

FILE/DIRECTION/ORDER

BEFORE JUDGE MYERS

ACTION # CV-17-11822-001

KSV KOFMAN et al
Plaintiff(s)

.v.

DAVIES et al
Defendant(s)

CASE MANAGEMENT: YES NO

COUNSEL: _____ PHONE NO. _____
_____ PHONE NO. _____
_____ PHONE NO. _____

- ORDER DIRECTION FOR REGISTRAR
- REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____
- NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

MR DAVIES ASKS FOR AN ORDER LIFTING THE TAREVA INJUNCTION FROM HIS HOUSE. DESPITE, OR IN FACE OF THE INJUNCTION, HE WAS LISTED AND PURPORTED TO SELL THE HOUSE SUBJECT TO A CONDITION THAT HE OBTAIN AN ORDER BY TODAY TO DELETE THE TAREVA INJUNCTION FROM TITLE.

Oct 24/17
DATE

[Signature]
JUDGE'S SIGNATURE

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THE SALE IS NOT SET TO CLOSE UNTIL
JAN. 17 2018.

THE AGREEMENT OF PURCHASE AND SALE WAS
SIGNED ON SEPTEMBER 30, 2017. THE AFFIDAVIT
OF SERVICE FILED ON BEHALF OF MR. DAVIES DOES
NOT DISCLOSE THE DATE OF SERVICE, BUT THE ~~FILED~~
NOTICE OF MOTION IS DATED OCTOBER 19, 2017.
THERE IS NO EXPLANATION FOR THE THREE
WEEK DELAY RESULTING IN A LAST MINUTE
"URGENT" MOTION.

THE RECEIVER HAS CONCERNS WITH WHAT
IT PERCENTS TO RE MR DAVIES' LACK OF
DISCLOSURE OF HIS SOURCES OF LIVING EXPENSES,
HIS LACK OF WILLINGNESS TO CO-OPERATE
WITH THE RECEIVER'S DESIRE TO TIE UP THE
ARIZONA PROPERTY CONSENSUALLY AND THE
SALE PRICE OF THE HOUSE.

MR DAVIES EXPLAINS IN HIS AFFIDAVIT

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THAT HIS HOUSE IS ENUMBERED BY A MORTGAGE AND FOUR TAX LIENS IN RELATION TO UNPAID TAXES OF ALMOST \$600,000. HE IS WORRIED THAT THE MORTGAGEE HAS INITIATED PRIVATE POWER OF SALE PROCEEDINGS SO HE IS SELLING TO "ATTRACT THE HIGHEST POSSIBLE PRICE WHILE AVOIDING THE DISCOUNT NORMALLY ASSOCIATED WITH POWER OF SALE TRANSACTIONS IN ORDER TO PAY MY CREDITORS." AS LAUDABLE AS THAT GOAL IS, THERE ARE TWO ISSUES:

(1) THE SALE IGNORES AND ON ITS FACE IS A BREACH OF THE SUBSISTING MAREVA INJUNCTION; AND

(2) THERE IS NO EVIDENCE AT ALL TO JUSTIFY A CONCLUSION OR EVEN TO ALLOW THE COURT TO ASSESS WHETHER THE

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AGREEMENT EVIDENCES THE "HIGHEST POSSIBLE SALE PRICE" FOR THE PROPERTY. THERE HAS BEEN NO FORMAL PROCESS, NO BIDDING, NO TENDERS, OR ANYTHING OF THE LIKE. THERE IS NO EVIDENCE BY THE AGENT OF THE SCOPE OF EXPOSURE OF THE PROPERTY TO THE RELEVANT MARKET OR THE SUFFICIENCY THEREOF. IS IT ON MLS? WAS THE AGENT ADVERTISED? HAS IT DONE ANYTHING AT ALL TO ATTRACT BUYERS OR TO ALLOW A CONCLUSION THAT THE OFFER RECEIVED REPRESENTS F.M.V. FOR THE PROPERTY? THE DAVIES ACCEPTED A PRIVATE OFFER FOR LESS MONEY THAT FELL THROUGH. IGNORING FOR THE MOMENT THAT BREACH OF THE MARLVA AGREEMENT, THE ~~EA~~ FACT IS THAT THE CROSBY PROPOSAL IS FOR MORE. THE DAVIES' PRIVATE SALE MODEL DOES NOT THEREFORE NECESSARILY PROVIDE THE BEST OUTCOMES FOR CREDITORS

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AS HE SAYS IS HIS GOAL.

FINALLY, ~~THE~~ ^{NO} OTHER CREDITORS ARE
~~HERE~~ HERE CLAIMING PREJUDICE. ABSENT
 CONSENT BY THE RECEIVER ^{THEM,} I SEE NO EVIDENCE
 ON WHICH I WOULD EXERCISE THE DISCRETION
 TO LIFT THE MAREVA INSTRUCTION. ~~JUST~~
 THE "URGENCY" IS COMPLETELY SELF-
 INFLICTED. EVEN IF MR DAVIES MIGHT
 OTHERWISE HAVE PROVEN GOOD GROUNDS TO
 LIFT THE ORDER I WOULD HAVE BEEN
 HESITANT TO COUNTENANCE A UNILATERAL
 SALE EFFORT IN PLACE OF THE MAREVA. RULE
 60.12 EMPowers A COURT TO MAKE SUCH
 ORDER AS IS JUST TO REMEDY A BREACH
 OF A COURT ORDER. DENIAL OF THE RELIEF
 SOUGHT WOULD HAVE BEEN AN ATTRACTIVE
 REASON IN ANY EVENT. HOWEVER GIVEN
 MR. DAVIES' FAILURE TO ESTABLISH THAT

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HIS PROPOSED SALE IS VALUE-MAXIMIZING FOR CREDITORS, I DO NOT HAVE TO GET TO THAT ISSUE.

IF MR DAVIES BELIEVES HE SHOULD CONTROL THE SALE OF HIS NOYS, HE SHOULD PROPOSE A PROPER PROCESS AND SEEK LEAVE BEFORE ~~THE~~ PROCEEDING UNILATERALLY IN FALE OF AN ORDER. ALTERNATIVELY,

IF THE PARTIES CONSENT, I CAN BE CONTACTED TO CONSIDER THAT CIRCUMSTANCE.

THE RECEIVER MAY DELIVER COSTS SUBMISSIONS OF NO MORE THAN TWO PAGES BY NOV. 1, 2017.

MR DAVIES MAY RESPOND WITH NO MORE THAN TWO PAGES OF SUBMISSIONS BY NOV. 8, 2017. SUBMISSIONS SHALL BE IN PDF SEARCHABLE FORMAT ATTACHED TO AN EMAIL TO MY ASSISTANT.

DATE:

Oct 29/17

JUDGE'S SIGNATURE

