

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JUANA TOPOROVSKY.,

Plaintiff,

Index No.: 817070/2025E

-against-

ARIE TOPOROVSKY, ASHER TOPOROVSKY,
ESTHER TOPOROVSKY, ARTHUR COURT
REALTY MGT. CORP, THE ESTATE OF RINALDO
TOPOROVSKY, VAN COURTLANDT ASSETS LLC
and JOHN GOJCAJ.,

Motion Seq. No. 002

Defendants.

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO VACATE THE NOTICE OF PENDENCY**

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PRELIMINARY STATEMENT

A notice of pendency may, and should, be filed in actions implicating title, possession, or use and enjoyment of real property. Plaintiff Juana Toporovsky brings this action to stop the transfer of title of real property and seeks judgement (1) holding a purported contract to sell said property is invalid; and (2) requiring compliance with certain contractual provisions before the real property may be sold. The lone question posed on this motion practice is whether the relief sought in the complaint affects title to real property.

It does.

Defendants acknowledge that the relief demanded in the complaint affects title to and possession of real property. On page two of their brief, Defendants explain that in her first cause of action, Juana's seeks a judgment that Defendant "Arie lacked authority to execute a contract to sell the Property, and that *the contract Arie executed to sell the property is void.*" (Emphasis added). It is difficult to conjure a better example of a request for relief that will affect title to real property. The notice of pendency here is not only proper, but indispensable as it advises the contract vendee and any other potential buyers or lenders that there is a dispute regarding Defendants' legal authority to convey title to real property. Defendants ask that the Court reinterpret a century of case law, disregard the language of the CPLR, and adopt a new rule that the propriety of a lis pendens does not turn on whether the relief sought in an action implicates rights to real property, but that the determinative factor should be the individual rights of the plaintiff.

Juana does, in fact, have certain personal rights with respect to the property at issue that have been violated, so even if there was merit to Defendants' legal argument, the motion would still fail. More importantly, the CPLR and the law interpreting it are clear—where the *judgment*

demanded in an action would impact legal rights to real property, as it does here, a notice of pendency is warranted.

STATEMENT OF FACTS

For a complete recitation of the facts, the Court is respectfully referred to the Complaint (NYSCEF Doc. No. [1](#)¹) and the affirmation of Juana Toporovosky.

In brief and as most relevant to this motion, Juana holds at least a 30% membership interest in Defendant Van Courtlandt Assets, LLC (the “Company”). The Company’s assets are apartment buildings located off the Moshulu Parkway (the “Real Property”). The Company’s Operating Agreement, made by Juana and her late brother Rinaldo, contains concrete requirements that must be followed for the Company to sell the Real Property. (No. 1, ¶ 2-3.)

Specifically, Section 6 of the Operating Agreement requires for the Company to lawfully sell the Real Property notice, consultation on price, consultation on appraisers used in fixing price, the opportunity of members to select their own appraiser, fixing of a minimum price, a right to purchase, and then an eventual sale for at least the minimum price fixed via the detailed appraisal process along with a right of first refusal. (*Id.*, ¶ 34.) Since the entire purpose of the Company was tied to the Real Property, it was logical and apt for the Operating Agreement to require a systematic, inclusive, and transparent process for selling the Real Property where all members would be involved throughout the process and have their rights protected.

Defendants Arie and Asher, purporting to act on behalf of the Company, did not follow *any* of the Operating Agreement’s mandates regarding a sale. Instead, they went behind their 90-year-old aunt’s back and signed a contract to sell the Real Property at a fraction of its appraised value. Only after signing the sale contract with Defendant Gojcaj, as purchaser, did Arie and

¹ “No.” citation references are to the NYSCEF Docket entries.

Asher inform Juana what they had done and presented her has having no choice but to accede to the sale. (*Id.*, ¶ 36-47.) It is unclear under what authority to bind the Company Arie purported to act in executing the contract.

Juana, accordingly, brought this action to enforce her rights and ensure that the Company, and anyone purporting to act on its behalf, complies with the terms of the Operating Agreement with respect to any transfer of title to the Real Property. In the First Cause of Action, Juana seeks a judgment that (i) Defendants violated the Operating Agreement; (ii) Arie lacked authority to execute a contract on behalf of the Company to sell the Real Property; and (iii) that the purchase and sale agreement for the transfer of title of the Real Property, which Arie and Defendant Gojcaj signed is void. (*Id.*, ¶ 60.) In the Second Cause of Action, Juana seeks an order enjoining the Defendants from attempting to sell the Real Property without complying with Section 6 of the Operating Agreement. (*Id.*, ¶ 67.)

ARGUMENT

I. This relief requested in the complaint will affect title and possession of real property.

Where the rights, enjoyment and ownership of a property are at issue in a lawsuit, it is appropriate to file a notice of pendency. CPLR § 6501. In analyzing whether a notice of pendency is proper, the focus is on the action and relief sought, not on the individual interests of any parties. The question is “whether the pleading on its face directly affects the necessary interest in the land.” *Shihab v. 215–217 West 10th St. Assoc.*, 506 N.Y.S.2d 651 (N.Y. Civ. Ctr., N.Y. Cnty. 1986). In conducting this analysis, a court “neither assesses the likelihood of success on the merits nor considers matters beyond the pleading itself; the court’s analysis is limited to the pleading’s face.” *Nastasi v. Nastasi*, 26 A.D.3d 32, 36 (2d Dep’t 2005) (cleaned up).

The pleading here affects interests in land by seeking (1) a judicial ruling that a contract to transfer title to the Real Property is void and (2) an injunction against Defendants selling the Real Property absent compliance with the Operating Agreement. Defendants acknowledge this. (See Defs' Mem., at 2. *See also* Affirmation of Stephen Spedaliere.) Defendants, however, ask this Court to create new law and hold that the appropriateness of a notice of pendency is not based on whether an action affects real property but whether a plaintiff owns a direct or contingent interest in the real property. (*Id.*, at 3-5.)

The statutory language forecloses Defendants' argument. The CPLR provides that a notice of pendency may be filed in any action "in which the judgment demanded would affect the title to, incumbrance of, or the possession, use or enjoyment of, real property." CPLR § 6501. The plaintiff's personal rights, and even the merits of a plaintiff's claim, are not relevant. Whether the relief requested in the complaint will affect title/encumbrance/possession/use or enjoyment of real property is determinative of whether a notice of pendency may be recorded.

Defendants rely primarily on *5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313 (1984). In that case, however, the plaintiff was challenging the sale of membership interests in a company that owned real property, it was not challenging the sale of real property as Juana is here. In fact, in *Orange Gowanus LLC v. Ben-Yosef*, 78 Misc.3d 1231(A), 2023 WL 3186602 (N.Y. Sup. Ct. Kings Cnty. 2023), the court rejected the precise argument Defendants advance here. In that case, a member of a company that owned real property sought a ruling regarding (1) his rights to purchase other membership interests in the company and (2) preventing the other members of the company from selling the real property that the company owned. The defendants moved to discharge the notice of pendency arguing the plaintiff did not hold a direct interest in the real property at issue. The court quickly disposed of this argument finding that the outcome

of the claims alleged in the complaint “will affect title to the Property[,]” and a notice of pendency was therefore appropriate. *Id.*, at *5. *C.f. Piccirillo v. Ravenal*, 161 A.D.2d 253, 254 (1st Dep’t 1990) (holding notice of pendency inappropriate where the action was a dispute about shareholders rights and did not affect the title to the real property the corporation owned)

In this case, the judgment requested impacts title to, and necessarily possession of, real property. If Defendants believe that Juana’s claim lacks merit or that she somehow lacks standing to seek a judgment that the contract for transfer of title to the Real Property is invalid, those are issues they may litigate separately; they are not relevant to whether CPLR § 6501 permits a notice of pendency here.

Simply put, where the face of a complaint shows that the relief sought would affect rights in real property, as the complaint does here, a notice of pendency is proper. *See e.g. Nina Penina, Inc. v. Njoku*, 30 A.D.3d 193, 194 (2006) (denying motion to cancel the notice of pendency because the action affected title to real property); *Carney v. Schoenherr*, 76 Misc. 3d 285, 288–89 (N.Y. Sup. Ct. Ham. Cnty. 2022) (denying a motion to cancel the notice of pendency on the grounds that the action implicates the defendants’ rights to possession, use and enjoyment of real property even though the plaintiffs lacked a direct interest in the subject property).

Here, Juana does in fact have a personal interest in the Real Property in that the Operating Agreement grants her the right to purchase the Real Property at different stages in the sale process—none of which were followed here. (No. 1, ¶ 34.) Accordingly, even if Defendants were correct that a notice of pendency turns on the direct rights of a plaintiff rather than the effect that the relief sought will have on real property, their motion would still fail.

The statute and the case law interpreting it are clear. Where the judgment demanded in an action would affect rights to real property, a notice of pendency may be filed. That is exactly what the judgment demanded here will do. Defendants' motion should be denied.

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CERTIFICATION OF COUNSEL

Brendan Goodhouse, an attorney duly admitted to the practice of law in the Courts of the State of New York, does hereby affirm, pursuant to Rule 17 of the Uniform Rules for the Supreme Court and County Court, 22 NYCRR 202.8-b, that the word count of the processing system used to prepare the aforesaid document indicates that the document contains no more than 1,666 words, exclusive of the caption and signature block.

Dated: White Plains, New York
October 2, 2025

/s/ Brendan Goodhouse

Brendan Goodhouse