

Chetram v Singh

2007 NY Slip Op 30702(U)

March 14, 2007

Supreme Court, Queens County

Docket Number: 0018541/2006

Judge: James P. Dollard

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAMES P. DOLLARD IA Part 5
Justice

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	x	Index	
SOOKDEO CHETRAM		Number	<u>18541</u>
2006			
		Motion	
		Date	<u>January 30,</u>
2007			
	- against -		
		Motion	
JARNAIL SINGH, et al.		Cal. Number	<u>4</u>
	x		
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The following papers numbered 1 to 10 read on this application by defendants to 1) cancel the notice of pendency pursuant to CPLR 6514 and 2) impose sanctions pursuant to 22 NYCRR 130 et seq., as well as motion costs and attorneys' fees pursuant to CPLR 6514(c).

	<u>Papers</u> <u>Numbered</u>
Order to Show Cause - Affidavits - Exhibits	1-5
Answering Affidavits - Exhibits	6-7
Reply Affidavits	8-10

Upon the foregoing papers it is ordered that the motion is determined as follows:

Pursuant to CPLR 6501, a notice of pendency may be filed in any action in which the judgment would affect the title, possession, use or enjoyment of real property. (See, 5303 Realty Corp. v O & Y Equity Corp., 64 NY2d 313 [1984].) Due to the immediate impact this device has on the alienability of property, together with the ease with which it may be obtained, a strict interpretation of the statute is required. (See, Shkolnik v

Krutoy, 32 AD3d 536 [2006].) An examination of the complaint is necessary to ascertain whether the action falls within the scope of CPLR 6501. (5303 Realty Corp. v O & Y Equity Corp., supra.)

The complaint annexed to the moving papers is not a full copy of the pleading. A review of the County Clerk records indicates that four causes of action were interposed in the action, breach of contract, fraudulent misrepresentation, unjust enrichment and encroachment upon plaintiff's property. Thus, it is noted that even if this court were to entertain plaintiff's request to amend the complaint to add an encroachment action, no basis exists to do so.

Plaintiff seeks money damages based on allegations that defendants' activities have caused structural damages to his property for which he has not received reimbursement in contravention of their agreement, and that the construction encroaches upon his land by a few inches. These acts do not impact upon the title, use or possession of defendants' real property and, therefore, do not fall within the purview of the statute. (See, Weidel v Kaba Realty, LLC, ___ AD3d ___, 826 NYS2d 912 [2007]; Shkolnik v Krutoy, supra.; Distinctive Custom Homes Bldg. Corp. v Esteves, 12 AD3d 559 [2004]; see also, Huffmann Investors Corp. v Yuval, 33 AD3d 511 [2006].)

Requests for relief must be made by notice of motion setting forth the relief demanded. (CPLR 2214.) Inasmuch as defendants acknowledged the necessity of this procedure in reference to plaintiff, their informal request to dismiss the action against Jarnail Singh is denied without prejudice to renewal upon proper papers.

Accordingly, defendants' motion is granted to the extent that the County Clerk of Queens County is directed, upon payment of any fees which may be due and owing, to cancel the notice of pendency filed in this action against the property located at 95-12 Van Wyck Expressway or as currently configured on 95-12, 95-14, 95-16, 95-18, 95-20 Van Wyck Expressway, Richmond Hill, New York. The Clerk shall enter upon the margin of the record a notice of cancellation referring to this order.

The remaining branches of the motion to impose sanctions, costs and attorneys' fees are denied.

Dated: March 14, 2007

