

Matter of Sheridan v Town of Islip

2007 NY Slip Op 31065(U)

April 30, 2007

Supreme Court, Suffolk County

Docket Number: 0030448/2006

Judge: Elizabeth H. Emerson

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SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 8 SUFFOLK COUNTY

PRESENT: Hon. Elizabeth Hazlitt Emerson

MOTION DATE: 12-15-06
SUBMITTED: 1-3-07
MOTION NO: 001-MOT D
002-XMOT D

_____ X
In the Matter of the Application of DENNIS J.
SHERIDAN,

Petitioner,

PAUL L. DASHEFSKY, ESQ.
Attorney for Petitioner
317 Middle Country Road
Smithtown, New York 11787

For a judgment pursuant to Article 78 of the Civil Practice
Law and Rules, directing the Town of Islip to transfer title
to the real property located at 13 Satinwood Street,
Central Islip, County of Suffolk, to Dennis J. Sheridan,

PIERCE FOX COHALAN, ESQ.
Attorney for Respondent
655 Main Street
Islip, New York 11751

-against-

TOWN OF ISLIP,

Respondent.

_____ X

Upon the following papers numbered 1 to 7 read on this petition for mandamus and cross-motion to dismiss ;
Notice of Petition and supporting papers 1-3 ; Notice of Cross Motion and supporting papers 4-5 ; Answering Affidavits and
supporting papers 6 ; Replying Affidavits and supporting papers 7 ; it is,

ORDERED that the petition for a judgment pursuant to CPLR article 78 compelling
the respondent to transfer to the petitioner title to a certain parcel of real property and the cross
motion by the respondent for an order dismissing the petition are determined as follows:

In 1978 the petitioner entered into a conditional contract of sale with the respondent
to purchase a house located at 13 Satinwood Street, Central Islip, New York. At that time the
premises was in a complete state of disrepair. The contract required the petitioner to repair the
premises in order to meet the requirements of the Town of Islip Code, to provide insurance
coverage for the premises, to pay the taxes, and to reside there with his family, among other things.
Upon fulfilling all of the terms and conditions of the contract, title to the premises was to be
transferred to the petitioner four years later, in 1982. The petitioner contends that, although he fully
performed his obligations under the contract and made several requests, the respondent did not
transfer the title to him. He has commenced this CPLR article 78 proceeding in the nature of
mandamus to compel the respondent to transfer the title. The respondent moves to dismiss the
proceeding on the ground that mandamus does not lie when, as here, the petitioner alleges a breach
of contract.

It is well established that, when the damage allegedly sustained arises from a breach of contract by a public official or governmental body, then the claim must be resolved through the application of traditional rules of contract law (*see, Abiele Constr. v New York City School Constr. Auth.*, 91 NY2d 1, 7-8; **Matter of Barrier Motor Fuels v Boardman**, 256 AD2d 405; **Matter of Goodstein Constr. Corp. v Gliedman**, 117 AD2d 170, 176, *affd* 69 NY2d 930). An article 78 proceeding in the nature of mandamus is used to compel the performance of a duty that is merely ministerial in nature and involves no exercise of discretion (*see, Matter of Felmont Natural Gas Storage Co. v Hudacs*, 175 AD2d 565). Mandamus cannot lie against an officer or public body until the claimant's primary right and the respondent's duty can be said to have already been fixed as a matter of law (*see, State Div. of Human Rights v New York State Dept. of Correctional Servs.*, 90 AD2d 51, 68 n8). Accordingly, except in certain specific circumstances, mandamus does not lie to enforce contract rights (*see, Matter of Felmont Natural Gas Storage Co. v Hudacs, supra* at 566, *citing State Div. of Human Rights v New York State Dept. of Correctional Servs., supra* at 68 n8).

The availability of mandamus to enforce what appear to be contract rights is based upon one of two theories: a vesting of a legal, not merely contractual, right by some official act of accepting the petitioner's performance of his obligations under the contract or a vesting of a right, not in the nature of contract, but in the nature of status or statutory grant (*see, State Div. of Human Rights v New York State Dept. of Correctional Servs., supra* at 68 n8). The second theory is not applicable to the facts of this case. With respect to the first theory, the petitioner must show a valid express contract, his performance of all or a portion of his obligations thereunder, and official acceptance of such performance by the appropriate agent of the governmental entity or such sufficient inaction as to be deemed acceptance (*see, State Div. of Human Rights v New York State Dept. of Correctional Servs., supra* at 68 n8).

The court finds that, while the petitioner has shown a valid express contract, he has not shown as a matter of law that he fully performed his obligations thereunder and that his performance was accepted by the respondent or that he supplied the respondent with verification of his performance and the respondent refused to transfer title to the premises (*cf., Bay Ridge Diagnostic & Analytical Lab. v Smith*, 71 AD2d 889). Under these circumstances, the transfer of title is not a ministerial act and that the petitioner's remedy is not a writ of mandamus.

CPLR 103(c) provides, in pertinent part, "If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution." The court has obtained jurisdiction over the parties. The respondent does not dispute the existence of the contract in question. Moreover, the respondent represents that it is willing to execute a deed transferring the property to the petitioner upon his submission of proof that he has complied with the terms of the contract. Under these circumstances and in the interest of judicial economy, the court exercises its authority under CPLR 103(c) to convert this proceeding to an action for specific performance of the parties' conditional contract of sale (*see, Steve's Star Service v County of Rockland*, 278 AD2d 498, 500; **Matter of Felmont Natural Gas Storage Co. v Hudacs, supra** at 566-567).

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The parties are directed to appear for a preliminary conference, which shall be held on June 21, 2007 at 9:45 a.m., Supreme Court, Courtroom 7, Arthur M. Cromarty Criminal Court Building, 210 Center Drive, Riverhead, New York 11901.

DATED: April 30, 2007

HON. ELIZABETH HAZLITT EMERSON

J. S.C.