

Leshold Realty Corp. v Makkas
2004 NY Slip Op 30369(U)
December 15, 2004
Supreme Court, Orange County
Docket Number: 3152-2002
Judge: Lawrence Ivan Horowitz
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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-----X
LESHOLD REALTY CORP.,

Plaintiff,

Index No. 3152/02

- against-

Order and Decision

ANGELO MAKKAS, KONSTANEINOUS G. MAKKAS,
LIGERIE L. MAKKAS and TRAVELERS
BANK & Trust, FSB,

Action #1

Defendants.
-----X

CITICORP TRUST BANK, FSB f/k/a et al.,

Third-Party Plaintiff,

Index No. 1263/03

- against-

Action #2

LIGERIE L. MAKKAS, KONSTANEINOUS G. MAKKAS,
LESHOLD REALTY CORP., et al.,

Defendant.
-----X

HOROWITZ, J.S.C.,

Pursuant to CPLR §602, the Plaintiff-Defendant Leshold Realty Corporation moved for an order consolidating the above actions, for the purposes of conducting discovery and for trial, upon the grounds that each action involves common questions of law and facts, similar issues, similar facts to be determined, and the outcome of each action is dependent upon the other actions. On November 30, 2004, This Court denied that motion on the grounds that Action #2 was not a pending case, assigned to this Court.

In response to the original motion, the Defendant Travelers Bank and Third Party Plaintiff Citicorp Trust Bank had filed a cross motion, pursuant to CPLR Rule 3212, seeking summary judgment against Leshold Realty Corp., dismissing that Plaintiff's complaint in Action #1, and striking Leshold's answer in Action #2, upon the grounds that there are no issues of fact for this Court to determine.

The Plaintiff opposes the requested relief. The Plaintiff alleged that the Movant's papers

required the affirmation of one of the Plaintiff's officers, or a person having knowledge of the transaction. Further, the Plaintiff alleges that there were issues concerning whether Citicorp is a bona fide purchaser for value.

In reply, the Movant Bank argues that (1) Citicorp was a bona fide purchaser for value, (2) the statute of limitations expired that required that the Plaintiff commence this litigation to set aside the conveyance, as a fraudulent conveyance, within five years of the conveyance, (3) Laches barred the Plaintiff's claim, (4) Equitable Estoppel doctrine barred the Plaintiff's action against Citicorp, (5) the Plaintiff's Complaint in Action No. 1, and answer in Action No. 2, do not seek relief to set aside Citicorp's mortgage, and (6) Citicorp was a bona fide purchaser under the recording act.

The following papers, numbered 1 to 6, were read upon this application:

Notice of Motion - Affirmation of John R. Kelligrew, Esq.	1
Annexed Exhibits 1 and 2	2
Notice of Cross-Motion, affidavit of Gloria Sexton, Exhibits A to K	3
Answering Affirmation of John Kelligrew and Affidavit of Leslie Wagner	4
Exhibit Volume containing Exhibits 3 to 15	5
Reply Affirmation	6

Based on the foregoing papers, and information supplied by the Part Clerk, the Defendant Traveler's Bank & Trust, FSB, and the Third Party Citicorp Trust Bank's "cross-motion" is DENIED.

Branches of the Banks' cross motion involving Index No. 1263-2003

As stated above, the Plaintiff was denied consolidation of Action #1 and Action #2, because the Part Clerk advised this Court that Index No 1263-2003 (Action #2) is a disposed matter that was assigned to Justice Patsolos. As such, it was not eligible for consolidation, with Action #1. Therefore, this Court has no jurisdiction to grant any relief concerning Action No. 2 (Index No. 03-1263) and all branches of the Banks' motion involving the foreclosure action at Action No. 2 are DENIED.

Legal Discussion Concerning Action No. 1

A summary judgment motion must be granted if, upon all the papers and proof submitted, the instant Movants establish that there is no factual dispute and the Defendant Bank is entitled to a finding that the Plaintiff has no cause of action against it.

However, a summary judgment motion must be denied where a party shows facts sufficient to require a trial of any factual issue (see, *Lan Duong v. City University*, 150 AD2d 349 [2nd Dept. 1989]). In determining the instant summary judgment motion, the evidence must be viewed in the light most favorable to the nonmoving party and least favorable to the Movants (see generally, *Glennon v. Mayo*, 148 AD2d 580 [2nd Dept. 1989]).

Here, the record reveals that significant factual issues remain to be established concerning the events surrounding the conveyance and whether the Travelers Bank was a "bona fide purchaser for value" under the "Recording Act" for the property and whether the conveyance should be set aside. The task of marshaling the record was that much more difficult because of the parties' assumption concerning consolidation. This record is littered with records and arguments that are of limited value to the Court in deciding the Movant's instant "cross-motion."

Accordingly, it is

ORDERED that the branches of the Defendant Travelers Bank and Trust and Third Party Plaintiff's motion for summary judgment in Action No. 2 (Index No. 1263-2003) are DENIED, on the basis that Index No. 1263-2003 is not consolidated, pursuant to CPLR §602(a), with Index No. 3152- 2002, and, therefore, this Court lacks jurisdiction over Action No. 2, and it is further

ORDERED that the branches of the Defendant Travelers Bank's motion for summary judgment in Action No. 1 (Index No. 3152-2002) are DENIED, with leave to renew; and it is further

ORDERED that, upon the Court's own motion, the caption in this case shall be:

-----X
LESHOLD REALTY CORP.,

Plaintiff,

Index No. 3152-2002

- against-

ANGELO MAKKAS, KONSTANEINOUS G. MAKKAS,
LIGERIE L. MAKKAS and TRAVELERS
BANK & Trust, FSB,

Defendants.
-----X

The foregoing constitutes the decision and order of this Court.

Dated: GOSHEN, New York
December 15, 2004



Honorable LAWRENCE IVAN HOROWITZ
JUSTICE OF THE SUPREME COURT

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