

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. EDWARD W. MC CARTY, III
Justice

TRIAL/IAS, PART 2
NASSAU COUNTY

DWIGHT MILLER and MSO REALTY, INC.,

Plaintiff(s)

INDEX No.16560/2003

-against-

EREZ SOLOMON a/k/a ERIC SOLOMON,
DGA CORP. and CHRISTINE PORTER,

MOTION DATE:1/16/07
MOTION SEQ.#006-007-008

Defendant(s)

DGA CORP.,

Plaintiff(s)

-against-

CHRISTINE PORTER,

Defendant(s)

The following papers read on this motion:

Notice of Motion/Order to Show Cause	xx
Cross-Motion	x
Answering Affidavit	x
Replying Affidavits	x

Motions (#006 and #007) by defendants Solomon and DGA Corp. for renewal of a prior motion for an order pursuant to CPLR 6401 appointing a temporary receiver of 788 Park Place, Brooklyn, New York (hereinafter, "the Premises"), is granted to the extent that renewal is granted, but upon renewal, the motion to appoint a temporary receiver is denied. Cross motion (#008) by plaintiffs Miller and MSO Realty, Inc. (hereinafter, "MSO") for: (1) an order pursuant to CPLR 8303-a and 22 NYCRR Part 130 dismissing the motion to

appoint a temporary receiver as frivolous; (2) an order granting partial summary judgment on the issue of title to the Premises, and (3) an order vacating and dismissing the lis pendens on the Premises, is denied, except insofar as defendants' motion to appoint a temporary receiver is denied.

By order dated September 27, 2006, this Court denied the prior motion (#005) made by defendants Solomon and DGA Corp. for an order pursuant to CPLR 6401 appointing a temporary receiver of the Premises, with leave to renew upon a showing of sufficient proof that the Premises are indeed in danger of being lost before this action can be resolved.

In support of its current motions (#006 and #007) for appointment of a receiver, which appear to be identical except for the date of the attorney's supporting affirmation, defendants Solomon and DGA Corp. allege that tax payments on the Premises are in arrears and that a tax lien foreclosure action has been commenced against the Premises.

In opposition to defendants' motion, plaintiffs Miller and MSO establish that the tax liens at issue have been paid and the tax lien foreclosure action is being discontinued. Therefore, there is no indication that there is any danger that the Premises may be lost.

Defendant Porter's argument that plaintiffs' prior late payments of taxes necessitate the appointment of a receiver is without merit. As noted by this Court in its previous order of September 27, 2006, appointment of a receiver is an extreme remedy to be granted only where the applicant makes a clear evidentiary showing of the necessity for the conservation of the Premises and the protection of the interests of that party. (See, *Modern Collection Associates, Inc. v Capital Group, Inc.*, 140 AD2d 594.) Such a clear evidentiary showing has not been made herein. Therefore, defendants' motions (#006 and #007) seeking appointment of a temporary receiver are denied.

Plaintiffs' cross motion (#008) for partial summary judgment on the issue of title to the Premises and for vacatur and dismissal of the lis pendens on the Premises are denied, as issues of fact exist which preclude such relief.

Date 3-1-07

ENTERED
MAR 06 2007 EDWARD W. McCARTY III
NASSAU COUNTY J.S.C.
COUNTY CLERK'S OFFICE