

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS: PART 32

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ILIAS LELEKAKIS, formerly known as ELIAS :  
LECKAS, :  
:  
Plaintiff, : **DECISION AND ORDER**  
:  
-against- :  
:  
STANLEY KAMAMIS and OLGA KAMAMIS, : Index No. 28566/01  
:  
Defendants. :  
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Papers read on the motion: order to show cause -1 and 1A; opposition papers- 2.

CHARLES J. MARKEY, J.:

Upon the foregoing papers, the plaintiff Ilias Lelekakis has moved again, by order to show cause dated May 24, 2006, for an order modifying an order by the Honorable Joseph J. Risi, J.S.C., dated October 18, 2005, that granted a stay pending appeal on condition that a bond of \$30,000 is posted. This Court has reviewed all of the past proceedings and all the prior opinions and orders of the Appellate Division, Supreme Court, and the Housing Part of the New York City Civil Court in this case.

The initial motion to modify Justice Joseph J. Risi's order of October 18, 2005, was argued before and decided by the undersigned on May 2, 2006, by Jason R. Levine of the Law Office of Thomas Torto, representing the plaintiff, and by Philip T. Simpson, of Robinson Brog Leinwand Greene Genovese & Gluck P.C., representing the defendants. The order of this Court dated May 2, 2006, denied plaintiff's motion without prejudice since the Appellate Division was then considering a multi-branch motion that included a provision for similar relief. On May 3,

2006, the Appellate Division, Second Department, inter alia, dismissed the appeal from the order of Justice Risi dated May 20, 2005, since that order was superseded by a judgment and, in summary form, denied the other branches of relief.

Mr. Levine then made this present, second motion for a stay since the undersigned had denied his last motion without prejudice. The urgency of the relief is that Judge Gilbert Badillo of Housing Court, who gave possession to defendant Olga Kamamis, stayed execution of the warrant until May 31, 2006, and the Clerk is expected to issue the warrant to the Marshall for execution imminently. The parties, at the oral argument held in Chambers before the undersigned on June 7, 2006, and transcribed by the court reporter, requested an expedited decision.

The facts of the case, with Justice Risi as the trier of fact, are bewildering. They would make the grist of a fascinating television miniseries, were it not for the stark fact that the consequences for all of the parties are of immense and very sad proportion. The facts involve the ownership of real property, allegations of substantial cash payments without any receipt to evidence the cash payments, an alleged sale of property by a husband without securing the consent of his wife, the other tenant by the entirety, and forgery of signatures.

Contrary to Mr. Simpson's contention, at the June 7 oral argument, this Court finds no glimmer in the brief Appellate Division order of May 3, 2006 that would disclose that plaintiff's appeal will not likely succeed. The substance of the forthcoming appeal and the defendant's cross-appeal were not at all involved in the May 3 order.

The undersigned believes that ordering a stay is in the true interests of justice. The plaintiff Ilias Lelekakis lived at the subject premises for fifteen years. To cause a Marshall to

throw him out of on the street on the eve of the appeal being perfected [expected during July, 2006] serves no one and thwarts the true administration of justice right before a panel of appellate justices can consider the weighty contentions of both sides. The Appellate Division can review and reconsider the facts and the law and make an ultimate resolution of the case or place its imprimatur on Justice Risi's order. Since the only prejudice and urgency identified by Mr. Simpson in his eloquent oral argument is the desire of defendant Olga Kamamis to reside in the subject house, those considerations pale in comparison to the enormous potential for harm if Mr. Lelekakis is tossed out of the house and the Appellate Division then concludes that the judgment ought to be reversed. A wait of a few more months causes no real prejudice to anyone under these circumstances.

Considering the Appellate Division's prior opinion in this case on the issue of the amount of an undertaking, even though the plaintiff posted recently an undertaking of \$30,000 with the Clerk of the Court and has a large money judgment, of \$303,000.00, against defendant Stanley Kamamis, the Court requires the plaintiff to post an additional undertaking, on or before July 31, 2006, in the amount of \$20,000 with the Clerk of the Court.

In light of the importance of this decision and the urgency of an imminent eviction, the Court is causing copies of this decision and order to be faxed to counsel to both sides.

Accordingly, the plaintiff's motion to modify the decision of Justice Risi is granted to the following extent:

1. It is hereby ordered that pending the determination of the Appellate Division, Second Department of the appeal and the cross-appeal, the defendants, their attorneys, agents, servants, and employees, and the City Marshall and Sheriff of the City of New York and anyone acting for

or on their behalf, are hereby stayed from taking any steps to enforce any judgment of eviction/possession entered herein against plaintiff; and

2. The Court, furthermore, orders the plaintiff to post an additional undertaking in the amount of \$20,000 with the Clerk of the Court on or before July 31, 2006.

Finally, relating to the perfection of the appeal, the Court notes that, on June 7, 2006, at the request of both counsel, the undersigned's law secretary, Howard L. Wieder, Esq., undertook enormous efforts to locate the many exhibits admitted during the trial of this action held before Justice Risi on May 31 and June 1, 2005. Mr. Wieder, among other efforts, telephoned Justice Risi's former law secretary and former Part Clerk. From his investigation, Mr. Wieder learned that certain records kept by Justice Risi, now a judicial hearing officer, had been moved to Justice Risi's new chambers. None of those records related to this case. Justice Risi's former Part Clerk stated that trial counsel is told at the conclusion of the case to come back to the Court, after a Bench trial, to pick up the trial exhibits. Trial counsel in this case, both of them being predecessor counsel and not the excellent counsel who argued this motion to the undersigned, failed to do that, and the trial exhibits had been destroyed. Counsel indicated, at the conclusion of the oral argument, that they would proceed by the Appendix method, and that, at any rate, they had preserved copies of key documents.

The foregoing discussion serves as an important reminder for all counsel with respect to the preservation of key evidence. It is the attorney's responsibility - - not the Court's task - - to ensure that all trial exhibits, especially in a hotly contested case that is likely to be appealed, are preserved, returned, and retrieved.

The foregoing constitutes the decision, order, and opinion of the Court.

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Hon. Charles J. Markey  
Justice, Supreme Court, Queens County

Dated: Long Island City, New York  
June 8, 2006

**Appearances:**

**For the Plaintiff:** Thomas Torto, Esq., by Jason Levine, Esq., 419 Park Avenue South, New York, NY 10016, of counsel to L.A. Beesecker, 246 Main Street, suite 4, Cornwall, New York 12518

**For the Defendants:** Robinson Brog Leinwand Greene Genovese & Gluck P.C., by Philip T. Simpson, Esq., 1345 Avenue of the Americas, New York, NY 10105-0143