

Goodell v Rosetti

2007 NY Slip Op 31757(U)

June 13, 2007

Supreme Court, Albany County

Docket Number: 0066012/0041

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

NORMAN GOODELL and BARBARA
GOODELL,

Plaintiff,

-against-

DECISION and ORDER
RJI NO.: 0105081543S
INDEX NO.: 6601-04

RICHARD ROSETTI,

Defendant.

RICHARD ROSETTI,

Third Party Plaintiff,

-against-

DREW CATHELL CUSTOM HOMES, INC.

Third Party Defendant.

Albany County Supreme County All Purpose Term, May 29, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Plaintiffs, Norman and Barbara Goodell, bring this motion pursuant to CPLR §§ 2221(d) and (e) to renew and reargue this Court's February 22, 2007 Decision granting summary judgment to Defendant, Richard Rosetti. Defendant/Third Party Plaintiff opposes the motion. Third Party Defendant, Drew Cathell Custom Homes, Inc. (Hereinafter Drew Cathell), also opposes the motion.

After fully reviewing the record, this Court denies Plaintiffs' motion.

Plaintiffs allege, as they did in their opposition to summary judgment and motion to confirm title, that there is, at least, a triable issue of fact as to whether Mr. Rosetti owned #3 Spyglass Lane, Guilderland New York on January 26, 2004 when Plaintiff was injured on that property. CPLR § 2221(d) allows for a motion to reargue based upon a misapprehension of substantial matters of fact or law, not including matters of fact that were not offered on the prior motion. CPLR § 2221(e) allows for a motion to renew where new facts or a change in law would change the prior determination. Plaintiffs allege that this Court mistook the nature of Plaintiffs' argument when, in the November 22, 2007 Decision on this matter it was held that the October 27, 2003 deed effected a valid transfer of the property from Mr. Rosetti to Drew Cathell, notwithstanding the failure to record the deed. Contrary to plaintiffs assertions, this Court understands that plaintiffs' contention is that the October 27, 2003 deed represented a financial

agreement not designed to actually transfer title, but merely to secure funding for Drew Cathell to develop the parcel. This Court is aware that the failure to record the deed was only one fact that Plaintiff cited as indicia that Mr. Rosetti remained the actual owner of the parcel on January 26, 2004. This Court hereby reaffirms its November 22, 2007 finding that the October 27, 2003 deed effected a legal transfer of title and that provisions in RPL § 291 relating to the validity of unrecorded deeds do not give Plaintiffs, who are not a party to the deed, standing to challenge the transfer.

In support of the motion to renew, Plaintiffs offer further evidence that the October 27, 2003 transfer was a sham transaction by demonstrating deeds from other properties that were sold to Drew Cathell by Mr. Rosetti in a similar manner with an unrecorded first deed to obtain financing and a second recorded deed at a closing with new purchasers. Notwithstanding any agreements (valid or invalid) between Drew Cathell and Mr. Rosetti regarding the disposition of #3 Spyglass Lane that might have impacted their rights and liabilities in regards to each other and/or future purchasers, legal transfer of title was effected on October 27, 2003.

According, this Court denies Plaintiffs' motion to renew and reargue.

All papers, including this Decision and Order, are being returned to the attorney for the Defendant. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: June 13 2007

Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Plaintiffs' Notice of Motion, dated April 25, 2007 with Attached Exhibits
2. Third Party Defendant Opposition, dated May 17, 2007
3. Plaintiffs' Reply, dated May 23, 2007
4. Defendant's opposition, dated May 14, 2007