

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

BRADLEY LIEBMAN,

Plaintiff,

- against -

JENNA LAVECCHIA,

Defendant.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 11743/11
Motion Seq. No.: 01
Motion Date: 10/12/11

The following papers have been read on this motion:

	Papers Numbered
Order to Show Cause, Affidavit, Affirmation and Exhibits	1
<i>Pro se</i> Affidavit in Opposition and Exhibit	2
Affirmation in Reply	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves for an order enjoining defendant from disposing of, in any manner whatsoever, a diamond engagement ring described as a center Cushion Brilliant Diamond certified by GIA with a weight of 2.18 carats, quality rating of F Color, clarity of SI1 and finish rated "very good", 108 separate diamonds in the setting that totals 1.05 carats with a color and clarity rating of G/VS, as well as 28 round fancy pink diamonds weighing .32 carats and a clarity rating of FP/SI1, for a total weight of 3.55 carats, that was given to defendant in contemplation of marriage on November 20, 2010; and for an order preserving any and all joint assets that belonged to plaintiff and defendant, including, but not limited to, funds that were originally on

deposit at CitiBank under Checking Account #9990116520 and Savings Account #9990116539 that were allegedly withdrawn by defendant. Defendant opposes the motion.

Plaintiff submits that, on November 20, 2010, he proposed to marriage to plaintiff, who accepted said proposal. Upon defendant's acceptance, plaintiff presented her with the aforementioned diamond engagement ring. A wedding was scheduled to take place on October 29, 2011. As part of the preparation for said wedding, the parties opened joint bank accounts at Citibank. For the period of time that they were engaged, the parties deposited approximately \$19,000.00 into said accounts, of which \$3,000.00 was engagement gifts to both parties. Both parties were signatories on the Citibank accounts. Plaintiff contends that he deposited sixty-five percent (65%) of the total funds in the accounts (minus the gifts received) with the remaining thirty-five percent (35%) being deposited by defendant.

Plaintiff claims that, on July 26, 2011, defendant unilaterally terminated the engagement by means of a text message sent to him. After defendant terminated the engagement, plaintiff made a demand for a return of the engagement ring. Defendant refused, and continues to refuse, to return said ring. Plaintiff also indicates that he was informed that defendant, without authorization or consent, withdrew the entire balance (approximately \$12,000.00) of the parties' joint Citibank accounts and closed said accounts.

On or about August 11, 2011, plaintiff filed a Summons and Verified Complaint to commence the instant replevin action. *See* Plaintiff's Affirmation in Support Exhibit E. Defendant joined issue on or about August 26, 2011. *See* Plaintiff's Affirmation in Support Exhibit F.

Plaintiff argues that there is both statutory and case law that clearly and unequivocally

states that plaintiff is entitled to the return of the engagement ring. He submits that the return of a gift given in contemplation of marriage is well established in the State of New York. Plaintiff further argues that given said statutes and case law in favor of the return of a gift given in contemplation of marriage, there is a likelihood that he will prevail in the instant action and, therefore, the request for a preliminary injunction is warranted under the circumstances.

In opposition to plaintiff's motion, defendant, *pro se*, argues that it was plaintiff who broke off the parties engagement on July 24, 2011, when he demanded the return of the engagement ring after defendant allegedly said that she was going to call the police out of fear of his erratic behavior. Defendant contends that, at the time she was given her engagement ring on November 20, 2010, she did not know that plaintiff was incapable of entering into a marriage contract due to the impact of his drug addiction. Defendant alleges that plaintiff suffers from "the mental disturbance of abstinence delirium." Defendant submits that plaintiff lacked the capacity to enter into a marriage contract and therefore the ring could not be a gift in contemplation of marriage.

Defendant further argues that the engagement ring defendant gave her is not "unique and irreplaceable" as is required by CPLR § 7109. She asserts that "[a]nother ring can be made with similar setting with diamonds of similar size and quality." Defendant adds that plaintiff has also failed to meet the other requirements for a preliminary injunction, specifically a likelihood of success on the merits, irreparable injury absent the granting of the injunction and a balance of equities in the movant's favor. Defendant also submits that she closed out the parties' Citibank accounts to protect the funds in said accounts from plaintiff using them to satisfy his drug addiction. Defendant states, "[a]fter obligations are satisfied related to our aborted wedding, it is

unlikely that there will be anything left for either the plaintiff or me.”

In reply to defendant’s *pro se* opposition, plaintiff’s counsel argues that “the within motion is brought for the sole purpose of preventing waste of the particular asset for, if the Defendant would be able to sell same, she would undoubtedly receive a deeply discounted amount. The ring is, as stated in my client’s affidavit in support of the motion, a unique design and may not be readily marketable. As such, any sale would reflect that fact through a reduction in offered price....It is feared that she [defendant] cannot and will not be able to reimburse the Plaintiff, in cash, for the value of the engagement ring and for the funds that she [defendant] absconded with.”

Based upon the arguments before it, as described above, the Court finds that plaintiff is entitled to the preliminary injunction sought in his Order to Show Cause. Plaintiff has demonstrated that the chattel he seeks return of in his replevin action is unique and that there is a likelihood that plaintiff will succeed on the merits of his underlying action.

Accordingly, plaintiff’s motion for an order enjoining defendant from disposing of, in any manner whatsoever, a diamond engagement ring described as a center Cushion Brilliant Diamond certified by GIA with a weight of 2.18 carats, quality rating of F Color, clarity of SI1 and finish rated “very good”, 108 separate diamonds in the setting that totals 1.05 carats with a color and clarity rating of G/VS, as well as 28 round fancy pink diamonds weighing .32 carats and a clarity rating of FP/SI1, for a total weight of 3.55 carats, that was given to defendant in contemplation of marriage on November 20, 2010; and for an order preserving any and all joint assets that belonged to plaintiff and defendant, including, but not limited to, funds that were originally on deposit at CitiBank under Checking Account #9990116520 and Savings Account #9990116539 that were allegedly withdrawn by defendant is hereby **GRANTED**.

It is further ordered that the parties shall appear for a Preliminary Conference on January 17, 2012, at 9:30 a.m., at the Preliminary Conference Desk in the lower level of 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this Order shall be served on all parties and on the DCM Case Coordinator. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
December 1, 2011

ENTERED
DEC 05 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE