

Hardoon v Seward Park Hous. Corp.

2005 NY Slip Op 30628(U)

June 6, 2005

Supreme Court, New York County

Docket Number: 113632/04

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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Ezra Hardoon and Francine Hardoon,

Plaintiff,

-against-

Seward Park Housing Corporation,
Kerry Gotlib, Esq., Citi Habitats, Inc.,
And Isaac Hardoon,

Defendants.

DECISION/ORDER

Index No.: 113632/04
Seq. No.: 005

Present:
Hon. Judith J. Gische
J.S.C.

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Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Def's Notice of Motion w/aff (IH), exhs.	1
Pl's Aff (EH) in Op w/exhs.	2
Def's Aff (IH) in Reply	3

Gische, J.

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiffs brought an action to impose a constructive trust in connection with the ownership of cooperative apartment unit J-503 located at 208 East Broadway in Manhattan ("apartment"). The apartment is owned by defendant, Isaac Hardoon, who is plaintiffs' adult son. The apartment is presently under a contract to be sold to a third party. Initially plaintiffs moved before this court for a preliminary injunction prohibiting the apartment from being sold, pending the determination of the underlying proceeding. By decision and order dated February 18, 2004 this court denied the motion, clearing

the way for the sale to proceed.

While proceeding to close on the sale of the apartment, however, Isaac Hardoon claims that he learned for the first time that plaintiffs have possession of the stock and proprietary lease appurtenant thereto. In August 2004, Ezra Hardoon filed with the NYC Department of Finance a UCC1 form, purporting to reflect a security interest in the apartment.

Isaac Hardoon has now filed this motion seeking an order directing plaintiffs to return the share certificate and proprietary lease to him and to file a UCC3 form to release the lien he placed on the apartment.

Isaac has submitted a sworn affidavit to this court in which he swears: that he is the owner of the apartment; that the apartment is under a contract of sale to Ping Tang Forester; that as owner Isaac never borrowed money from his parents and he never gave them any security interest in the apartment. Isaac claims that he never delivered the stock and proprietary lease to his parents, but that it was with his personal papers that were left in the United States when he went to Israel. Isaac wants his documents returned to him and represents that plaintiffs are impeding closing on the sale of the apartment by their actions, especially because the stock certificate needs to be delivered to the cooperative corporation for cancellation.

Plaintiffs claim that Isaac Hardoon gave them the lease and stock certificate. They acknowledge that no sale can go through if they refuse to deliver the documents to Isaac. Instead they claim that although Isaac has signed and sworn the affidavit submitted to the court, an "imposter" has made this motion.

Plaintiffs also claim that they have an enforceable oral agreement with Isaac that plaintiffs were the beneficial owners of the apartment and that Isaac would hold the

apartment in his name. Plaintiffs claim that they paid expenses both before and after the purchase of the apartment and that as part of the parties' agreement, Isaac gave them a security interest in the apartment evidenced by a delivery of the stock. They further claim that Isaac gave them an interest in the apartment to protect "all" of them from being taken advantage of by third parties. Finally they assert that Isaac's mental deficiencies convince them that Isaac is not really making this motion.

Dealing with the last argument first, the court has repeatedly informed plaintiffs that in the absence of an appropriate adjudication regarding Isaac's competency, the court will not look beyond Isaac's sworn statements about what he seeks in this action. Significantly plaintiffs have never contended that other sworn statements submitted by Isaac were forgeries or made by others. [See orders dated 2/18/05 and 6/6/05 (Seq. No. 4)].

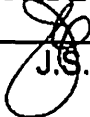
The court cannot decide on this motion the disputed issues regarding how plaintiffs came into possession of the stock and proprietary lease. Some of the disputed issues are at the heart of plaintiffs' action for the imposition of a constructive trust, which has not yet been decided. Other disputes concern whether the stock and lease were delivered as collateral for some obligation or stolen by the plaintiffs. The court is aware that without the stock and lease Isaac Hardoon may not be able to close on the impending sale. While the court has not enjoined the sale from going forward, the court assumed that Isaac could close on the sale without requiring any affirmative action by plaintiffs. Now it appears Isaac seeks preliminary relief in the nature of a mandatory injunction compelling plaintiffs to take actions while this matter is pending. He has not shown entitlement to such drastic relief. St. Paul Fire & Marine Insurance v. York Claims Services, 308 AD2d 347 (1st Dept. 2003). If defendant ultimately succeeds

in proving that plaintiffs stole his documents, however, he may have collateral claims for significant money damages against them.

The motion must, therefore, be denied at this time. The issues about who is ultimately entitled to the delivery of the stock and lease are ones for trial. So is the issue of the legal significance, if any, of the UCC1. This constitutes the decision and order of the court.

Dated: New York, New York
June 6, 2005

SO ORDERED:



J.S.C.

HON. JUDITH J. GISCHE

FILED
JUN 20 2005
COUNTY CLERK'S OFFICE
NEW YORK