

S.D.N.Y. – N.Y.C.
Forrest, J.*

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of November, two thousand seventeen.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Peter W. Hall,
Circuit Judges.

*In re 650 Fifth Avenue
and Related Properties*

17-3243, 17-3251, 17-3254, 17-3255, 17-3258,
17-3260, 17-3261, 17-3262, 17-3264, 17-3265,
17-3267, 17-3268, 17-3269, 17-3271, 17-3272,
17-3276, 17-3278, 17-3304

Appellants Alavi Foundation and 650 Fifth Avenue Company move to stay the judgment pending appeal in each of these cases. Upon due consideration, it is hereby ORDERED that the motions are GRANTED. *See Nken v. Holder*, 556 U.S. 418, 433-34 (2009); *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002); *In re the Seizure of All Funds in Accounts in the Names Registry Publishing, Inc.*, 58 F.3d 855, 856 (2d Cir. 1995).

This Order governs the use and disposition of the following properties (the “Defendant Properties”):

- (a) The Alavi Foundation’s 60% interest in the 650 Fifth Avenue Company;
- (b) The real property and appurtenances located at 650 Fifth Avenue, New York, New York, with all improvements and attachments thereon (the “Building”);
- (c) The real property and appurtenances located at 2313 South Voss Road, Houston, Texas 77057, with all improvements and attachments thereon;
- (d) The real property and appurtenances located at 55-11 Queens Boulevard, Queens, New York 11377, Block 1325 Lots 1, 6, 7, and 8, with all improvements and attachments thereon;
- (e) The real property and appurtenances located at 4836 Marconi Avenue, Carmichael, California 95608, with all improvements and attachments thereon;

* The relevant district court docket numbers are: 08-cv-10934; 09-cv-165; 09-cv-166; 09-cv-553; 09-cv-564; 09-cv-4614; 09-cv-4784; 10-cv-1627; 10-cv-2464; 11-cv-3761; 12-mc-19; 12-mc-20; 12-mc-21; 12-mc-22; 13-mc-71; 13-cv-1825; and 13-cv-1848.

- (f) The real property and appurtenances located at 4204 Aldie Road, Catharpin, Virginia 20143-1133, with all improvements and attachments thereon;
- (g) The real property and appurtenances located at 4300 Aldie Road, Catharpin, Virginia 20143-1133, with all improvements and attachments thereon;
- (h) The real property and appurtenances located at 7917 Montrose Road, Rockville, Maryland 20854, with all improvements and attachments thereon;
- (i) The real property and appurtenances located at 8100 Jeb Stuart Road, Rockville, Maryland 20854, with all improvements and attachments thereon;
- (j) All funds on deposit at Sterling National Bank in account number 3802032216, held in the name of Alavi Foundation, and all funds traceable thereto;
- (k) All funds on deposit at Sterling National Bank in account number 3802032201, held in the name of Alavi Foundation, and all funds traceable thereto; and
- (l) All funds on deposit at Sterling National Bank in account number 3852524414, held in the name of Alavi Foundation, and all funds traceable thereto.

All persons and entities having actual knowledge of this Order shall not, directly or indirectly, transfer, sell, assign, pledge, hypothecate, encumber, or dispose of in any manner; cause to be transferred, sold, assigned, pledged, hypothecated, encumbered, disposed of in any manner; or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of, the Defendant Properties.

Kathleen A. Roberts is appointed as the Trustee of the Defendant Properties, and shall: (i) review and approve disbursements, agreements, and other activities of 650 Fifth Avenue Company, in order to preserve the value of the Defendant Properties, (ii) review and approve any decisions or other actions taken by the Alavi Foundation pursuant to its obligations under the Partnership Agreement, (iii) review and approve expenses and other disbursements necessary for the maintenance and upkeep of the Defendant Properties, (iv) review and approve disbursements by the Alavi Foundation, and (v) take all other actions necessary to preserve the value of the Defendant Properties. To effectuate the foregoing, the Trustee is empowered to:

- (a) Authorize necessary disbursements for the upkeep or preservation of the Building including, but not limited to, payroll, taxes, distributions to tenants of the Building, broker commissions, capital expenses and improvements. The Trustee may seek judicial intervention if necessary.
- (b) Review, approve, and execute proposed leases and subleases for the Building and proposed modifications to existing agreements.
- (c) Review, approve, and execute any agreements between 650 Fifth Avenue Company and third parties.
- (d) Employ personnel necessary to manage 650 Fifth Avenue Company and maintain the value of the Building. The employment of such personnel shall be done upon the approval of the United States Attorney's Office, Southern District of New York.
- (e) In the event that distributions are made to the Alavi Foundation, the Trustee shall review and approve any disbursements by the Alavi Foundation from said distributions as outlined below.
- (f) Report to the District Court, on a quarterly basis, commencing from the date of the entry of this Order, a summary of the actions taken and findings made by the Trustee pursuant to this Order.

The Trustee shall not take any actions to interfere with any ongoing judicial or administrative proceedings.

The reasonable costs, fees and expenses of the Trustee incurred in connection with the performance of her respective duties described herein shall be paid out of the rental income of the Building. These expenses include but are not limited to, the reasonable costs, fees and expenses of all persons who may be engaged or employed by the Trustee to assist her in carrying out her duties and obligations. All applications for costs, fees and expenses of the Trustee and those employed by her shall be made by application to the District Court setting forth in reasonable detail the nature of such costs, fees and expenses.

No creditor or claimant against the Alavi Foundation or 650 Fifth Avenue Company, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the duties and responsibilities of the Trustee.

The Trustee or her designee shall take possession of the books and records of 650 Fifth Avenue Company and maintain them.

The Trustee shall make available for inspection to the United States, or its designee, the books and records of 650 Fifth Avenue Company.

The Trustee shall make disbursements from the rental income of the Building for the following purposes:

- (a) To pay unsatisfied bills of the Alavi Foundation and 650 Fifth Avenue Company as of September 29, 2017;
- (b) To conduct the minimal operations of the Alavi Foundation limited to the provision of funds to pay any necessary rent, utility charges, and necessary staff salaries;
- (c) To pay for the Alavi Foundation's and 650 Fifth Avenue Company's continued legal defense; and
- (d) To pay for any necessary safety or maintenance repairs for the Defendant Properties.

Nothing in this Order shall be construed as prohibiting or excusing any debtors, creditors, or tenants from complying with the terms of their agreement(s) with the 650 Fifth Avenue Company.

Nothing in this Order shall be construed as affecting in any way the rights of any party under Section 201 of the Terrorism Risk Insurance Act of 2002.

This Order supersedes the prior orders of the District Court in case 08 Civ. 10934 (S.D.N.Y.) at ECF Nos. 2, 136, 161, 264, 995, 1023, 1408, 1472, 2062, and 2078.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A True Copy

Catherine O'Hagan Wolfe, Clerk

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