

Hudson 418 Riv. Rd., LLC v Safiya Consultants Inc.

2022 NY Slip Op 31675(U)

May 23, 2022

Supreme Court, Kings County

Docket Number: Index no. 510351/2018

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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HUDSON 418 RIVER ROAD, LLC,

Plaintiff,

Decision and order

- against -

Index No. 510351/2018

SAFIYA CONSULTANTS INC., ABIED CONSTRUCTION
INC., BROOKLYN BROADWAY MASJID & ISLAMIC
CENTER, S.M. G HOSSAIN, MOHAMMAD ULLAH,
BIJOY CONSTRUCTION CORP., MD A ALI, ASHRAF
ALI PE PC., MICAH KWASNIK, ALI H. DAFALLA,
IMAM ABDEL HAFID DIEMIL, MOHAMMAD AHMED,
GULZAR HOSSEIN, HARBOR VIEW ABSTRACT INC.,

Defendants,

May 23, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendant the Brooklyn Broadway Masjid and Islamic Center [hereinafter 'the Masjid'] has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated May 24, 2018 which granted the plaintiff's request for an injunction preventing the defendants from engaging in any construction on property located at 986 Gates Avenue in Kings County. The plaintiff opposes the motion arguing it has no merit. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

As recorded in the prior order, property located at 986 Gates Avenue in Kings County was owned by Kobas and Solih Realty LLC. On March 13, 2014 the owner entered into a contract to sell half the ownership interest to the Masjid. This lawsuit was instituted seeking a determination regarding that ownership. The

prior decision concluded that the plaintiff, Hudson 418 River LLC, had standing to bring this lawsuit as the owner of at least half the property pursuant to an 'Asset Purchase and Stock Sale Agreement' wherein the plaintiff purchased the share of ownership from Kobas and Solih Realty. The agreement did note that the half allegedly owned by the Masjid was disputed, however, the plaintiff duly purchased whatever remaining share Kobas and Solih Realty still owned. Upon reargument the Masjid asserts the court incorrectly concluded the plaintiff maintains standing to initiate this lawsuit and therefore the injunction must be vacated.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The asset purchase and stock sale agreement states that Amin Kobas is the sole shareholder of Kobas and Salih Realty Ltd., and thus had the sole right to enter into the agreement with the plaintiff. The Masjid argues that Ebrahim Salih was in fact a fifty percent owner of Kobas and Salih Realty Ltd., together with Amin Kobas who owned the other half. Indeed, in a prior order

dated December 10, 2018 the court acknowledged the contention that a corporate resolution naming Ebrahim Salih as a fifty percent owner was a forgery which raised issues of fact preventing the dismissal of the action. Moreover, in another, similar action, entitled Saleh v. Hudson 418 River Rd. Ltd., Index Number 526794/2019 the court issued a decision on May 27, 2020 whereby the court once again acknowledged there were questions of fact concerning the ownership of Kobas and Salih Realty Ltd., and that in spite of those questions the injunction was still proper. Thus, the Masjid argues yet again that there are questions concerning the plaintiff's percentage of ownership based upon its purchase of the share owned by Kobas and Salih Realty Ltd. and thus does not have standing to seek an injunction. Moreover, the Masjid asserts the plaintiff should have commenced a derivative action concerning the repairs. It should be noted that numerous requests seeking the same relief are unlikely to yield different results and thus they should generally be avoided.

In any event, concerning the preliminary injunction, even if issues of fact exist, the court can still conclude the moving party has demonstrated a likelihood of success on the merits (see, Ruiz v. Meloney, 26 AD3d 485, 810 NYS2d 216 [2d Dept., 2006]). Indeed, "the mere existence of an issue of fact will not itself be grounds for the denial of the motion" (Arcamone-

Makinano v. Britton Property Inc., 83 AD3d 623, 920 NYS2d 362 [2d Dept., 2011]). This is especially true where the denial of an injunction would disturb the status quo and render the continuation of the lawsuit ineffectual (Masjid Usman, Inc., v. Beech 140, LLC, 68 AD3d 942, 892 NYS2d 430 [2d Dept., 2009]). Thus, the moving party is not required to present "conclusive proof" of its entitlement to an injunction and "the mere fact that there indeed may be questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction" (Ying Fung Moy v. Hōhi Umeki, 10 AD3d 604, 781 NYS2d 684 [2d Dept., 2004]). Of course, issues of fact will necessarily prevent the issuance of any injunction only where the factual issues "subvert[s] the plaintiff's likelihood of success on the merits in this case to such a degree that it cannot be said that the plaintiff established a clear right to relief" (County of Westchester v. United Water New Rochelle, 32 AD3d 979, 822 NYS2d 287 [2d Dept., 2006]).

In this case the plaintiff as the purported sole owner of the interests of Kobas and Salih Realty Ltd. sought an injunction seeking to stop the Masjid from conducting work at the premises that would eventually reduce the value any ownership interests could yield. While there is a factual issue concerning the plaintiff's share of ownership in Kobas and Salih Realty Ltd., there is really no dispute they own a portion of Kobas and Salih

Realty Ltd. and thus a portion of the property. Therefore, their request seeking an injunction during the pendency of the litigation remains proper.

Further, there is no basis seeking reargument on the grounds the plaintiff has failed to demonstrate an irreparable injury or there is a lack of a balance of the equities.

Lastly, concerning the plaintiff's alleged failure to initiate a derivative action, even if true and such action should be commenced it has no bearing on the injunction sought which is a measure seeking to maintain the status quo. The request for an injunction may properly be sought by the plaintiff notwithstanding its decision to forego any derivative claims.

Therefore, seeking to maintain the status quo while ownership issues are resolved the likelihood of success on the merits is apparent. Therefore, the injunction is proper and any motion seeking reargument is denied.

Turning to the motion to renew, whether or not the Masjid was aware at the time of the original motion that Salih did not sell his share of Kobas and Salih Realty Ltd. to the plaintiff, as noted there are questions of fact in this regard as acknowledged by the court on December 10, 2018. Thus, any additional affidavit supplied by Salih which contradicts the assertions of Kobas and the plaintiff do not alter the court's

analysis in any way. Therefore, based on the foregoing the motion seeking renewal is denied.

So ordered.

ENTER:



DATED: May 23, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC