DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	JANUARY 15, 2018

MOTION FOR DISCHARGE OF JUDGMENT LIEN ON SUBSTITUTION OF BOND

The defendant, The Yeshiva of New Haven, Inc. (the "Yeshiva" or the "Defendant"), hereby moves (the "Motion"), pursuant to Conn. Gen. Stat. § 52-380e, for an order discharging the judgment lien held by Eliyahu Mirlis ("Mirlis" or the "Plaintiff") as it relates to the property located at 765 Elm Street, New Haven, Connecticut (the "Property") upon substitution of a bond. In further support hereof, the Yeshiva states as follows:

I. STATEMENT OF FACTS

On June 6, 2017, final judgment entered against the Yeshiva and Daniel Greer ("Greer") in the U.S. District Court case styled *Eliyahu Mirlis v. Daniel Greer, et al.*, Case No. 3:16-CV-00678 (the "District Court Case") in the amount of $21,749,041.10 (the "Judgment"). Subsequently, on June 28, 2017, Greer and the Yeshiva filed a motion for new trial in the District Court Case pursuant to Fed. R. Civ. P. 59(a) (the "New Trial Motion") seeking either an order granting a new trial or remittitur of the Judgment on the basis that the evidence could not fairly support the jury's award of non-economic damages.

On July 7, 2017, Plaintiff filed a certificate of judgment lien (the "Judgment Lien") against the Property with the Office of the City Clerk for the City of New Haven, Connecticut. Thereafter, on July 27, 2017, Plaintiff initiated the instant action by filing a complaint seeking foreclosure of the Judgment Lien. On October 27, 2017, Greer and the Yeshiva filed a motion

for relief from final judgment (the "Motion for Relief") in the District Court Case on grounds that newly-discovered evidence had been brought to the attention of Greer and the Yeshiva thereby warranting relief under Fed. R. Civ. P. 60(b)(2). On November 8, 2017, Plaintiff filed his Motion for Summary Judgment in the instant case.

The District Court heard oral argument on the New Trial Motion and Motion for Relief on December 8, 2017, and denied both motions. As such, on December 15, 2017, Greer and the Yeshiva filed a Notice of Appeal indicating that Greer and the Yeshiva seek review by the United States Court of Appeals for the Second Circuit from the Judgment and the District Court's denial of the New Trial Motion and Motion for Relief.

II. BASIS FOR RELIEF REQUESTED

The Yeshiva seeks to substitute a cash bond as security for the Judgment in exchange for discharge of the Judgment Lien on its Property pursuant to Conn. Gen. Stat. § 52-380e. Section 52-380e provides:

> When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.

Conn. Gen. Stat. § 52-380e.

III. LAW AND ARGUMENT

In determining whether the proposed substitution is sufficient, a court must analyze both the qualitative and quantitative features of the substitution. *Jefferson v. SBD Kitchens, LLC*, 2015 WL 425156, at *1 (Conn. Super. Ct. Jan. 7, 2015). Concerns over the insufficiency of a

proposed substitution often involve situations wherein a judgment debtor seeks to substitute a lien on alternative real property owned by the judgment debtor and the value of said proposed alternate property is unclear or questionable. For instance, in *Jefferson*, the court declined to permit the substitution of alternate real property when it seemed likely that the two lots offered as substitution would be merged for zoning purposes in the near future, thereby negatively impacting the value of the properties and providing inadequate security for the judgment creditor. *Id.* at *4. Similarly, in *Harbor Federal Sav. And Loan Ass'n v. Seibold*, 1991 WL 240451, at *1 (Conn. Super. Ct. Nov. 8, 1991), in the context of a judgment debtor's request to modify a prejudgment remedy of attachment, the court denied the substitution of an encumbered property in which the judgment debtor's equity was $208,000 for an unencumbered property which was worth $210,000.00. Although the proposed substitute property was close in value, it offered a lesser degree of quality of security to the judgment creditor due to the encumbrance of a first mortgage.

Here, unlike the above-described situations where issues as to the sufficiency of value and quality of the proposed substitution – i.e. a cash bond – are not present, the Court should grant the Yeshiva's request. The Yeshiva seeks to substitute a cash bond for the Property in the amount of the fair market value of the Property, thereby providing the same security with respect to Plaintiff's Judgment as that provided by the Property. *F.D.I.C. v. Bombero*, 37 Conn. App. 764, 768 (1995) ("Section 52-380e provides for substitution of a lien on 'other property.' Here, the cash that was deposited with the third party stakeholder constituted the 'other property.'"). Further, "[t]he transfer of a judgment lien to property of equal or greater equity value is a matter of right under the statute." *R.S. Silver Enterprises, Inc. v. Pascarella*, 2016 WL 785418, at *1 (Conn. Super. Ct. Feb. 9, 2016) (*citing Feuser v. Lampron*, 6 Conn. App. 350 (1986); *see*

Brainard v. Smyth Manufacturing Co., 178 Conn. 250, 253 (1979) ("The purpose of the statute is to make attachment security for a claim, not a weapon over the head of defendant.")). Accordingly, the Court should permit the Yeshiva to discharge the Judgment Lien with respect to the Property upon substitution of an acceptable bond or other security in the amount of the fair market value of the Property.

WHEREFORE, the Yeshiva hereby requests that the Court grant the Motion and enter an order: (1) discharging the Judgment Lien on the Property; (2) substituting a bond as security for the Judgment; and (3) for such further relief as this Court deems proper.

THE DEFENDANT:
The Yeshiva of New Haven, Inc. fka The Gan, Inc., fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc.

By: /s/ Lauren McNair

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CERTIFICATE OF SERVICE

This is to certify that on January 15, 2018, a copy of the foregoing Motion for Discharge of Judgment Lien on Substitution of Bond was sent to all appearing parties and counsel of record as follows via electronic email:

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/s/ Lauren McNair

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ORDER GRANTING DISCHARGE OF JUDGMENT LIEN ON SUBSTITUTION OF BOND

Upon the motion (the "Motion") filed by the Yeshiva of New Haven, Inc. (the "Yeshiva" or the "Defendant") pursuant to Conn. Gen. Stat. § 52-380e to substitute a bond as security for that certain judgment (the "Judgment") held by Eliyahu Mirlis ("Mirlis" or "Plaintiff") and secured by a judgment lien (the "Judgment Lien") on 765 Elm Street, New Haven, Connecticut (the "Property"); and after a hearing on the sufficiency of the substitution and upon good cause shown therefore;

IT IS HEREBY ORDERED that the Judgment Lien on the Property is discharged; and it is further

ORDERED that the Yeshiva may substitute a bond as security for the Judgment; and it is further

ORDERED that the amount of the bond shall equal _____, which amount constitutes the fair market value of the Property.

APPENDIX OF UNREPORTED CASES

2015 WL 425156
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford–Norwalk.

Brett JEFFERSON
v.
SBD KITCHENS, LLC.

No. FSTCV116011187S.
|
Jan. 7, 2015.

Attorneys and Law Firms

Ethan Andrew Brecher, Law Office of Ethan A. Brecher, LLC, New York, NY, for Brett Jefferson.

Whitman Breed Abbott & Morgan LLC, Greenwich, CT, for SBD Kitchens, LLC.

Opinion

POVODATOR, J.

***1** Until now, the term "high conflict" seems to have been a term reserved for family matters (dissolution and post-dissolution), with occasional exceptions made for child protection/custody matters in the juvenile court. Reluctantly, the court believes that the term may well be applicable to the instant case (actually, one of three cases arising from the dispute between the parties). [1]

Currently before the court is plaintiffs' application for substitution of a bond for a judgment lien, modified to be a request to substitute different real estate, the court having rejected the alternate grounds set forth in # 145.00 for outright dissolution of the judgment lien (see footnote 1). The issue before the court is controlled by General Statutes § 52–380e, and necessarily, the court is required to interpret and apply that statute.

Section 52–380e provides:

> When a lien is placed on any real or personal property pursuant to section 52–355a or 52–380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52–380d by first class mail, postage prepaid, to the judgment debtor.

Of particular concern is the statutory language "determination after hearing of the sufficiency of the substitution." For purposes of this case, the question is the extent to which the court can and should exercise its discretion in determining the sufficiency of the proposed substitution, which in turn has two subparts—qualitative and quantitative. There presumably is little question that the quantitative aspect is properly to be considered; the less precise concept relating to quality of the security is very much the focus of the current aspect of the dispute between the parties.

Before addressing the actual merits, the court needs to review the somewhat tortured history of just this motion. The court has heard argument on the motion four times (9/9/14, 10/6/14, 11/3/14 and 11/24/14). The motion started out, in relevant part, [2] seeking substitution of a bond for the judgment lien, but at the first argument, counsel sought leave to substitute a lien on other property owned by plaintiffs. That led to a dispute/discussion concerning the fact that the plaintiffs were not the owners of both parcels, but were scheduled to close on the proposed-to-be substituted property the very day of argument. That evolved into a subsequent argument focusing on the fact that they were not the legal owners of both parcels, but rather were the beneficial owners of one parcel, and the statute is premised on the judgment debtor owning both properties involved in the proposed substitution. That, in turn, led to yet another issue-if the plaintiffs became the fee owners of both properties, which were abutting

properties, would the nonconforming status of the parcel sought to be substituted be lost (due to merger of the lots for purposes of zoning), which in turn might or would impact the value of that to-be-liened parcel, which in turn would impact the adequacy of security provided to defendant.

***2** Defendant argued that the motion as filed only sought to substitute a bond and therefore any issues concerning substitution of a different property were not properly before the court. In an ultimately futile effort to avoid unnecessary delays occasioned by requiring the filing of a substitute or amended motion, the court treated the motion as having been orally amended to request substitution of an alternate property, an alternate remedy allowed by the statute that had been invoked by the motion.

Yet another procedural wrinkle: at the outset of argument on the second occasion that this motion was before the court (October 6, 2014), the court raised the issue, *sua sponte,* relating to the automatic stay that arose as a result of the appeal by plaintiffs relating to the disposition of another issue raised in the motion currently before the court (see footnote 1). The court indicated that its interpretation of the recent case, *Cuniffe v. Cuniffe,* 150 Conn.App. 419; cert. den. 314 Conn. 933 (2014), led it to believe that the stay did not impact the court's ability to rule on an issue unrelated to the appeal and not properly characterized as an attempt to enforce the order being appealed i.e. substitution of alternate security for the judgment lien was distinct from the issue of whether a lien was proper in the first instance.[3] The parties had not contemplated that issue and were not fully prepared to address it at that time; the court has not identified anything in any of the papers submitted by the parties since that date, or arguments made by parties since that date, suggesting that anyone disagrees with the court's assessment of the issue. However, defendant did request, in a subsequent filing (# 155.00[4]), that the court enter a discretionary stay. Defendant's strongest argument in support of a discretionary stay appears to be that an erroneous substitution might cause great harm to defendant; in so arguing, the court believes that defendant is conflating the appropriateness of addressing the motion for substitution at this time with the merits of that motion (as amended).

As a practical matter, declining to address the merits of this motion (as amended) at this time-the effect of a discretionary stay-would be tantamount to denying it. Accordingly, to the extent that defendant has requested a stay (presumably pursuant to *Practice Book* § 61–12[5]), the court denies that request.

Defendant's argument on the merits of substitution implicitly invokes the complementary issues of quality of security and value of security. Defendant discusses the situation presented in *Harbor Federal S & L Association v. Seibold,* J.D. Fairfield at Bridgeport, No. CV90–273564, 1991 Ct.Sup. 9232, 7 CSCR 127 [5 Conn. L. Rptr. 749] (Nov. 8, 1991), where the court declined to allow substitution of an approximately-equally-valued property due, in part, to the lesser degree of quality of security that the proposed substitute property would provide.

***3** Defendant has identified its concerns about the potentially adverse consequences of the concept of zoning merger, if the security is moved to an adjacent, vacant property also owned by plaintiffs. See, e.g. *Cockerham v. Zoning Board of Appeals,* 146 Conn.App. 355, 362 (2013). Absent merger, the vacant property apparently is entitled to treatment as a nonconforming lot and subject to use or development in its own right; if a zoning merger occurs, it may be treated (for purposes of zoning) as a portion of a larger parcel, with the acreage likely treated as excess or residual land, with substantially less value due to the loss of ability to utilize it separately as a nonconforming lot.

The court does not place as much weight as does defendant on the lack of any claim that plaintiffs want to sell the currently-encumbered property or otherwise are impeded in their ability to use or enjoy that parcel. That may well have been part of the rationale for enactment of the provision at issue, but that is not an explicit or implicit limitation on the authority of the court to allow substitution. However, the lack of any plausibly-claimed harm from the status quo must be balanced against the uncertainty that a transfer of the lien might have in terms of adequacy of security for defendant. No attempt has been made to present the court with anything relating to the value of the adjacent parcel, were it to be deemed merged for purposes of zoning. The price paid by plaintiffs would not necessarily be a fair measure of the post-merger value—the price paid would have reflected the market for a nonconforming lot, whereas post-acquisition (by the owner of an abutting parcel), there is a likelihood that

that value would no longer apply. Plaintiffs offered no evidence or even suggestion that there would be no change in value despite the prospect for zoning merger.

The statute contemplates a hearing. To date, plaintiffs have not proffered any live testimony or affidavit that would suffice to convince the court that substitution of the adjacent parcel would provide sufficient security to defendant, warranting granting of the motion to allow substitution. They have not requested an opportunity to present live testimony at some future date—and at the November 3 argument (the third time this matter was heard), the court's recollection is that the parties were told that the matter would need to be concluded at the next scheduled date (November 24, 2014), that the matter needed to come to some resolution. Plaintiffs have submitted documents (attached to # 151.00) indicating that the property was assessed by the town for $405,440, which is equivalent to a full value of $579,200—but there is no explicitly-indicated date of valuation. Attached to # 150.00 is documentation relating to the purchase of the property, with an indicated purchase price of $850,000. Accepting that either value may be appropriate, and accepting further the representation that there are no mortgages or other liens on the property at present, there remains the focal challenge to valuation—the impact on value of possible or likely merger for purposes of zoning. Indeed, plaintiffs presumptively were aware of this potential problem early on: also attached to # 150.00 is a September 18, 2014 letter from plaintiffs' real estate counsel—who is the trustee in whose name the abutting property was purchased—specifically identifying "zoning" as the reason that the property was acquired in his name as trustee. ("Please note that title to the property was taken by me 'as Trustee' for zoning purposes only.")

***4** As something of a corollary: to the extent that this is not only (potentially) legally an adjunct to their existing home/property in a zoning sense but may also be intended to be a practical/actual adjunct, do plaintiffs even intend to retain the existing improvements on the property?

Given the unusual circumstances here, the court cannot "assume" that the historical value of the proposed substitute property reflects its value as security going forward, if both parcels were to be owned by plaintiffs. See, e.g. *Davis v. Westport,* 61 Conn.App. 834, 844, 846, 767 A.2d 1237 (2001) (both sides valued residual or excess land, not subject to separate development or usage, at 10% of value of primary/buildable lot/acreage-dispute as to whether merged lot should have been valued as sum of two separate lots, since prior to merger, each lot had been subject to improvement and had been valued accordingly). The issue at present is not the actual magnitude of the impact on value were the proposed substitute lot to be deemed merged for purposes of zoning; it is the likelihood of an impact coupled with a lack of any evidence that so-affected the property would still provide adequate security.

The statute charges the court with responsibility for making a determination of the sufficiency of the proposed substitute security, as a precondition to allowing substitution and discharge of the lien on the property currently encumbered. The court does not find that plaintiffs have established the sufficiency of the proposed substitute security under the circumstances presented here. Accordingly, the court cannot grant the motion to substitute a lien on the proposed property for the lien currently in place and cannot dissolve the lien currently in place. The court already has denied the motion with respect to the issue of money judgment (see footnote 1); the balance of the motion is hereby denied.

All Citations

Not Reported in A.3d, 2015 WL 425156

Footnotes

1 Issues that have been raised if not necessarily fully adjudicated include whether part or all of the judgment could be paid in coins, and whether a judgment confirming an arbitration award (ordering payment of approximately $200,000 in compensatory and punitive damages) is a monetary judgment because (primarily) there is no specified date for payment ("maturity date"), thereby precluding the filing of a judgment lien. The latter issue was raised in the motion currently before the court and denied from the bench; that denial is the subject of an appeal filed by the plaintiffs (# 149.00)).

In one of defendant's memoranda, it states that plaintiffs have filed six appeals during the life of this dispute (so far), and the court is aware that defendant has filed at least one appeal. According to the Appellate Court website, 3 of the appeals (including defendant's) were argued on December 10, 2014; the most recent appeal (# 149.00; docketed in

the Appellate Court as AC 37220) is still pending (as of this date). The online docket indicates that defendant has filed a motion seeking dismissal of that recent appeal.

2 i.e. the portion of the motion seeking substitution of alternate security for the judgment lien, not the challenge to characterization of the judgment as a monetary judgment upon which basis a judgment lien might exist. The monetary judgment issue was resolved at the first hearing, from the bench.

3 To the extent that a stay presumably is intended to benefit the person allegedly aggrieved by the order or judgment being appealed, query whether the appellant effectively can impliedly "waive" that benefit without formally seeking relief from the stay.

4 In addition to the motion itself (# 145.00), plaintiffs have filed four supporting memoranda (# 146.00, # 148.00, # 150.00, and # 151.00); defendant has filed two memoranda in response to the motion (# 147.00 and # 155.00).

5 Defendant has not filed a formal motion seeking a stay, and does not specifically cite *Practice Book* § 61–12 in the relevant discussion in # 155.00.

1991 WL 240451

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Fairfield, at Bridgeport.

HARBOR FEDERAL SAVINGS AND LOAN ASSOCIATION
v.
Charles F. SEIBOLD.

No. CV90 27 35 64.
|
Nov. 8, 1991.

MEMORANDUM OF DECISION

RE: MOTION TO MODIFY PREJUDGMENT ATTACHMENT

THIM, Judge.

***1** Defendant Charles F. Seibold seeks a modification of a prejudgment remedy of attachment. He wants a lien released on one parcel of real property and offers another parcel as substitute security. Harbor Federal Savings and Loan Association opposes the motion for modification on the grounds the exchange will result in the bank not being fully secured and not being in the same position of priority as it presently enjoys. The court, having reviewed the evidence and the parties' claims, denies the motion for modification.

The plaintiff has attached two parcels to secure a claim for $310,000.00. One parcel, which is located at 45 Martin Lane in Easton, is worth $220,000.00. Since the defendant has a one-half interest in the parcel, the bank's attachment is worth $110,000.00. The second parcel is an unimproved lot known as parcel 1, 66 Sunny Ridge Road, Easton. This parcel is worth $210,000.00 and is not encumbered by any lien except the plaintiff's lien of attachment.

The defendant wants the lien on parcel 1, 66 Sunny Ridge Road, to be released. He offers as substitute security a lien on another parcel. The other parcel is described as parcel 2, 66 Sunny Ridge Road. The defendant's residence is located on this latter parcel. This property is encumbered by a first mortgage on which the mortgage debt is $692,000.00.

The parties dispute the market value of the replacement property. The defendant claims the property is worth $1,200,000.00 to $1,250,000.00. The plaintiff claims the property is worth $900,000.00.

The defendant presented testimony from an appraiser whose opinion as to value lacked a sufficient foundation. He relied upon inappropriate comparables. On the other hand, the appraiser called by the plaintiff gave a well grounded opinion. While the court has discretion to find a different value than that given by the appraisers, the court is of the opinion that the appraiser who testified on behalf of the plaintiff is correct. The court finds the market value of the defendant's residence and the lot on which it is situated to be $900,000.00.

Should the defendant's motion be granted, the plaintiff will lose as security unencumbered property which is worth $210,000.00. In exchange, the plaintiff will receive encumbered property in which the defendant's equity is $208,000.00. The relative position of the plaintiff as an attaching creditor will have changed. This change is a relevant factor for the court to consider. See *Brainard v. Smyth Manufacturing Co.,* 178 Conn. 250, 252 (1979). The quality of a lien which is behind a first mortgage is not the same as the quality of a lien on unencumbered property. Under the facts of this case, the change in the plaintiff's priority is significant. The offered lien is not sufficient security. The motion for modification is denied.

All Citations

Not Reported in A.2d, 1991 WL 240451, 5 Conn. L. Rptr. 749