

SUPREME COURT - STATE OF NEW YORK
IAS TERM PART 16 NASSAU COUNTY

PRESENT:

HONORABLE LEONARD B. AUSTIN
Justice

Motion R/D: 6-11-06
Submission Date: 6-11-06
Motion Sequence No.: 001/MOT D

FINE CUT DIAMONDS,
Plaintiff,

- against -

COUNSEL FOR PLAINTIFF
Morritt, Hock, Hamroff & Horowitz,
Esqs.
400 Garden City Plaza
Garden City, New York 11530

ELIAHU SHETRIT a/k/a SHETRIT
ELIAHU and AYELET ELLITUV a/k/a
AYELET C. ELLITUV and a/k/a AYELET
SHETRIT
547 Halevy Drive
Cedarhurst, New York 11516
Defendants.

COUNSEL FOR DEFENDANT
(for Ayelet Ellituv)
Kossoff & Unger, Esqs.
217 Broadway
New York, New York 10013

x

(for Eliahu Shetrit)
Beilis & Pols, P.C.
213 W. 35th Street
New York, New York 10001

ORDER

The following papers were read on the motion of Ayelet Ellituv a/k/a Ayelet C. Ellituv a/k/a Ayelet Shetrit to vacate a notice of pendency:

- Order to Show Cause dated May 23, 2006;
- Affidavit of Ayelet Ellituv sworn to on May 2, 2006;
- Affirmation of Michael D. Nachotme, Esq. dated May 3, 2006;
- Defendant's Memorandum of Law;
- Affirmation of Michael S. Re, Esq. dated June 6, 2006.

Defendant Ayelet Ellituv a/k/a Ayelet C. Ellituv a/k/a Ayelet Shetrit ("Ayelet") moves to cancel and vacate the notice of pendency filed against the premises known as 547 Halevy Drive, Cedarhurst, New York.

BACKGROUND

This action, and this motion, must be understood in the context of another action pending before this Court captioned *Fine Cut Diamonds Corp. v. Eliahu Shetrit and Eli Unique Diamonds, Inc.*, Index No. 1283/2006 ("Diamond action"). The Diamond Action was commenced on or about January 23, 2006.

Plaintiff Fine Cut Diamond Corp. ("Fine Cut") is in the wholesale diamond and jewelry business. From January 2004 through December 2005, Fine Cut alleges it delivered various pieces of diamonds and jewelry to Eliahu Shetrit ("Eliahu") on consignment which is known in the trade as "on memorandum" or "on memo". These goods remained in Fine Cut's name until payment was made. Eliahu, as the consignee, was responsible for the goods until paid for in full or returned to Fine Cut.

In January 2006, Eliahu advised Fine Cut that he was terminating their relationship. Fine Cut alleges that, at that time, Eliahu had over \$8 million worth of goods on memo from Fine Cut as to which he neither paid or returned.

The Diamond action was commenced seeking to recover the diamonds and other jewelry or the value of those items.

Eliahu and Ayelet are husband and wife.

FINE CUT DIAMONDS v. SHETRIT, *et al.*,
Index No. 1801-06

By deed dated January 5, 2005, Jay and Marilyn Waxman conveyed title to 547 Halevy Street, Cedarhurst, New York ("the Property") to Shetrit Eliahu. By deed dated December 3, 2005, recorded in the office of County Clerk, Nassau County on January 2, 2006, Eliahu conveyed the Property to Ayelet.

This action was commenced on January 31, 2006 whereby this action seeks to set aside the transfer of the Property by Eliahu to Ayelet on the grounds that it was a fraudulent conveyance as defined by Debtor and Creditor Law Article 10.

Upon the filing of the summons and complaint in this action, Fine Cut filed a notice of pendency indicating that it had commenced an action seeking to have the deed conveying the property from Eliahu to Ayelet declared fraudulent, void and a nullity and seeking to restore title to the property to its pre-conveyance status.

Ayelet asserts the property was purchased by Eliahu after they were married with money given to him by her family. She further asserts they occupy the property as the marital residence. Thus, the property is subject to the homestead exemption.

Ayelet further asserts Fine Cut is improperly using a notice of pendency as a means to obtain what amounts to a preliminary order of attachment.

DISCUSSION

CPLR 6501 permits the filing of a notice of pendency in "any action...in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property."

FINE CUT DIAMONDS v. SHETRIT, *et al.*,
Index No. 1801-06

An action brought pursuant to Debtor and Creditor Law Article 10 to set aside a conveyance of real property made by a husband to a wife affects title to or possession, use or enjoyment of real property. Moran v. Harting, 227 A.D.2d 391 (2nd Dept. 1996). See also, Resnick v. Doukas, 261 A.D.2d 375 (2nd Dept. 1999); and Bennett v. Bennett, 62 A.D.2d 1154 (4th Dept. 1978). Therefore, the party bringing such an action may file a notice of pendency. *Id.*

The fact that the Property may be subject to the homestead exemption does not prevent Fine Cut from placing a notice of pendency on the Property. The homestead exemption only affects the amount the judgment creditor receives on the sale of the property and the procedure used for selling the property. CPLR 5206(e). Thus, the notice of pendency shall remain of record.

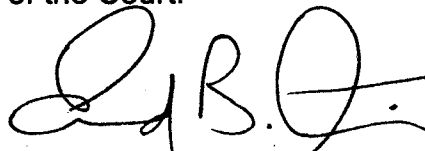
Accordingly, it is,

ORDERED, that the motion of defendant Ayelet Ellituv a/k/a Ayelet C. Ellitun a/k/a Ayelet Shetrit to vacate and cancel the notice of pendency filed against the premises 547 Halevy Drive, Cedarhurst, New York is **denied**; and it is further,

ORDERED, counsel for the parties are directed to appear for a Preliminary Conference on October 3, 2006 at 9:30 a.m.

This constitutes the decision and Order of the Court.

Dated: Mineola, NY
September 7, 2006



Hon. LEONARD B. AUSTIN, J.S.C.

ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE