

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-008390

02/24/2017

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT

M. Corriveau

Deputy

C P F VASEO ASSOCIATES L L C

TODD A BURGESS

v.

BRUCE W GRAY, et al.

JOHN NEIL STUART

RULING ON REQUEST FOR PROVISIONAL REMEDIES

CPF Vaseo Associates, LLC ("CPF") has applied for provisional remedies against Bruce and Barbara Gray. The Court held a provisional remedies hearing on February 22, 2017. The Court has considered the evidence.

Pursuant to A.R.S. §12-2410(C), the Court's role is limited to the following issues: 1) the probable validity of CPF's claims and 2) whether CPF has met the statutory requirements for the provisional remedy sought. Each of these issues will be discussed below.

1. Probable validity of CPF's claims, including any defenses and personal exemptions

As an initial matter, the Court finds that CPF demonstrated probable validity that the Grays owe it a significant amount of money, approximately \$39 million.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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02/24/2017

The Grays acknowledge that the money has never been paid. They acknowledge that they executed personal guaranties on the \$26.5 million loan, and that Mr. Gray executed a personal guaranty on the \$3.7 million loan. The Grays allege that CPF breached the covenant of good faith and fair dealing by interfering with the Grays' efforts to sell the Blue Sky property to Guefen when CPF submitted the \$22.5 million appraisal, which was well below Guefen's offer of \$36 million for an approximate two thirds share. The Grays argue that the breach of the covenant of good faith and fair dealing negates their guaranties.

The Court finds that CPF rebutted the Grays' defense and has established probable validity that the Grays owe the money. Mr. Gray acknowledges that if the sale to Guefen didn't work out, valuation was important in the bankruptcy case. On the evidence presented, the Court was persuaded by the applicant's position that the purported sale to Guefen was a far cry from a done deal. CPF had legitimate concerns over valuation. The proposed sale to Guefen was subject to a nonbinding Letter of Intent, and there was no money placed in escrow. Guefen backed out of the Biltmore property sale, as well, even though there was no suggestion that CPF had any role in the Biltmore property sale. Other than the hearsay statements offered by Mr. Gray, there was no evidence that Guefen had the ability to close the transaction or that the reason Guefen backed out of the deal was the filing of the appraisal. The property had been on the market for more than three years, and there was no proof of other offers on the property. The Court was persuaded that the transaction involving Guefen was more likely an attempt to buy time in the bankruptcy court than a real (or "rock solid") deal that was going to close for \$36 million. Mr. Gray has a history of promising lucrative sales that will generate massive proceeds, then failing to close the transactions. *See, e.g.* Exhibit 45.

The Court finds that CPF established the probable validity of its claims against the Grays.

2. Has CPF statutory requirements?

A.R.S. §12-2404(A) requires that an application for provisional remedy shall be filed under oath. The original application was under oath and Mr. Flaxman was placed under oath at the evidentiary hearing.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-008390

02/24/2017

With regard to garnishment, applicant has applied to garnish bank accounts from Wells Fargo, Bank of America, BMO Harris, Chase and Comerica Banks. None of these specific writ applications were supported by an affidavit, but Mr. Flaxman testified that he had reason to believe Wells Fargo had money from the Grays. The Court has the sense that the applications to Bank of America, BMO Harris, Chase and Comerica Banks were shots in the dark taken by CPF in the hope that the Grays have money there. There is no evidentiary support for the claim that CPF has “good reason” to believe that the Grays have money at any of those banks. There is no evidentiary support for the claim against Gray Development Group. The claim against Wells Fargo, however, is different. Not only was it supported by Mr. Flaxman’s testimony, but it is supported by Exhibit B to the reply, indicating that Mr. Gray transferred funds held in a Wells Fargo bank account.

The Court finds that applicant met the statutory requirements for Wells Fargo, but did not meet the statutory requirements for any of the other proposed garnishees.

With respect to the application for writ of attachment, the application is supported by an affidavit indicating that the Grays own property referred to as the San Miguel Property located at 5340 E. San Miguel Avenue, Paradise Valley Arizona. This property is identified with sufficient particularity and is supported by an affidavit from Mr. Flaxman (filed February 16, 2017). The Court finds that the statutory requirements for the issuance of a writ of attachment have been met for the San Miguel Property.

As previously noted, the Court declines to issue a blanket attachment order for properties not identified in the application.

IT IS ORDERED that the application for a provisional remedy with Wells Fargo as the garnishee is granted, but the applications for provisional remedies with the other banks is denied.

IT IS FURTHER ORDERED that the application for a writ of attachment against the property located at 5340 E. San Miguel is granted.

IT IS FURTHER ORDERED that the Court authorizes the issuance of a provisional writ of garnishment in an amount not to exceed \$34,251,780.83 to Wells Fargo, conditioned upon the filing of an appropriate application and bond, and upon compliance with the other procedural requirements of A.R.S. §12-1570 *et seq.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-008390

02/24/2017

IT IS FURTHER ORDERED that the Court authorizes the issuance of a writ of attachment in an amount not to exceed \$34,251,780.83 against property located at 5340 East San Miguel Avenue, Paradise Valley, Arizona, conditioned upon the filing of the affidavit required by A.R.S. §12-1522 and evidence of a filed bond, and upon compliance with the other procedural requirements of A.R.S. §12-2401 *et seq.*

IT IS FURTHER ORDERED that plaintiff shall be permitted to proceed with domestication and enforcement of this Order in other States or jurisdictions, subject to the applicable State's or jurisdiction's procedures for domestication of a foreign judgment.

DATED this 24th day of February, 2017.

/s/ Roger Brodman
HONORABLE ROGER BRODMAN
JUDICIAL OFFICER OF THE SUPERIOR COURT