

**Holy Spirit Assn. for the Unification of World
Christianity v Barreto**

2019 NY Slip Op 33128(U)

October 18, 2019

Supreme Court, New York County

Docket Number: 155828/2019

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

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THE HOLY SPIRIT ASSOCIATION FOR THE
UNIFICATION OF WORLD CHRISTIANITY,

Plaintiff,

INDEX NO. 155828/2019

MOTION DATE 10/16/2019

MOTION SEQ. NO. 003

- v -

MICKEY BARRETO and MICKEY BARRETO MISSIONS,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 121

were read on this motion to/for SUMMARY JUDGMENT

Motion by Plaintiff The Holy Spirit Association for the Unification of World Christianity (“Holy Spirit Association”) pursuant to CPLR 3212 for an order granting it summary judgment on the first and second causes of action of complaint against Defendants Mickey Barreto (“Barreto”) and Mickey Barreto Missions¹ is granted, there being no opposition submitted.²

In the instant action, Plaintiff claims that Barreto, both individually and through an entity he controls named Mickey Barreto Missions, filed a forged, fraudulent deed that falsely stated that a civil court conveyed Plaintiff’s ownership of 481 Eighth Avenue, New York, New York (the “Building”) to Barreto by operation of law in a July 10, 2018 order³, and then that Barreto was conveying certain ownership to Mickey Barreto Missions. In motion seq. 001, on June 21, 2019, this Court acknowledged that the subject deed appeared to be forged and fraudulent “by all appearances” and, based upon the clear and convincing evidence in the papers submitted and

¹ As Mickey Barreto Missions has not answered or appeared in the action, the Court will read the motion as one for a default judgment pursuant to CPLR 3215 as against Mickey Barreto Missions.

² The instant motion was filed on September 25, 2019, with a return date of October 16, 2019. The notice of motion indicated that opposition papers were to be served at least seven days prior to the return date pursuant to CPLR 2214 (b). On October 16, 2019, beginning at 2:52 p.m., Barreto e-filed a “Notice of Withdrawal of Action/Proceeding” and accompanying exhibits twice. (NYSCEF Doc Nos. 117–125.) As such, these documents are late, are not properly before the Court, and have not been read on the motion. Moreover, this is a working copy part. Plaintiff has submitted working copies of its motion papers, while no working copies have been submitted of any opposition papers, and the motion was marked fully submitted – no opposition by the General Clerk’s Office, on October 16, 2019, and was delivered to chambers on October 18, 2019. No other papers have been received by chambers.

³ The judge in that case made clear in a September 11, 2019 order that “the court’s order of July 10, 2018 only awarded possession of one apartment, and did not address any issue as to title.” Indeed New York’s civil courts have not the authority to issue declaratory judgments quieting title. (Meisel affirmation, exhibit J.)

adduced at multiple hearing dates at which both sides had a full and fair opportunity to be heard, granted a preliminary injunction, familiarity with which is presumed. (NYSCEF Doc No. 37.)

In the instant motion, Plaintiff now moves for summary judgment on the first and second causes of action of the verified complaint, seeking (1) a judgment declaring that (a) the subject deed is null and void as a matter of law, (b) Plaintiff is the fee simple owner of the Building, and (c) Defendants are not the owners of the Building; and (2) a permanent injunction, enjoining and restraining Defendants from certain acts arising or expected to arise out of the fraud allegedly being perpetrated by Defendants.

There is no opposition submitted that is properly before the Court. Further, Mickey Barreto Missions has failed to answer or appear in the action.

Based upon the papers submitted and the evidence presented in motion seq. 001, the motion is granted. There is nothing submitted that would change the Court's determination—already the law of the case—that the subject deed is a forged deed by all accounts. As such, it follows that the subject deed is null and void as a matter of law, Plaintiff is the fee simple owner of the Building, and Defendants are not the owners of the building.

Further, Plaintiff has satisfactorily demonstrated prima facie entitlement to a permanent injunction. “To establish prima facie entitlement to a permanent injunction, a plaintiff must demonstrate: (a) that there was a violation of a right presently occurring, or threatened and imminent; (b) that he or she has no adequate remedy at law; (c) that serious and irreparable harm will result absent the injunction; and (d) that the equities are balanced in his or her favor.” (*Intl. Shoppes v At the Airport*, 131 AD3d 926, 938 [2d Dept 2015].) Further to the evidence heard in motions seq. 001, there is nothing in the papers submitted in the instant motion that would change the Court's determination in seq. 001 as to these criteria. Defendants were and are violating Plaintiff's rights as to its property, as is made manifest in the papers submitted in the instant motion by, among other things, the showing in the instant motion that Defendants have made false HPD and SEC filings (Meisel affirmation, exhibits L and W) in contravention of the restraints put in place on Defendants in seq. 001. As such, the Court will issue the declaratory judgment and permanent injunction sought in the complaint.

As to Plaintiff's third cause of action for Tortious Interference with Prospective Contractual Relations, Plaintiff did not move for summary judgment, and the Court takes no position as to that cause of action. To facilitate the decision and order on this motion, the Court will sever the third cause of action and leave the matter open, as Plaintiff in its complaint requested a money judgment against Defendants in an amount to be determined at trial as to that cause of action. Upon the resolution of the instant motion, it will be for Plaintiff to decide whether it wishes to continue to litigate its tortious interference claim against Defendants in this action or discontinue pursuant to CPLR 3217—the motion papers are silent as to the third cause of action, but Plaintiff has requested a final order and judgment in this case.

CONCLUSION

Accordingly, it is

ORDERED that the motion by Plaintiff The Holy Spirit Association for the Unification of World Christianity pursuant to CPLR 3212 for an order granting it summary judgment on the first and second causes of action of complaint against Defendants Mickey Barreto and Mickey Barreto Missions is granted, there being no opposition submitted; and it is further

ADJUGDED and DECLARED that that certain deed, filed by Barreto on May 28, 2019, with the New York City Department of Finance (the "DOF"), City Register File No. 2019000165644 (the "Fraudulent Deed") is null and void as a matter of law, Plaintiff is the true and actual fee simple owner of the Building, and Defendants are not the owners of the Building; and it is further

ORDERED that Defendants are enjoined and restrained from:

- (i) informing, stating, advising, notifying, and/or otherwise communicating with, any individuals and/or entities, whether orally or in writing (and in any form or medium whatsoever, including, but not limited to, on the internet, newspapers, publications, via postings online, through LinkedIn and/or business cards), including, but not limited to, any New York City and/or State agencies, and/or any vendors, employees, tenants, residents, and/or customers of the New Yorker Hotel (the "Hotel") (including, without limitation, the restaurants located therein), that Defendants are the owners of the Building;
- (ii) demanding any rent, money, and/or other compensation, from any guest, individual, entity, vendor, employee and/or tenant of the Hotel and/or otherwise sending any notices, letters, documents and/or other correspondence (regardless of the form or medium, and whether orally, in writing or otherwise) to any guest, vendor, employee and/or tenant of the Hotel, including, but not limited to, the restaurants located therein, pursuant to which, Defendants seek compensation, money and/or rent;
- (iii) demanding and/or seeking (whether in writing or orally and regardless of the form or medium) any rent, money and/or other compensation from Plaintiff, The New Yorker Hotel Management Company, Inc. (the "Ground Lessee"), MCR NYH Management LLC ("MCR") and/or anyone affiliated or associated with the Hotel based upon Defendants' false claim of ownership to the Building;
- (iv) presenting and/or filing the Fraudulent Deed to any individual and/or entity;
- (v) taking any actions, steps and/or measures in connection with the Fraudulent Deed, including, but not limited to, actions, steps and/or measures in connection with, and/or otherwise supporting, Defendants' false claim of ownership to the building;

- (vi) filing any liens, mortgages and/or encumbrances against the Building;
- (vii) conveying, transferring and/or otherwise selling all or any portion of the Building;
- (viii) entering into any agreements, written or oral, with any third person or entity, whether a lease, occupancy agreement or otherwise, for all or any portion of the Building, including, but not limited to, the restaurants located therein; and
- (ix) taking any actions and/or measures in connection with the One Hundred and Ten Million Dollar mortgage held by M&T Bank ("Lender") to which the Ground Lease is subject including, but not limited to, visiting any local branch of Lender, communicating (whether orally or in writing and regardless of the form or medium) with any of Lender's officers, directors, shareholders, employees and/or agents about the Mortgage and/or the Building and/or demanding any bank accounts, records and/or other information maintained by Lender relating to the Mortgage and/or the Building; and it is further

ORDERED that Defendants shall (i) take any and all actions and/or measures, including, but not limited to, filing any documents with the DOF, in order to expunge, vacate, set aside and/or otherwise vacate the Fraudulent Deed and (ii) to remove from the public record, including, but not limited to, on the internet (or any other medium, print, television, electronically or otherwise), any and all documents, including, but not limited to, LinkedIn postings, indicating and/or evidencing that Defendants are the owners of the Building; and it is further

ORDERED that the third cause of action is severed and shall continue, but if Plaintiff wishes to discontinue the action by an order of the Court pursuant to CPLR 3217 (b), Plaintiff shall move for such an order by motion on notice; and it is further

ORDERED that the November 19, 2019 compliance conference is adjourned to Tuesday, January 21, 2020, at 9:30 a.m., in Part 29, located at 71 Thomas Street Room 104, New York, New York 10013-3821, and all parties are directed to appear; and it is further

ORDERED that Plaintiff shall, within 10 days of the NYSCEF filing date of the decision and order on this motion, serve a copy of this order with notice of entry on Defendants and on the clerk, who is directed to enter judgment accordingly.

The foregoing constitutes the decision, order, judgment, and declaration of the Court.

10/18/2019
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Robert D. Kalish
HON. ROBERT D. KALISH, J.S.C.