

Prince v Accardo

2007 NY Slip Op 30711(U)

April 9, 2007

Supreme Court, Queens County

Docket Number: 0014981/2006

Judge: Joseph P. Dorsa

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SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12
Justice

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ROGER PRINCE, HELENA LAUNDRY and
SOLOMON ENGLISH,

Index No.: 14981/06

Plaintiffs,

- against -

MICHEL-ANGELO ACCARDO, BERKSHIRE
FINANCIAL GROUP INC., UNITED GENERAL
TITLE INSURANCE COMPANY, RCA LAND
SEARCH, INC. and JOHN AND JANE DOES
1015, representing as yet unknown and
unidentified employees of Berkshire
Financial Group, Inc.,

Defendants.

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The following papers numbered 1 to 11 on this motion:

	<u>Papers Numbered</u>
United General Title Ins. Co.'s Notice of Motion-Affirmation-Affidavit(s)-Service-Exhibit(s) & Memorandum of Law	1-5
Plaintiffs' Affirmation in Opposition- Affidavit(s)-Exhibit(s)	6-8
Defendant Berkshire's Affirmation in Partial Opposition-Affidavit(s)-Exhibits(s)	9-11

By notice of motion, defendant, United General Title Insurance Co., seeks an order of the Court, granting them summary judgment and dismissing the complaint as to them.

Plaintiffs file an affirmation in opposition. Defendant Berkshire Financial Group, Inc. (Berkshire) files an affirmation in partial opposition.

The underlying action is a claim by plaintiffs for damages based on allegations that the defendants engaged in fraud, conversion, civil RICO, and fraudulent inducement resulting in defendants receiving unjust enrichment.

Plaintiffs also seek an accounting and constructive trust.

Essentially, plaintiffs' claim that they have been victims of a practice known as "predatory lending." Plaintiffs allege that through a series of high pressure tactics and false promises, defendant, Berkshire Financial Group, Inc., convinced plaintiffs to transfer title of their property, premises located at 13-14 Gipson Street, Far Rockaway, N.Y. 11691 to Michel-Angelo Accardo.

Originally, arrangements were presented to plaintiffs for refinancing which would forestall the foreclosure action. However, at the last minute, and without independent legal representation, plaintiffs were convinced to sign title over to Accardo. They were promised that they could remain in the premises and that they would be given an opportunity to "refinance" a year or so later. Plaintiffs were repeatedly told that they were not really relinquishing title to their premises.

Now comes defendant, United General Title Insurance Co. (UGTIC), seeking summary judgment and dismissal of the complaint as to them. UGTIC maintains that they have no privity with plaintiffs; that plaintiffs are not the insureds herein; and, that consequently, they owe no duty to plaintiffs.

In the body of their affirmation, defendant, UGTIC also seeks dismissal of the default judgment already obtained by plaintiffs against defendant, RCA Land Search, Inc. (RCA), the policy issuing agent for UGTIC. Said application is denied as the relief is improperly requested and is, moreover, unsupported as required under CPLR § 5015, with an affidavit of a meritorious defense and reasonable excuse for the default.

While plaintiffs concede that the title insurance policy issued by UGTIC did not serve to insure them, as they were not "owners" of the property at the time of its issuance, they do maintain that the nature of their claim based on fraud and conspiracy does not require privity as between them and UGTIC. Furthermore, plaintiffs maintain that at this early stage of the proceedings, where discovery has only begun, where depositions have yet to take place, the granting of summary judgment to defendant is premature. In particular, plaintiffs rely on CPLR § 3212(f), in support of their contention that their lack of

documents underlying this transaction, (i.e., from the closing, the applications for title insurance, the name of the attorney representing them) hamper their ability to oppose defendant's motion for summary judgment. That information, and those documents continue at this time to be in the exclusive control of defendants. Morris v. Hochman, 296 AD2d 481, 745 NYS2d 549 (2d Dep't. 2002).

Plaintiffs note recent legislative action intended to prevent the very practices alleged by plaintiffs herein. The Court is aware of the "Home Equity Theft Prevention Act" § 265(a), but as plaintiffs admit the act is effective February 1, 2007, and could not therefore, be applied to this case.

Accordingly, upon all of the foregoing, defendant's motion for summary judgment is denied with leave to represent upon completion of discovery.

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Dated: Jamaica, New York
April 9, 2007

JOSEPH P. DORSA
J.S.C.