

214 Lafayette House LLC v Akasa Holdings, LLC

2021 NY Slip Op 34080(U)

October 18, 2021

Supreme Court, New York County

Docket Number: Index No. 153415/2018

Judge: Erika Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

214 LAFAYETTE HOUSE LLC,

Plaintiff,

- v -

AKASA HOLDINGS, LLC,

Defendant.

INDEX NO. 153415/2018

MOTION DATE 07/28/2020

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and oral argument held before this court on September 9, 2021, the court grants Plaintiff 214 Lafayette House LLC's ("214 Lafayette") motion for partial summary judgment in its favor on its first cause of action and for issuance of a permanent injunction regarding removal of Defendant Akasa Holdings, LLC's ("Akasa") obstructions to the path of a 1981 easement, dismissal of Akasa's counterclaim for declaratory relief and severance of 214 Lafayette's second cause of action. The court denies Akasa's cross-motion for summary judgment on its counterclaim and certain affirmative defenses.

214 Lafayette, which owns a residential building located at 214 Lafayette Street, brought this action against Akasa, which owns a residential building located at 55 Crosby Street and an enclosed lot located at 57 Crosby Street. 214 Lafayette seeks declaratory relief regarding removal of obstructions to the path of a 1981 easement for emergency access to and from 214 Lafayette Street and burdening 57 Crosby Street and other properties, a 1999 easement benefitting 214 Lafayette Street and 216 Lafayette Street and burdening 57 Crosby Street. The

1981 easement was properly recorded and indexed against the lot at the time, which included 214 Lafayette and 57 Crosby, but the lot was subsequently divided into three separate lots and 57 Crosby was separated into a new lot. Unfortunately, the New York City clerk's office failed to record the easement on the parcel of land now attributed to 57 Crosby Street.

In previous litigation between the parties, the First Department held in substance that 214 Lafayette held title to the 1981 easement that ran from its property over 57 Crosby, which was diagonally located, as an enforceable easement appurtenant, that the easement ran with the land as long as the building on 214 Lafayette remained in place and that Akasa had constructive notice of the 1981 easement when it purchased 57 Crosby Street in 2011 (*see Akasa Holdings, LLC v 214 Lafayette House, LLC*, 177 AD3d 103 [1st Dept 2019]).

214 Lafayette's first cause of action pertains to the 1981 easement which grants 214 Lafayette a nonexclusive easement for ingress and egress by foot over a six foot wide strip of land along the southern border of 57 Crosby Street which it shares with 55 Crosby Street. 214 Lafayette seeks declaratory relief including an order requiring Akasa to remove several obstacles obstructing or impeding 214 Lafayette's potential use of the easement to Crosby Street, including two staircases with platform landings, an elevator/mechanical lift, a pit on the ground, a portion of a fence and other items.

214 Lafayette's second cause of action pertains to the 1999 easement which grants 216 Lafayette Street a nonexclusive easement for ingress and egress by foot over a six foot wide strip of land along the northern border of 57 Crosby Street and a twelve foot wide strip of land along the eastern border of 57 Crosby Street. 214 Lafayette seeks removal of obstacles obstructing the potential use of the 1999 easement, including a bench or sofa, trees, plants, a grill, stairs and a storage unit.

214 Lafayette now moves for partial summary judgment on its first cause of action involving enforcement of the 1981 easement, for the issuance of a permanent injunction prohibiting and restraining Akasa from obstructing or impeding the path of the 1981 easement for emergency egress from 214 Lafayette Street across a portion of 216 Lafayette Street and a portion of 57 Crosby Street and directing Akasa to remove all obstructions to the path of the 1981 easement on 57 Crosby Street. 214 Lafayette also seeks dismissal of Akasa's counterclaim seeking declaratory relief and severance of 214 Lafayette's second cause of action from the remaining claims.

Akasa cross-moves for partial summary judgment on its counterclaim seeking declaratory relief determining that the 1981 easement has been extinguished as a consequence of adverse possession because of the permanent staircases and elevator and that 214 Lafayette enjoys no benefit from the 1999 easement and on its affirmative defenses of adverse possession, laches, waiver and estoppel and unclean hands.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

Here, the court finds that 214 Lafayette demonstrated its entitlement to partial summary judgment in its favor on its first cause of action for a declaratory judgment, for dismissal of Akasa's counterclaim and for the additional relief requested and Akasa failed to demonstrate its entitlement to partial summary judgment in its favor on its counterclaim and affirmative defenses of adverse possession, laches, waiver and estoppel and unclean hands. 214 Lafayette demonstrated the need to enforce the 1981 easement for emergency use by the tenants and invitees of 214 and 216 Lafayette Street. Additionally, the court finds that it is entitled to such relief based upon equitable principles.

Additionally, since the court previously found that the 1981 easement was enforceable and since Akasa or its principal was awarded money from the title insurance company as compensation for the reduced value of 57 Crosby as a result of the 1981 easement, Akasa should have been on notice that 214 Lafayette would attempt to enforce the easement and demand removal of any obstructions at Akasa's expense.

The court denies Akasa's motion for partial summary judgment on its affirmative defenses of adverse possession, laches, waiver and estoppel and unclean hands and finds that Akasa failed to demonstrate the merits of these claims. 214 Lafayette's delay in objecting to the obstructions and bringing its claims are not precluded by laches, waiver, estoppel, or unclean hands. Additionally, the court is not persuaded by Akasa's arguments that 214 Lafayette failed to join the owner of 55 Crosby as a necessary party.

Furthermore, the court agrees with 214 Lafayette and finds that Akasa is barred by res judicata from raising its adverse possession claim even though the court did not resolve this issue in its 2016 decision, because Akasa could have raised the claim, but failed to do so (*Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 NY3d 64, 72-73 [2018]). Here, the risk of conflicting judgments is too great and the court previously found that Akasa had constructive notice of a valid 1981 easement appurtenant. However, even if the court permits Akasa to raise its adverse possession arguments in this matter, then the court would still deny it on its merits based upon the circumstances in this case.

Although the court would very much like to see the parties further discuss these matters and resolve these issues by a simple relocation of the easement on a slightly different unobstructed path which would not require the removal of the stairs, landings and elevator, based on the facts and relevant case law the court grants 214 Lafayette unobstructed access to the path of its 1981 easement.

The court has considered all remaining arguments of the parties not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants the branch of Plaintiff 214 Lafayette House LLC's motion for partial summary judgment in its favor against Defendant Akasa Holdings, LLC as to its first cause of action in its complaint and a declaratory judgment with respect to the subject matter of that cause of action is granted; and it is further

ADJUDGED and DECLARED that Plaintiff 214 Lafayette House LLC is entitled to the issuance of a permanent injunction prohibiting and restraining Defendant Akasa Holdings, LLC from obstructing or impeding the path of Plaintiff's easement appurtenant recorded in July 1981, including, but not necessarily limited to, Defendant Akasa Holdings, LLC's removal of two staircases and landings, an elevator, a pit, portion of fence or fixed gate and any other obstructions to the path of such easement; and it is further

ORDERED that the court grants the branch of Plaintiff 214 Lafayette House LLC's motion that seeks summary judgment dismissal of Defendant Akasa Holdings, LLC's counterclaim and the counterclaim is dismissed; and it is further

ORDERED that the court denies Defendant Akasa Holdings, LLC's cross-motion for summary judgment on its counterclaim seeking declaratory relief and its affirmative defenses of adverse possession, laches, waiver and estoppel and unclean hands; and it is further

ORDERED that the balance of the action is severed and continued; and it is further

ORDERED that the parties are directed to appear for a status conference before the court on November 30, 2021, at 10:00 a.m. to be held via Microsoft Teams (separate link will be provided).

This constitutes the decision and order of the court.

10/18/2021

DATE



ERIKA EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: