

Sogoloff v Sogoloff

2024 NY Slip Op 31259(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 150148/2024

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

HELEN SOGOLOFF,

Plaintiff,

- v -

NATALY SOGOLOFF, DIMITRI SOGOLOFF

Defendant.

-----X

INDEX NO. 150148/2024

MOTION DATE 03/29/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the petition is denied, and the matter is converted to a plenary action for the reasons indicated below.¹

The Allegations in the Petition

The petition and accompanying affirmation allege the following. Petitioner Helen Sogoloff and respondent Dimitri Sogoloff were formerly married. As part of a matrimonial action an order was entered requiring Dimitri Sogoloff to transfer assets to Helen Sogoloff.

Due to Dimitri Sogoloff refusing to transfer the assets he was required to transfer to Helen Sogoloff, an enforcement proceeding was commenced in the matrimonial action. That Court ruled that Helen Sogoloff was entitled to receive a one-half share of any cash and non-cash benefits from the sale/liquidation of the parties' investment in a company.

Thereafter, the Court in the matrimonial action determined that Helen Sogoloff was entitled to receive the sum of \$688,213.00 from Dimitri Sogoloff. A judgment, in the amount of

¹ The Court would like to thank Jason Lowe, Esq. for his assistance in this matter.

\$723,509.84 was entered in favor of Helen Sogoloff and against Dimitri Sogoloff. Only a portion of that judgment has been collected.

As a result of additional enforcement action, a company associated with Dimitri Sogoloff, DAS Capital, LLC ("DAS Capital"), was ordered to pay funds owed to Dimitri Sogoloff on a promissory note up to the amount of \$688,213.00. That order was entered on May 4, 2021.

However, prior to the order against DAS Capital, Dimitri Sogoloff and his new wife, co-respondent Nataly Sogoloff, bought an apartment together (the "Apartment"). The purchase price for the Apartment was \$2,875,000. The down payment for the Apartment, in the amount of \$287,500 was paid by DAS Capital. Other than the down payment and closing costs, the purchase price was paid via a mortgage on the Apartment.

Helen Sogoloff now brings this petition seeking to set aside a transfer from Dimitri Sogoloff to Nataly Sogoloff when the Apartment was put in their names as tenants by the entirety or otherwise encumbering or requiring Nataly Sogoloff to turn over her interest in the Apartment to petitioner.

Respondents submit a verified answer disputing many of the above facts.

Discussion

CPLR 409 provides that in a special proceeding, "[t]he court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised" and "[t]he court may make any orders permitted on a motion for summary judgment." The standards governing summary disposition of a special proceeding are the same standards applicable on a motion for summary judgment. See *Gonzalez v City of New York*, 127 AD3d 632, 633, 8 N.Y.S.3d 290 (1st Dept 2015).

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986). The burden is upon the moving party to make prima facie showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs. Inc.*, 46 NY2d 1065, 1067, 390 N.E.2d 298, 416 N.Y.S.2d 790 (1979). A failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063, 619 N.E.2d 400, 601 N.Y.S.2d 463 (1993).

The relief petitioner seeks, setting aside an alleged transfer of an interest in the Apartment between Dimitri Sogoloff and Nataly Sogoloff, is not supported by the petition or accompanying paperwork. Petitioner has failed to establish that Dimitri Sogoloff transferred anything to Nataly Sogoloff. Dimitri Sogoloff did not transfer the Apartment to Nataly Sogoloff. Rather, the Apartment was bought by both Dimitri Sogoloff and Nataly Sogoloff. They own the Apartment together subject to a mortgage.

The evidence presented by petitioner in documentary format, i.e., a check and mortgage note, is that the money used to buy the Apartment came from DAS Capital, a non-party to this action, and from a mortgage. Though there is deposition testimony from Dimitri Sogoloff concerning whether he used his own assets for the downpayment and closing costs on the Apartment, since the only documentary evidence shows that payment came from DAS Capital and the mortgage, there is at least an issue of fact as to whether Dimitri Sogoloff personally paid any amounts toward the purchase of the Apartment.

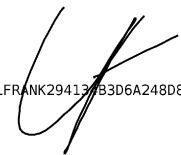
The causes of action asserted in the petition are pursuant to former Debtor and Creditor Law (“DCL”) §§ 273, 273-a, 275, 276, 276-a, and 278.² Each of these sections address a conveyance or transfer that has the effect of defrauding a creditor or making the conveyer or transferor insolvent. In this case, since the documentary evidence of a conveyance or transfer is a check from DAS Capital with “Contract Deposit” in the for line. This evidences a conveyance from DAS Capital to respondents Dimitri Sogoloff and Nataly Sogoloff, not from Dimitri Sogoloff to Nataly Sogoloff.

DAS Capital is not a party to this action and there is an issue of fact as to whether Dimitri Sogoloff paid anything for the Apartment. Therefore, the Court determines that the petition must be denied and that this action is more appropriate as a plenary action. The Court converts this action to a plenary action pursuant to CPLR 103(c). The petition shall be deemed the complaint in this action and the answer shall be deemed the answer to the complaint.

Accordingly, it is hereby

ORDERED that the petition is DENIED to the extent discussed in this Order; and it is further

ORDERED that, this action is converted to a plenary action and the petition is deemed the complaint and the answer is deemed the answer to the complaint.


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LYLE E. FRANK, J.S.C.

4/11/2024
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

² Since the actions alleged in the petition took place when former DCL §§ 273, 275, 276, 276-a, and 278 were in effect, that version governs the actions described in the petition.