

Sampson v Marks

2006 NY Slip Op 30866(U)

August 16, 2006

Supreme Court, Bronx County

Docket Number: 23434/05

Judge: Stanley Green

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-27

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ETHEL SAMPSON, as Distributee of
Hazel Dews, Deceased,

Plaintiff,

-against-

LISA ZORA MARKS,

Defendant.

INDEX NO.: 23434/05

FILED
AUG 22 2006
BRONX COUNTY CLERK'S OFFICE

DECISION

-----X

HON. STANLEY GREEN

The motion by defendant for an order pursuant to CPLR §213(g), CPLR §3211(a)(3),(5) and (7) and EPTL §11-3.2 dismissing the complaint with prejudice and directing that the lis pendens filed on November 7, 2005 against the premises known as 3219 Grace Avenue, Bronx, New York (the premises) be vacated, voided and canceled pursuant to CPLR §6514(c) and for costs and disbursements of this motion is denied without prejudice to renewal after discovery has been completed.

Plaintiff, who is the daughter and distributee of Hazel Dews, commenced this action to challenge the validity of a deed purportedly executed by her aunt, Mildred H. Hatcher, on January 10, 1984. The deed conveyed Hatcher's interest in the premises known as 3219 Grace Avenue, Bronx, New York from herself to herself and Lisa Zora Marks, as joint tenants. The deed, which provides that the conveyance was made "in consideration of \$10.00 and other valuable consideration", was recorded in the Bronx County City Register's Office on January 23, 1984. Hatcher died intestate in 1985. Dews, who was Hatcher's sister and sole distributee, had resided

at the premises prior to Hatcher's death. Dews continued to reside at the premises for more than twenty years after Hatcher's death, renting out a portion of the premises to a tenant. Dews died intestate on October 15, 2004.

Plaintiff seeks an order declaring the deed dated January 10, 1984 null and void and imposing a constructive trust on the premises on the grounds that: (1) the signature on the deed purportedly executed by Hatcher is a forgery; (2) the deed was procured by fraud and/or undue influence/duress practiced on Hatcher by Marks, who was a local tarot card reader, or someone acting on her behalf; (3) the deed was procured by misrepresentation practiced on Hatcher by Marks or someone acting on her behalf; and (4) at the time the deed was executed, Hatcher lacked mental capacity to execute it.

Marks seeks dismissal of the complaint on the grounds that: (1) the complaint fails to sufficiently plead any of the causes of action it asserts; (2) plaintiff lacks standing to bring this action because she is not a duly appointed representative of the decedent; and (3) the action is barred by the six year statute of limitations for fraud.

Initially, it is noted that where it is alleged that the defendant "procured through fraud and undue influence, the transfer to him of property from one who later dies intestate, an action may be maintained by the distributees of the intestate against the defendant to avoid the transfer without the necessity of the prior appointment of an administrator (Prouty v. Nichols, 123 NYS2d 789; aff'd 282 AD2d 962). Therefore, the motion to dismiss this action for lack of legal capacity to sue is denied.

Insofar as defendant seeks dismissal of this action on the ground that it is barred by the statute of limitations, an action based upon fraud must be commenced within six years from the

date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it (CPLR 213(8)). However, the mere fact that the deed had been recorded is insufficient to constitute constructive notice of the conveyance (Guedj v. Dana, 11 AD3d 368). Thus, in the absence of discovery, it cannot be said as a matter of law that this action is barred by the statute of limitations.

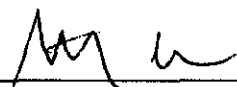
As to the issue of whether the complaint alleges facts sufficient to state a cause of action, on a motion to dismiss the complaint pursuant to CPLR §3211(a)(7), the court must accept as true the factual allegations of the complaint and accord the plaintiff all favorable inferences which may be drawn therefrom (Leon v. Martinez, 84 NY2d 83). Even where a pleading is inartfully drawn, if a cause of action can be spelled out from the four corners of the pleading, a cause of action is stated and no motion lies under CPLR §3211(a)(7) (511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144; Foley v. D'Agostino, 21 AD2d 60).

While a cause of action for fraud must be pleaded with particularity (Mance v. Mance, 128 AD2d 448) and CPLR §3016 requires the circumstances constituting the alleged fraud to be stated in detail, where the circumstances constituting a fraud are peculiarly within the knowledge of the alleged defrauder, it may be impossible to state in detail the circumstances constituting the alleged fraud (Jered Constructing Corp. v. NYC Transit Authority, 22 NY2d 187). Here, the allegations that Hatcher's signature on the deed is a forgery, that Marks was a tarot card reader at the time the deed was executed, that no consideration was paid for the conveyance and that Dews was permitted to continue to live at the premises for twenty years after Hatcher's death, paying the taxes, insurance and maintenance for the premises are sufficient to support an inference that

Marks intentionally concealed the fact that a deed had been executed in 1984, conveying Hatcher's interest in the premises to her as a joint tenant, until both Hatcher and Dews were deceased. Under the circumstances, there is an inference that the alleged conveyance was fraudulent. Accordingly, the motion to dismiss the complaint is denied.

This constitutes the decision and order of the court.

Dated: August 16, 2006



STANLEY GREEN, J.S.C.