

Corning Fed. Credit Union v Georgilis

2017 NY Slip Op 31337(U)

May 16, 2017

Supreme Court, Queens County

Docket Number: 710044/16

Judge: Timothy J. Dufficy

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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CORNING FEDERAL CREDIT UNION,

Plaintiff,

Index No.: 710044/16

Mot. Date: 1/17/17

-against-

Mot. Cal. No. 16

Mot. Seq. 1

STEVEN GEORGILIS, DIBENEDETTO
PROPERTIES, INC., JASON GEORGILIS, and
JOHN DOE 1 and 2 , the names of the "John
Doe" defendants being fictitious and unknown to
plaintiff but intended to be parties, if any, having
or claiming an interest in the real property
described herein,

Defendants.

FILED
MAY 25 2017
COUNTY CLERK
QUEENS COUNTY

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The following papers read on this motion by for an order, *inter alia*, granting defendant
JASON GEORGILIS leave to amend his answer, dismissing the plaintiff's complaint as
against him, and canceling plaintiff's Notice of Pendency.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	EF 27-49; EF 52
Memorandum of Law.....	---
Affirmation in Opposition-Exhibits	EF 53-54; EF 56
Memorandum of Law.....	---
Reply Affirmation-Exhibit.....	EF 57

Upon the foregoing papers, it is ordered that the motion is denied.

Facts

On July 30, 2010, non-party American Made Tire Inc. (AMT) entered into a mortgage note and commercial term loan note and security agreement with Corning, pursuant to which AMT agreed to repay the amount of \$150,000 and \$350,000 respectively, in accordance with the terms of the mortgage note and commercial note. The mortgage note contained an absolute guarantee of payment whereby defendant Steven Georgilis guaranteed full payment when due of any and all the obligations of AMT to plaintiff Corning Federal Credit Union (Corning). On or about July 30, 2010, defendant Steven Georgilis executed an unconditional guarantee, whereby he unconditionally guaranteed full payment when due of any and all monies owing under the commercial note by AMT to Corning and Steven Georgilis breached the terms of the mortgage note and the aforesaid guarantees by failing to make payments in accordance with the terms of the note.

Based upon the aforesaid breaches of the mortgage note and associated guarantees, Corning commenced an action against defendant Steven Georgilis seeking money damages by filing a summons and complaint with the Chemung County Clerks Office, on May 9, 2013. That action remains pending. Defendant Steven Georgilis is indebted to Corning in the amount of \$375,097.03, plus accrued interest costs and disbursements and attorneys fees.

On or about October 21, 1982, defendant Steven Georgilis and a non-party took title to the premises, commonly known as 37- 22 59th Street, Woodside, NY 11377. Each owner possessed a one half interest in the property. Following the death of the non-party owner, on or about May 20, 2003, defendant Steven Georgilis' son, Jason Georgilis, purchased the one-half interest in the property for \$175,000, between May 20, 2003 and December 20, 2013, Jason Georgilis and Steven Georgilis each owned a one half interest in the property as tenants in common. On or about December 30, 2013, Steven Georgilis transferred his one-half interest in the property to DiBenedetto Properties, Inc. (DiBenedetto) for \$30,000, ostensibly to repay a debt, with a contractual right of reversion to Steven Georgilis upon payment of the debt to DiBenedetto. Less than seven months later, on or about July 21, 2014, DiBenedetto Properties, Inc. transferred its one-half interest in the property to Jason Georgilis for \$200,000. During the 2016 to 2017 tax

year, the property had an estimated market value of \$1,046,000. Corning then commenced an action against Steven Georgilis, DiBenedetto Properties, Inc., and Jason Georgilis for fraudulent conveyance pursuant to New York Debtor and Creditor Law sections 273, 273- a, 275, and 276.

Corning claims first that Jason Georgilis did not purchase the property for fair consideration. It argues that the purchase of Steven Georgilis' one-half interest for \$200,000 did not constitute fair consideration because Jason's interest was encumbered with a \$75,000 mortgage, which Steven Georgilis' one half interest was not. Moreover, the interest could have been used to repay the debt to Corning, but for the series of fortuitous transfers that resulted in the property being held by the debtor's son, Jason Georgilis.

Legal Standard

Pursuant to Debtor and Creditor Law § 273, a conveyance that renders the conveyor insolvent is fraudulent as to creditors without regard to actual intent, if the conveyance was made without fair consideration (*see* Debtor and Creditor Law § 273; *Stout St. Fund I, L.P. v Halifax Group, LLC*, 2017 N.Y. App. Div. LEXIS 1566, *7-8, 2017 NY Slip Op 01584, 2, 48 N.Y.S.3d 438 [2d Dept. 2017]; *Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 303 [1st Dept. 2006]). Pursuant to Debtor and Creditor Law § 274, a conveyance is fraudulent when it is made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his [or her] hands after the conveyance is an unreasonably small capital. In addition, pursuant to Debtor and Creditor Law § 275, "[e]very conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he [or she] will incur debts beyond his [or her] ability to pay as they mature, is fraudulent as to both present and future creditors."

"Fair consideration exists "when in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or *an antecedent debt is satisfied*" or "[w]hen such property, or obligation is received in good faith to secure a

present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property, or obligation obtained" (Debtor and Creditor Law § 272; see *Matter of BSL Dev. Corp. v Aquabogue Cove Partners*, 212 AD2d 694, 695-696 [2d Dept. 1995]; *North Fork Bank v Schmidt*, 265 AD2d 466. [2d Dept. 1999]). Here, there is no indication of whether the debt to DiBenedetto or Corning was an antecedent debt.

"[T]he good faith of both transferor and transferee is stressed as an indispensable condition in the definition of fair consideration under either branch of the statutory language" (*Julien J. Studley, Inc. v Lefrak*, 66 AD2d 208, 213 [2d Dept. 1979]).

Debtor and Creditor Law § 276 provides that "[e]very conveyance made . . . with actual intent . . . to hinder, delay, or defraud either present or future creditors, is fraudulent." "The requisite intent required by this section need not be proven by direct evidence, but may be inferred from the circumstances surrounding the allegedly fraudulent transfer" (*Matter of Steinberg v Levine*, 6 AD3d 620, 621 [2d Dept. 2004]). In determining whether a conveyance was fraudulent, the courts will consider "badges of fraud," which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent (*see Pen Pak Corp. v LaSalle Natl. Bank of Chicago*, 240 AD2d 384, 386 [2d Dept. 1997]). Here, the movant acquired a parcel of property with considerable value from his father, who owed a significant pre-existing debt to the plaintiff, which could have been satisfied by the property. The claim that the father and son are estranged does not mandate any different outcome, since they are close family members, and such transfers are subject to strict scrutiny (*see e.g. Modica v Montanino*, 2014 N.Y. Misc. LEXIS 3462 [Sup. Ct. Suffolk Co. 2014]).

Conclusion

Triable issues of fact exist regarding the total consideration received by Jason Georgilis from his purchase of the property. Moreover, there is an issue as to whether Steven Georgilis released his \$200,000 claim for damages against Jason Georgilis as additional consideration for Jason Georgilis' purchase. There is also an issue as to whether there were other obligations running between Steven and Jason Georgilis, which were released in consideration of Jason Georgilis' purchase. There also is an issue as to

whether the total amount of consideration for Jason Georgilis' purchase includes rental income on the property. There is an issue as to whether Jason Georgilis purchased the property with the intent to defraud Steven Georgilis' creditors, since an inference is raised from the circumstances surrounding the transfer. Finally, the property could have been used to satisfy, in whole or in part, Steven Georgilis' prior indebtedness to Corning, had it not been conveyed to his son. Notwithstanding his statements to the contrary, the plaintiff would likely have been eager, if not willing to accept Steven Georgilis' interest in the property as partial or full payment of his debt. Accordingly, triable issues of fact preclude the granting of the defendant Georgilis' dismissal motion.

The plaintiff has not interposed any opposition to Jason Georgilis' motion to amend his answer, however, defendant has not indicated the nature of the amendment, or submitted the proposed answer. Accordingly, the Court is not able to adjudicate the saliency of the desired amendment, and that request is also denied.

Accordingly, for all of the foregoing reasons, it is hereby,

ORDERED, that motion by defendant Jason Geogiklis is denied in all respects.

Dated: May 16, 2017


TIMOTHY J. DUFFICY, J.S.C.

FILED
MAY 25 2017
COUNTY CLERK
QUEENS COUNTY