

<b>Georgitsi Realty, LLC v Armory Plaza, Inc.</b>
2021 NY Slip Op 32244(U)
November 10, 2021
Supreme Court, Kings County
Docket Number: Index No. 45669/2007
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 10th day of November 2021.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

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 GEORGITSI REALTY, LLC, 1504 REALTY LLC,  
 ARTHUR STRIMLING, LISA SEGAL, TIMOTHY  
 PETRZAK, CATHERINE SHANNON, BORIS  
 GILZON, MARTIN ZOLTOWSKI, MEMORIAL  
 BAPTIST CHURCH OF BROOKLYN, and NEW  
 HAMPSHIRE INSURANCE COMPANY a/s/o  
 1504 REALTY LLC,

Plaintiff

-against-

Index No. 45669/2007

DECISION AND ORDER

ARMORY PLAZA, INC., ARMORY HEIGHTS, LLC,  
 JACK LOCICERO, LORENZO LOCICERO,  
 BRICOLAGE DESIGNERS, INC., HENRY RADUSKY,  
 DOUGLAS PULASKI, SANCHEZ ASSOCIATES P.C.,  
 LOUIS SANCHEZ, ABRAHAM HERTZBERG,  
 WONGOOD CONSTRUCTION, XINGJIAN  
 CONSTRUCTION, INC., IMMOBILIARIA  
 BUILDERS CORP., DIAMOND POINT EXCAVATING  
 CORP., d/b/a DIAMOND POINT EXCAVATION CORP.,  
 JAFCO GROUP INC., ABC INC./CORP./LLC/LP/  
 PARTNERS 1-9, and JOHN/JANE DOES 1-50,

Defendants

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The following papers read on this motion:

Notice of Motion/Order to Show Cause/  
 Affidavits (Affirmations) and  
 Exhibits  
 Answering Affidavit (Affirmation)  
 Reply Affidavit (Affirmation)  
 Supplemental Affidavits and exhibits

NYSCEF Doc Nos

577-589

595-596, 598-600

602-604

792-806, 829-831

Defendants ARMORY PLAZA, INC., ARMORY HEIGHTS, LLC, JACK LOCICERO,  
 LORENZO LOCICERO (“the ARMORY Defendants”), move to modify an Order of this

Court which restrains the use of income from their building located at 406-408 15<sup>th</sup> Street Brooklyn New York (“the building”). They seek permission to use \$650,000 of the income currently restrained to fund a settlement it reached with two Plaintiffs, 1504 REALTY, LLC and NEW HAMPSHIRE INSURANCE COMPANY, a subrogee of 1504 Realty LLC.

Defendants JACK LOCICERO and LORNEZO LOCICERO are members of ARMORY HEIGHTS LLC, and principles of AMORY PLAZA INC. Defendant ARMORY HEIGHTS LLC is the current owner of the building and Defendant AMORY PLAZA INC. is the former owner of the building.

The Plaintiffs in this proceeding are property owners whose properties were damaged by a 60-foot-deep excavation done by the ARMORY Defendants.

The Plaintiffs were granted summary judgment as to liability against the ARMORY Defendants and several of the other Defendants. After being granted summary judgment, the Plaintiffs moved to have a receiver appointed to manage the building in order to ensure there were sufficient assets to cover their potential judgment, as the ARMORY Defendants do not have insurance to cover the damage caused by their excavation.

The Court declined to appoint a receiver because Plaintiffs have not yet been awarded a money judgment. The Court did enjoin the ARMORY Defendants from transferring any income from the building to any of the ARMORY Defendants or for any purpose other than paying taxes, water charges, insurance, utilities, mortgage payment, or necessary repair without further order of the Court.

In its decision, the Court noted that the deposition testimony of Defendant LORENZO LOCIERCO revealed that he has engaged in a course of comingling funds of Defendant ARMORY HEIGHTS LLC and his personal finances, using LLC funds for his personal use, and that he has begun to purchase out of state property.

Subsequent to this order, Plaintiffs 1504 REALTY, LLC and NEW HAMPSHIRE INSURANCE COMPANY settled with all Defendants. The ARMORY Defendants share of the settlement is \$2,425,000. Although the ARMORY Defendants originally moved for full access to the income from the building, they have since limited their application to \$650,000 of the building's income. The ARMORY Defendants state they need to use \$650,000 of the income from the building to complete funding of the settlement.

The ARMORY Defendants argue that they have \$12 million dollars in equity in the building which is more than enough to cover any potential judgments.

The remaining Plaintiffs oppose the motion arguing that the income from the building is needed to ensure there is money to pay their potential judgments because the ARMORY Defendants have no insurance coverage and the ARMORY Defendants' equity in the building may not be enough to cover their damages. They contend that the value of the building has dropped during the pandemic.

The parties have widely divergent views on the amount of damages. The ARMORY Defendants believe the total potential damages to be less than \$200,000. Plaintiffs believe that the total damages, not including those of 1504 REALY LLC, together with interest from 2006, will total close to 20 million dollars.

The major source of the difference in the parties estimates of damages is a disagreement as to whether it is necessary to install underpinning and piles in the Plaintiffs' rear yards in order to stabilize their buildings.

Subsequent to making this motion, in May of 2020 the ARMORY Defendants stopped making payments on the mortgage on the building and entered into a forbearance agreement with its lender. The forbearance agreement ran from April 20, 2020 to July 31, 2020. An extension of the forbearance agreement was entered into which ran to July

31, 2021. Movants have not produced any further extensions of the forbearance agreement. The ARMORY Defendants represent that by the end of the extension they were in arrears on the mortgage in the amount of \$614,224.86. They further represent that they have been given 48 months to pay these arrears through monthly installments of \$12,796.35 in addition to the regular monthly payments.

In support of this representation, movants submit a one page print out with no letterhead or authentication. The Court gave the ARMORY Defendants a further opportunity to submit documentation that the mortgagee would continue to forbear foreclosing on the building as long as the above payments were made. The movants assert that no other documents were sent to them.

Without authenticated documentation of the amount of arrears claimed by the mortgagee and that the mortgagee will in fact forbear foreclosing on the building if the ARMORY Defendants make 48 monthly installments of \$12,796.35 in addition to the regular mortgage payments, the Court cannot determine if the building is in danger of being foreclosed and if the \$650,000 sought is needed to prevent foreclosure.

WHEREFORE, it is hereby ORDERED that the ARMORY Defendants motion to modify the order of March 18, 2019 is denied with leave to renew upon submission of documentation of the amount of arrears on the mortgage, the terms by which the mortgage must be brought current and the current balance in the building account.

This constitutes the decision and order of the Court.

E N T E R:



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JSC