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| Hepworth v Hepworth |
| 2018 NY Slip Op 32002(U) |
| August 15, 2018 |
| Supreme Court, New York County |
| Docket Number: 651730/14 |
| Judge: Nancy M. Bannon |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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C. LOUISE HEPWORTH, individually, and as trustee of the Hepworth Family Residence Trust, and as manager of Tir Na Nog Realty, LLC,

Index No.651730/14

Plaintiff

DECISION, ORDER
& JUDGMENT

v

DOUGLAS HEPWORTH and GEORGE COYNE,

Defendants.

MOT SEQ 005

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NANCY M. BANNON, J.:

I. INTRODUCTION

This is an action commenced by C. Louise Hepworth (Louise), the grantor and trustee of an irrevocable trust dated December 17, 2012, for a judgment declaring that certain acts taken or proposed by the defendants in connection with the trust and trust property were and are invalid.

Upon remittal from the Appellate Division, First Department, the defendants seek to modify this court's prior orders and judgment awarding declaratory and injunctive relief so as to conform them to the Appellate Division's directive. They also seek additional declaratory relief and the vacatur of all other injunctive relief previously issued by this court. The motion is granted to the extent of declaring that the October 14, 2013,

trust amendments giving the defendant Douglas Hepworth (Douglas) joint authority with Louise to remove and appoint an independent trustee are valid and enforceable, and vacating the provisions in prior orders enjoining the parties from amending the initial trust agreement for that limited purpose. The motion is otherwise denied.

II. BACKGROUND

The initial trust instrument appointed Louise and Douglas as trustees, and provided that they would mutually appoint a third, "independent" trustee. The instrument also gave Louise, who was the sole grantor, the unilateral right to appoint or remove the independent trustee, which she exercised by appointing the defendant George Coyne.

The instrument, however, also gave the independent trustee certain authority to unilaterally amend the terms of the trust. Coyne amended the trust agreement on October 14, 2013, so as to give Douglas joint authority with Louise in connection with the removal or appointment of the independent trustee. Louise commenced this action seeking, inter alia, a judgment declaring that the amendment was invalid and unenforceable, and that the defendants had no authority to lease the residential real property that is the sole asset of the trust or to remove her as manager of Tir Na Nog Realty, LLC (the LLC), which owns the trust

property. She also sought to recover money from Douglas for his use of the property. By order dated June 10, 2014, as modified August 7, 2014, the court (Tingling, J.) temporarily restrained the defendants from leasing, transferring, or conveying the subject real property pending the hearing of Louise's motion for a preliminary injunction. That order further restrained the defendants from taking any action with respect to the trust, including the amendment thereof, other than those acts necessary for the normal management of the trust.

By order and judgment entered September 1, 2016, this court awarded partial summary judgment to Louise declaring that the trust amendment was invalid and unenforceable, and denied the defendants' cross motion for partial summary judgment seeking a contrary declaration. The court preliminarily enjoined the defendants from taking any actions with respect to the trust, including the amendment thereof, other than those acts necessary for the normal management of the trust, and from leasing, transferring, or conveying the trust property. The defendants were also preliminarily enjoined from amending the LLC's operating agreement, or taking any action in connection with the LLC's property other than as necessary in the ordinary course of administering its affairs. The court denied the defendants' motion to modify the temporary restraining order so as to permit them to lease out the property. On September 13, 2016, Louise

removed Coyne as independent trustee, and replaced him with Maxine Stein Rahbari. On November 16, 2016, Louise removed Rahbari, and replaced her with Michael Charles.

The defendants appealed, as limited by their brief, only from so much of the order and judgment as granted Louise's motion for partial summary judgment, denied their cross motion, and declared that the trust amendments were invalid and unenforceable. By decision and order dated December 12, 2017, the Appellate Division, First Department, reversed the order and judgment insofar as appealed from, denied Louise's motion, granted the defendants' cross motion, and declared that the trust amendments were valid and enforceable. See Hepworth v Hepworth, 156 AD3d 461 (1st Dept. 2017). The Appellate Division noted that, although the trust agreement prohibited Coyne from bestowing any additional right or power upon Louise or Douglas, it gave him unilateral authority, as independent trustee, to amend the trust agreement in other respects. The Court concluded that, in amending the trust agreement to permit Douglas to have input into the removal or appointment of the independent trustee, Coyne did not bestow any additional right or power upon Douglas. See id. The Appellate Division was not asked to, and did not, address whether any other portion of the preliminary injunction was appropriately issued.

III. DISCUSSION

The defendants now seek to memorialize the Appellate Division's order, and also seek additional relief, purportedly based upon the Appellate Division's determination.

To the extent that the defendants merely request this court to enter a judgment declaring that the 2013 trust amendments are valid and enforceable, that request is granted. The Appellate Division itself expressly "declared that the amendments are valid and enforceable," and provided that "[t]he Clerk is directed to enter judgment accordingly." The Appellate Division's determination, however, was set forth in order, not a judgment, and causes of action seeking declaratory relief must be finalized in a judgment (see Lanza v Wagner, 11 NY2d 317 [1962]). When declaratory relief is granted, "the court . . . shall, on motion, determine the form of the judgment." CPLR 5016(c).

Upon the Appellate Division's reversal, the declaratory judgment that was issued by this court was essentially vacated and is of no effect, since "[w]hen an appellate court reverses a judgment, the rights of the parties are left wholly unaffected by any previous adjudication." Doomes v Best Tr. Corp., 126 AD3d 629, 630 (1st Dept. 2015) (citations and internal quotation marks omitted); see Taylor v New York Life Ins. Co., 209 NY 29 (1913). "It is fundamental that the reversal of an order upon appellate review restores the party who prevailed on appeal to the position

that he or she enjoyed prior to entry of the order appealed from." Matter of Angela F. v St. Lawrence County Dept. of Social Servs., 146 AD3d 1243, 1245 (3rd Dept. 2017), citing Doomes. Hence, although this court need not independently vacate the prior declaratory judgment, as the reversal itself effectuated a vacatur, the declaration made by the Appellate Division must nonetheless now be made and entered in the form of a judgment.

However, the proposed judgment submitted by the defendants includes a declaration that all actions taken by the plaintiff in contravention of the October 2013 amendments are void. Not only does the proposed judgment fail to specify which actions were in contravention of the amendments, it goes beyond the relief directed by the Appellate Division. Hence, the court declines to sign it or to enter a judgment in that form. Rather, it will only sign a judgment conforming to the Appellate Division's order.

The defendants' request to vacate the temporary restraining order dated June 10, 2014, as amended, has been rendered academic, since the TRO was, by its terms, in effect only pending the hearing of the motion for a preliminary injunction. See Divito v Farrell, 50 AD3d 405 (1st Dept. 2008). In any event, the TRO was superseded by the issuance of the preliminary injunction, as set forth in the order and judgment entered September 1, 2016. See CPLR 6301.

The defendants' request to vacate the preliminary injunction is granted in part. "A motion to vacate or modify a preliminary injunction is addressed to the sound discretion of the court which also has the power to impose conditions." Rosemont Enterprises, Inc. v Irving, 49 AD2d 445, 448 (1st Dept. 1975). The Appellate Division ruled only with respect to the limited issue of whether the initial 2012 trust agreement could be amended so as to afford Douglas joint authority over the removal and appointment of an independent trustee. Thus, the preliminary injunction, which otherwise prohibited amendments to the trust agreement, must be modified to permit that amendment.

The defendants, however, have not made a showing that vacatur of the remainder of the preliminary injunction is warranted. The Appellate Division did not rule on the validity of any other proposed or potential amendments to the trust. Nor was it asked to rule on the propriety of that portion of preliminary injunction which prohibited the parties from leasing or transferring the trust property, from amending the LLC operating agreement, or from taking any additional actions pursuant to the trust agreement, as amended, other than as necessary in the ordinary course of administering the affairs of the trust or the LLC. Hence, the appellate decision has no direct effect on Louise's right to injunctive relief in that regard. The defendants have not, on this motion, rebutted

Louise's initial showing that she is likely to succeed on the merits of her causes of action to recover for Douglas's use of the trust property and for declaratory and permanent injunctive relief in connection with the proposed lease or transfer of the property, or her management rights to the LLC. Nor have the defendants undermined Louise's initial showing that she would be irreparably harmed absent such injunctive relief or that the balance of equities remains in her favor. Hence, there is no basis for vacating the remainder of the preliminary injunction.

The defendants also seek to invalidate Louise's removal of Coyne as trustee, and his ultimate replacement by the third-party defendant Michael Charles on November 16, 2016. However, on April 18, 2017, the defendants stipulated that Charles was the "current" independent trustee and defined Coyne as the "then," or former, independent trustee. By order dated May 22, 2017, the court directed that the defendants' motion to preliminarily enjoin Louise from leasing or transferring the trust property or interfering with Douglas's management role in the LLC was resolved in accordance with the stipulation. The parties also agreed therein to continue the preliminary injunction prohibiting Louise from selling or transferring the property without Douglas's consent. Crucially, the parties effectively agreed that Charles, in his capacity as independent trustee, had authority, along with Louise and Douglas, to enter into the

stipulation. The defendants never expressly sought, at any time prior to the instant motion, to retroactively invalidate Coyne's removal or any subsequent appointment made by Louise, and that issue was not raised on their appeal. Nor did they seek a stay or preliminary injunction pending appeal preventing Charles from accepting his appointment or exercising any powers under the trust agreement. Hence, the court concludes that, by entering into the stipulation, the defendants are estopped from challenging Charles's appointment. See generally Matter of Farina v State Liquor Auth., 20 NY2d 484 (1967).

There is also no basis for vacatur of the stipulation, as alternatively sought by the defendants. "Only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation." Hallock v State of New York, 64 NY2d 224, 230 (1984); see Chae Shin Oh v Jeannot, 160 AD3d 701 (2nd Dept. 2018). The defendants have not made such a showing, nor have they demonstrated that "to enforce the stipulation would be 'unjust or inequitable or permit the other party to gain an unconscionable advantage.'" Yeun-Ah Choi v Shoshan, 136 AD3d 506, 506 (1st Dept. 2016), quoting Weitz v Murphy, 241 AD2d 547, 548 (2nd Dept. 1997). The defendants have cited, and research has revealed, no authority for their contention that a subsequent appellate determination favorable to

a party's litigation posture is a basis for vacatur of a stipulation.

IV. CONCLUSION

Accordingly, it is

ORDERED that the defendants' motion is granted to the extent of declaring that the October 14, 2013, amendments to the Hepworth Family Residence Trust Agreement are valid and enforceable, and modifying the Order and Judgment entered September 1, 2016, so as to vacate the portion of the preliminary injunction prohibiting the parties from amending the Hepworth Family Residence Trust Agreement in that limited respect, and the motion is otherwise denied; and it is further,

ORDERED that the Order and Judgment entered September 1, 2016, is modified by vacating first decretal paragraph thereof, and substituting therefor the following:

"ORDERED that the plaintiff's motion filed under sequence 001 for a preliminary injunction is granted to the extent that the defendants are enjoined (a) from taking any actions pursuant to the Trust Agreement or LLC Operating Agreement other than as necessary in the ordinary course of administering the Trust or the LLC, (b) from amending or attempting to amend or otherwise alter any terms of the Trust Agreement or the LLC Operating Agreement in contravention of the express terms set forth in those agreements,

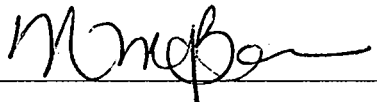
except to the extent that the terms of the Trust Agreement may be amended to authorize the defendant Douglas Hepworth to have joint responsibility with Louise Hepworth for the removal and appointment of the independent trustee, and (c) from selling, transferring, conveying, or otherwise encumbering the Residence, and is otherwise denied”;

and it is,

ADJUDGED and DECLARED that the October 14, 2013, amendments to the Hepworth Family Residence Trust Agreement are valid and enforceable.

This constitutes the Decision, Order, and Judgment of the court.

Dated: August 15, 2018

ENTER: 

J.S.C.

HON. NANCY M. BANNON