

Breest v Haggis

2023 NY Slip Op 31836(U)

May 31, 2023

Supreme Court, New York County

Docket Number: Index No. 161137/2017

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

Defendant resides in an apartment on Mercer Street. With respect to the Mercer Street Property, the 2016 Divorce Judgment granted defendant all right, title and interest to it and Ms. Rennard retained *no* interest. The parties agreed that the “net equity” of the Mercer Street Property as of the execution of the 2016 Divorce Judgment was “\$2,550,000 (appraised value of \$3,550,000 less \$1,000,000 mortgage).”

A separate apartment on West Broadway Property remained *co*-owned by defendant and Ms. Rennard. In the event that the West Broadway Property were to be sold, the proceeds would be divided as follows: (1) Ms. Rennard would receive 50% of the net proceeds of the sale, plus \$1,275,000 (corresponding to 50% of the net equity of the Mercer Street Property); and (2) Defendant Haggis would receive 50% of the net proceeds of the sale, less \$1,275,000 (corresponding to 50% of the net equity of the Mercer Street Property).

At trial, both defendant and Ms. Rennard gave inaccurate and misleading testimony about the parties’ interest in the West Broadway Property, asserting the 2016 divorce decree gave it entirely to Ms. Rennard.

The 2016 Divorce Judgment also obligated defendant to pay Ms. Rennard \$20,000 per month as spousal support until the death of either party, Ms. Rennard’s remarriage, or further order of the court. Defendant Haggis was obligated to pay child support only until their child reached the age of majority, which occurred in May 2016.

On October 17, 2022, the first day of jury selection in this action, defendant gave Ms. Rennard a security interest in the Mercer Street Property, in exchange for a \$1 million loan. There was evidence at trial that the property was valued at approximately \$4.2 million.

Since their divorce, Ms. Rennard and defendant Haggis have maintained a close relationship. Defendant at trial described Rennard as his best friend. They also maintain a close

financial relationship. Defendant and Ms. Rennard share an accountant, Joel Isaacson & Co. LLC, and repeatedly direct their joint accountant to transfer cash to Ms. Rennard's bank accounts, which Ms. Rennard then withdraws and places in a safe for defendant or gives to defendant directly.

Ms. Rennard helped defendant buy a property in Portugal, going as far as to open a European bank account and sign a promissory note for the property. Ms. Rennard continued to receive defendant's financial account statements at her apartment well into 2020, until defendant switched to paperless billing.

In January 2019, a little over 12 months after this lawsuit was filed, defendant and Ms. Rennard entered into agreement to modify the terms of their 2016 divorce judgment. Defendant permitted Ms. Rennard to record a \$1 million deed of trust against the Mercer Street Property,¹ subordinate to the existing home mortgage. Defendant agreed that, when he sold the Mercer Street Property, the \$1 million deed of trust would be satisfied from the sale proceeds by paying Ms. Rennard \$1 million. Defendant also agreed to give his half-share ownership interest in the West Broadway Property to Ms. Rennard, so that, when the West Broadway Property was sold, Ms. Rennard would receive all sale proceeds. The parties agreed that Defendant Haggis would be relieved of his obligation to pay \$20,000 per month in spousal support for a ten-year period beginning on November 1, 2018.

Plaintiff asserts defendant sought to modify the 2016 Divorce Judgment even though financial records show that, throughout 2018, he possessed significant liquid assets with which to

¹ The Mercer Street Property is owned by the Mercer Street Trust. However, plaintiff asserts that Haggis appears to control the Mercer Street Trust as a matter of law and fact. The documents establishing the Mercer Street Trust state that it is a revocable trust and that Defendant is entitled to all income and principal from the trust. Further, plaintiff asserts defendant encumbered the Mercer Street Property through the 2019 Modification and the 2020 Promissory Note, and permitted Ms. Rennard to file UCC liens against the property, without any authorization by the trust for these actions.

pay spousal support obligations and his legal expenses. Defendant maintained over \$2.6 million in a Schwab retirement account in 2018, transferring over \$220,000 from it to a brokerage account that year. He maintained month-end balances in his personal City National Bank account ranging from approximately \$69,000 to \$188,000; in the City National Bank account of his loan out company Heretic Films, Inc. ranging from approximately \$64,000 to \$785,000; and in the City National Bank account of his loan out company Paul Haggis, Inc. ranging from approximately \$32,000 to \$110,000. The SAG-AFTRA account for Paul Haggis, Inc. had a 2018 year-end balance of \$110,340.66. He was able to pay his legal expenses in this lawsuit (thousands of dollars in periodic bills) with money from the Heretic Films, Inc. account over the course of 2018.

On March 13, 2019, Defendant Haggis sold the West Broadway Property for 5.5 million dollars. Notwithstanding the terms of 2019 Modification that purportedly transferred all interest and ownership of the West Broadway Property to Ms. Rennard, the closing report for the West Broadway Sale lists only defendant Haggis as the seller. Both defendant and Ms. Rennard testified at trial that all proceeds from the sale went to Ms. Rennard, and that the ownership was never transferred from defendant to Ms. Renard prior to the sale because they wanted to avoid paying a transfer tax.

On February 18, 2020, less than a year after the sale of the West Broadway Property, Ms. Rennard loaned defendant \$700,000 (the “Promissory Note”). Under the terms of their promissory note, defendant agreed to make annual payments of interest only, with the principal amount of \$700,000 to be paid upon sale of the Mercer Street Property. Ms. Rennard transferred 700,000 shares of municipal bonds to Defendant Haggis on or about February 21, 2020. To date, defendant has made no interest payments to Rennard.

Defendant gave Ms. Rennard a lien on the Mercer Street Property in exchange for a purported loan, even though throughout 2019 and 2020, he possessed sufficient liquid assets to pay his expenses, including legal fees. In 2019, Defendant Haggis maintained up to \$2.9 million in his Schwab retirement account; as of the beginning of March 2020, it held \$2.8 million. Defendant transferred approximately \$550,000 from his retirement account to a brokerage account between January 2019 and March 2020. As of January 31, 2023, defendant maintained over \$2.5 million in this retirement account.

In addition, Heretic Films, Inc. continued to have up to \$322,000 in 2019 and over \$200,000 at the end of February 2020. At the end of 2019, his personal City National Bank account had a \$250,000 balance, Paul Haggis, Inc. had a \$30,000 balance at City National Bank, and Paul Haggis, Inc. had a \$137,000 balance at SAG-AFTRA.

Defendant has permitted Ms. Rennard to record three UCC-1 Financing Statements during the pendency of this lawsuit purporting to hold an interest in the entirety of the Mercer Street Property.

DISCUSSION

CPLR §5222(a) provides that an attorney for a judgment creditor may issue restraining notices upon any person if at the time of service said person is in the possession or custody of property which she knows or has reason to believe the judgment debtor has an interest in.

Ms. Rennard denies being in possession of any such property.

Restraining notices issued pursuant to § 5222 are effective against assets in which the judgment debtor has an “interest,” and they “only reach property and debts with such a connection to the judgment debtor.” *AG Worldwide v. Red Cube Mgmt. AG*, No. 01 Civ. 1228, 2002 WL 417251, at *8 (S.D.N.Y. Mar. 15, 2002). Thus, if third parties “do not have property or debts in which the judgment debtor has an interest, the restraining notices are not effective.” *Id.* The “[j]udgment debtor's ‘interest’ in property must be understood to mean a direct interest in the property itself which, while it may require a court determination, is leviable and not an indirect interest in the

proceeds of the property....” *Sumitomo Shoji New York, Inc. v. Chemical Bank New York Trust Co.*, 47 Misc.2d 741, 263 N.Y.S.2d 354, 358 (N.Y.Sup.1965), *aff’d mem.*, 25 A.D.2d 499, 267 N.Y.S.2d 477 (App.Div.1966).

JSC Foreign Econ. Ass’n Technostroyexport v. Int’l Dev. & Trade Servs., Inc., 295 F. Supp. 2d 366, 391–92 (S.D.N.Y. 2003).

Plaintiff asserts that the restraining notice is valid because the transactions between defendant and Ms. Rennard are fraudulent conveyances intended to evade Plaintiff’s judgment. A restraining notice against non-debtor property is valid if the judgment creditor has made a *prima facie* showing that the transfer of the property to the non-debtor was a fraudulent conveyance. *Blue Giant Equip Corp v Tec-Ser, Inc.* 92 AD2d 630, 631.

A transfer by the judgment debtor may be set aside as either a constructive fraudulent conveyance or an actual fraudulent conveyance pursuant to New York Debtor and Creditor Law (“DCL”). *See United States v. Coppola*, 85 F.3d 1015, 1021 n.5 (2d Cir. 1996). “A transfer made without fair consideration can constitute a ‘constructive fraud’ regardless of the transferor’s actual intent, whereas an ‘actual fraud’ is made ‘with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors.’” *Paradigm BioDevices, Inc. v. Viscogliosi Bros., LLC*, 842 F. Supp. 2d 661, 666 (S.D.N.Y. 2012) (internal citation omitted). In determining whether a conveyance is fraudulent, “[t]he touchstone is the unjust diminution of the estate of the debtor that otherwise would be available to creditors.” *Interpool Ltd. v. Patterson*, 890 F. Supp. 259, 267 (S.D.N.Y. 1995).

To state a *prima facie* claim of constructive fraudulent conveyance under DCL § 273-a, a plaintiff must allege: “(1) the conveyance was made without fair consideration; (2) at the time of transfer, the transferor was a defendant in an action for money damages or a judgment in such action had been docketed against him; and (3) a final judgment has been rendered against the

transferor that remains unsatisfied.” *Neshewat v. Salem*, 365 F. Supp. 2d 508, 518-19 (S.D.N.Y. 2005); *Dempster v. Overview Equities, Inc.*, 4 A.D.3d 495 (2d Dep’t 2004). Fair consideration requires both that the amount given for the transferred property was a fair equivalent and that the transaction was made in good faith, by both the transferor and the transferee. *See Sardis v. Frankel*, 113 A.D.3d 135 (1st Dep’t 2014).

To establish actual intent to defraud under DCL § 276 to set aside the transfer as an actual fraudulent conveyance, courts may consider the surrounding circumstances, including the following “badges of fraud”: transfers to relatives or close friends of the transferor; suspicious timing of the transfers or transfers that are unusual or hasty; lack of fair consideration for the transfers; whether the transfers rendered the transferor insolvent, and the transferor’s retention of possession, benefit, or use of the property transferred. *United States v. McCombs*, 30 F.3d 310, 328 (2d Cir. 1994). The judgment creditor is not required to prove unfair consideration or insolvency. *See Wall St. Assocs. v. Brodsky*, 257, A.D.2d 526, 529 (1st Dep’t 1999).

“[C]lose family relationships” such as exists between defendant and Ms. Rennard have repeatedly been held as warranting heightened scrutiny as intra-family transfers. *See Flowers v. 73rd Townhouse, LLC*, 202 A.D.3d 403, 405 (1st Dep’t 2022); *In re Fill v. Fill*, 82 B.R. 200, 220 (Bankr. S.D.N.Y. 1987) (ex-spouses that shared “close family relationship for many years” warranted heightened scrutiny of “intra-family” transfers).

The court finds that the transactions outlined by plaintiff, in addition to the parties’ close relationship and the facts highlighted in the motion papers constitute sufficient evidence from which a court could infer that the transactions constituted fraudulent conveyances.

WHEREFORE it is hereby:

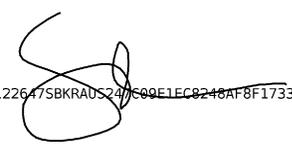
ORDERED that the motion to vacate the restraining notice is denied, and the *status quo* shall be preserved, provided however that plaintiff commences enforcement, turnover or other appropriate proceedings within 90 days of the date of this order. If such proceedings have not been commenced within 90 days, then the restraining notice shall be null and void on the 91st day after the date of this order; and it is further

ORDERED that the motion for sanctions is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision and order of this court.



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5/31/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED
<input type="checkbox"/>	GRANTED
<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: