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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 10

ADI KEIZMAN,

INDEX NO. 18485/08

Plaintiff,

-against-

MOTION DATE: 4/20/09
SEQUENCE NO. 01, 02, 03

ISAAC HERSHKO, NATASHA & CO.,
ESTHER HERSHKO, NADAV HERSHKO,
SHANIE HERSHKO, BRISCO PROPERTIES,
LLC, CLOVER PROPERTIES, LLC,
ETTIE PROPERTIES, LLC, LEVITICUS
PROPERTY MANAGEMENT LLC, METO
SERVICES, LLC, MY SON'S PROPERTIES,
LLC, NADAV PROPERTIES, LLC, SHANIE,
LLC, RIEL PROPERTY MANAGEMENT LLC,
ELIAS GROISMAN, NEIL SULTZER, ESQ.
ACKERMAN, RAPHAN and SULTZER and
DENNIS BERKOWSKY, ESQ.

Defendants.

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Upon the foregoing papers, it is ordered that the motion by plaintiff by way of Order to Show Cause for an order appointing plaintiff as a receiver of three properties for sale toward satisfaction of his December 2006 judgment against defendants Isaac Hershko and Esther Hershko is granted..

The branch of plaintiff's motion seeking the equitable relief of setting aside numerous real property and personal property transactions that occurred after the December 2006 judgment pursuant to DCL §273-a is granted.

The motions by defendants Dennis Berkowsky, Neil Sultzer, Ackerman, Raphan & Saltzer for an order dismissing this action against them pursuant to CPLR 3211(a)(7) are granted.

In this post-judgment action, plaintiff alleges that defendants Isaac Hershko and Natash Jewelry Manuf. LLC, (captioned as "Natasha & Co.") are judgment debtors pursuant to a \$6,858,395.43 judgment dated December 5, 2006 and filed in Nassau County on December 22, 2006. The principal amount of the judgment was reduced by \$30,000 by the Appellate Division, First Department on June 3, 2008; the amended judgment is \$6,812,032.69 dated July 10, 2008.

In an effort to enforce the aforementioned judgment, plaintiff filed an action against defendants in New York County Supreme Court (#606673/07) to compel the appearance of defendants Esther Hershko, Nadav Hershko and Shanie Hershko at post-judgment depositions and eight limited liability companies allegedly under their control to respond to disclosure demands.

After three discovery orders by New York County Supreme Court, a contempt order was signed on September 22, 2008 granting monetary sanctions against defendants Esther Hershko, Nadav Hershko, Shanie Hershko in the amount of \$880,779.53 each and against defendants Brisco Properties, LLC, Clover Properties

LLC, Ettie Properties, LLC, Leviticus Property Management LLC, Meto Services, LLC, My Son's Properties LLC, Nadav Properties LLC and Shanie, LLC. in the amount of \$12,587.53 each.

This action was commenced by plaintiff in an effort to prevent defendants from fraudulent conveyances and transfers of Nassau County real property in an effort to avoid payment of plaintiff's judgment. In essence, plaintiff seeks the equitable relief of piercing the corporate veil of nine corporations formed after the commencement of the underlying New York County 2002 action. Plaintiff also alleges in this action that defendants have "participated in multiple sham transfers of titles to in excess of forty-five (45) separate parcels of real property for the sole and express purpose of defrauding the plaintiff as a creditor of defendant Isaac Hershko and of Esther Hershko.

Plaintiff alleges that: "defendants Neil Sultzer, Esq., Ackerman, Raphan and Sultzer, and Dennis Berkowsky, Esq. Knowingly and intentionally participated in the defrauding of the creditors of defendant I. Hershko by facilitating the sham transfers of titles to numerous parcels of real property actually owned by defendant I. Hershko" and "defendant I. Hershko further defrauded creditors by collecting rents from tenants in properties nominally held by sham purchasers (i.e., 'straw men') and then secreting and expending said rent receipts for his own personal use."

In opposition to plaintiff's motion, defendants Isaac Hershko, Esther Hershko, Nadav Hershko, Shanie Hershko and Elias Groisman by their counsel, I. Zucker, argue that plaintiff does not have any interest in any of the three parcels of real property that can serve as the basis for the appointment of a post-judgment receiver pursuant to CPLR 5228(a). Additionally, defendants Isaac Hershko, Esther Hershko, Nadav Hershko and Shanie Hershko submit a November 24, 2008 judgment of

foreclosure for the Carman Avenue, Cedarhurst property showing Wells Fargo as the judgment creditor and the property was sold on December 22, 2008 to Approved Financial Corp. for \$1,000 leaving a deficiency of \$591,706.63.

Likewise, defendants argue that the Bayview Property was ordered sold at a foreclosure by order dated March 20, 2008 with express language that: "the plaintiff may recover from the defendant, Esther Hershko, unless discharged in bankruptcy, the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgage debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds thereof." The remaining realty, defendants contend was conveyed from Esther Hershko to Elias Groisman by deed dated May 22, 2007.

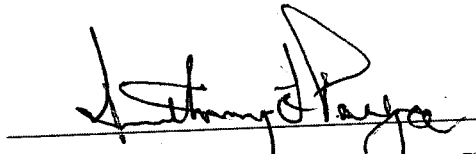
With respect to the motions to dismiss by defendants Neil Sultzer, Esq., Ackerman, Raphan & Sultzer and Dennis Berkowsky, these defendants argue that the conveyance of the numerous properties and corporate transactions took place before the final judgment against defendants Hershko was entered and was not a fraudulent post-judgment conveyance facilitated by them.

In opposition plaintiff notes that the causes of action against them allege that as attorneys for a purchaser of realty that had belonged to defendant Isaac Hershko, Dennis Berkowsky participated in a fraud against judgment-creditor plaintiff.

The Court has examined the Complaint in a manner consistent with uncontested law. "To determine whether a pleading is sufficient to withstand a challenge under CPLR 3211[a][7], the court must consider whether the pleading, taken as a whole, fails to state a cause of action. Looseness, verbosity and excursiveness, must be overlooked on such motion if any cause of action can be spelled out from the four corners of the pleading" (*Foley v. D'Agostino*, 21 AD2d 60

(1st Dept., 1964)). Defendants Neil Sultzer, Esq., Ackerman, Raphan & Sultzer and Dennis Berkowsky's motion is granted. The cause of action as presently pleaded against them is conclusory (*Thaler & Gertler v. Weitzman*, 282 AD2d 622 (2nd Dept., 2006)).

Dated: June 9, 2009.


Anthony L. Parga, J. S. C.

ENTERED

JUN 11 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**