spiering's attorney sent the following letter, via e-mail to the Receiver stating "the sum released (\$22,500.00) represents full satisfaction of your fees and all charges associated with any work you or your agents may have conducted at the property." Unfortunately, because a tenant never took possession of the building, nor was a lease signed, it is unclear if the real estate broker is entitled to be paid his usual commission of one month's rent.

During the course of the Receiver's work, Spiering's ancillary guardian did nothing but attempt to thwart the Receiver's efforts to comply with his fiduciary duties, including attempting motion practice to stop the Receiver from continuing his responsibilities, thereby causing the Receiver, to expend more of his time than was necessary, had this not occurred.

Plaintiff does not oppose the Receiver's application for compensation and in fact submitted an affirmation in support of the motion. Defendants, Speiring and Beltrami oppose the application, suggesting (1) that the Receiver did not adequately support his

application and (2) that the Receiver is not entitled to compensation for his services.

The real question is whether there were special circumstances that make it equitable to grant the Receiver's request for fees and expenses even though the expenses exceeded the rent that would have been collected. Where evidence submitted by the Receiver, which he did submit, establishes that the receivership was conducted with the utmost concern for physical and economic preservation of property, and that money was judiciously spent only as was necessary to remedy numerous violations on premises and to preserve property for benefit of party from whom the payment was sought, such applications are granted. *Sun Beam Enterprises, Inc. v Liza Realty Corp.* 210 AD2d 153 [1st Dept 1994])

Under the circumstances presented, this Court chooses to providently exercise its discretion in determining that special circumstances do exist for reimbursement of the reasonable value of the services provided by the Receiver (see *Sun Beam Enters. v Liza Realty Corp.*, 210 AD2d 153, [1st Det 1994]); *Litho Fund Equities v Alley Spring Apts. Corp.*, 94 AD2d 13, 16, [2nd Dept 1983]). Thus, this Court may properly fix the Receiver's compensation "in accordance with the respective services [he] rendered" (CPLR 8004[b]).

A receiver, as an officer of the court, can have no liability for actions performed "within the scope of his authority pursuant

to the receivership order" (*Bankers Fed. Sav. v Off W. Broadway Devs.*, 227 AD2d 306, [1st Dept 1996]). Consequently, the Receiver's application is granted in part and denied in part. In the event the Receiver deems it appropriate to reimburse the real estate broker for his out-of-pocket expenses from his fee award, he may do so at his discretion.

The balance of defendants' contentions have been considered and are deemed to be without merit. Accordingly, it is

ORDERED that the Receiver, Gregory Soumas, Esq., shall retain the sum of \$16,950.00 for the services rendered in connection with the receivership established by this Court, from the funds that may be in the Receiver's possession; and it is further

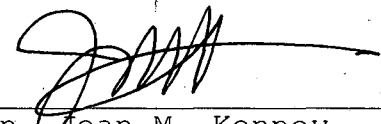
ORDERED that the Receiver is hereby discharged; and it is further

ORDERED that the Receiver's Surety bond is also discharged; and it is further

ORDERED that Gregory Soumas, Esq. Shall take whatever steps necessary to effectuate the directives of this Decision & Order forthwith.

Dated: August 24, 2016

E N T E R:



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