

Francis v Meskin

2021 NY Slip Op 30773(U)

March 1, 2021

Supreme Court, Kings County

Docket Number: 523788/2018

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Term Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 1st day of March 2021.

PRESENT:
Honorable Reginald A. Boddie, JSC

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ALFRED LARRY FRANCIS, individually, and
as a member of 711 PARK PL REALTY LLC,
suing in the right of 711 PARK PL REALTY LLC,

Plaintiffs,

Index No. 523788/2018
Cal. No. 12, 13 MS 2, 3

-against-

ALEXANDRA MESKIN, JACK PERLAMUTER,
and QUALITY REALTY ASSOCIATES LLC,

Defendants.

DECISION AND ORDER

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Papers Numbered
MS 2, 3 Docs. # 13-36

Upon the foregoing cited papers, the decision and order on plaintiffs' and defendants' motions is as follows:

Plaintiff 711 Park Realty LLC (711 Park), a company formed to purchase and hold real estate, purchased Unit 1A at 1448 Bedford Avenue, Brooklyn, New York (the subject property) on May 1, 2015, for \$425,000. 711 Park is governed by the April 30, 2015 operating agreement between plaintiff Alfred Larry Francis (Francis) and defendant Alexandra Meskin (Meskin), wherein they were each identified as 50% owners, members and operating managers of 711 Park.

Plaintiffs alleged Francis and Meskin made capital contributions to 711 Park in the sum of \$78,500, and Meskin acted as a straw owner for her brother, defendant Jack Perlamuter (Perlamuter), whose credit history was poor. Plaintiffs alleged Meskin did not invest her personal monies, but instead acted as a conduit through which Perlamuter made an investment in 711 Park. On May 1, 2015, 711 Park borrowed \$340,000 from 1448 Bedford Funding L.P. (Bedford

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Funding). Bedford Funding secured the note by a mortgage on the premises, a personal guarantee by Francis, Meskin, and Perlamuter, and the filing of a UCC-1 Financing Statement.

Perlamuter owns Quality Realty Associates LLC (Quality Realty). On May 13, 2015, Quality Realty entered into a five-year commercial lease with 711 Park for Unit 1A at the subject premises to operate a real estate office, commencing June 1, 2015, and expiring on May 31, 2020. Plaintiffs alleged defendants defaulted in paying rent owed pursuant to the lease and caused them to default on their loan from Bedford Funding. Bedford Funding commenced a foreclosure proceeding on July 21, 2017, Index 514135/2017.

Plaintiffs alleged Meskin attempted to transfer her membership interest in 711 Park to Perlamuter in 2015, in breach of the operating agreement, and averred the transfer was therefore invalid. Plaintiffs denied Perlamuter has any right to participate in or manage the affairs of 711 Park, and alleged that Meskin has neglected her duties to 711 Park and retains her membership and 50% ownership in the company. They further alleged Meskin refused to enforce the lease against Perlamuter and Quality Realty and conspired with them to steal 711 Park's corporate opportunity to rent the unit to a paying tenant.

Plaintiffs commenced this action on November 27, 2018, alleging breach of fiduciary duty, fraud and breach of contract against Meskin, and aiding and abetting breach of fiduciary duty against Perlamuter and Quality Realty. On November 30, 2018, 711 Park commenced a summary nonpayment proceeding in Part 52 of the Civil Court, Kings County, captioned *711 Park Pl Realty LLC v Quality Realty Associates LLC et. al.*, bearing Index Number 93687/2018, which was stayed upon the signing of defendants' Order to Show Cause (MS 2) by the Honorable Debra Silber on October 11, 2019. By order dated April 10, 2019, this Court dismissed defendants' counterclaims in their entirety.

Perlamuter and Quality Realty moved by Order to Show Cause (MS 2), pursuant to CPLR 326 (a) and 6301, to stay and enjoin the prosecution of the summary proceeding, and, pursuant to CPLR 325 (b) and 602 (b), to remove the Civil Court action to Supreme Court and consolidate it with the instant case. Plaintiffs opposed. On November 6, 2019, Justice Martin issued an order adjourning MS 2 in contemplation of a settlement of the underlying action and left the stay of the LT action in place. To date, that matter has not settled. However, the lease has expired negating the grounds for a continued nonpayment action.

Plaintiffs cross-moved (MS 3) for an order, pursuant to CPLR 6401, appointing a temporary receiver to manage 711 Park's affairs pending the resolution of this action and to take all steps necessary to collect rent from defendant Quality Realty Associates, LLC (Quality Realty) or another bona-fide tenant for the use and occupancy of the subject premises, and pursuant to CPLR 6312 (b) and 6315, directing defendants Meskin, Perlamuter, and Quality Realty to post a bond or undertaking in an amount to be determined in the event this Court grants defendants a preliminary injunction restraining plaintiff from taking any steps to dispossess Quality Realty from the subject premises.

Plaintiff averred that pursuant to the lease, rent was abated for the first four months and the first payment of rent was due on October 1, 2015. The rent schedule provided monthly rent in the amounts of \$3,533.33, \$3,604.00, \$3,676.08, \$3,749.60, and \$3,824.59 for years one through five, respectively. Defendants argued under the express terms of the lease and the parties' memorandum of understanding, Quality Realty's rent obligation was and continues to be abated, and under the self-executing abatement provision under the lease no rent was due until the rear area of the subject premises was rented. Currently, the parties indicate that Quality Realty is no longer operating as a viable business at 1448 Bedford Avenue, Brooklyn, NY.

Accordingly, upon review of the papers, the arguments of the parties and the applicable law, both motions are denied in their entirety and all stays are lifted.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

**HON. REGINALD A. BODDIE
J.S.C.**

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