

Choudhury v Rahman
2007 NY Slip Op 31902(U)
June 27, 2007
Supreme Court, Queens County
Docket Number: 0011828/2006
Judge: Lawrence Vincent Cullen
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: Honorable LAWRENCE V. CULLEN
Justice

IAS PART 6

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MOHAMMED A. CHOUDHURY,

Index No.: 11828/06

Plaintiff(s),

-against-

Date of Inquest 4/24/07 & 5/1/07

AMINUR RAHMAN,

DECISION AND ORDER

Defendant(s).

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Plaintiff Mohammed A. Choudhury has moved this Court for a decision and order rescinding a deed to the premises known as 160-15 21st Road, Whitestone, New York, on the grounds of fraudulent conveyance; said deed is dated the 6th of May, 2005 and purports to convey the subject property from Choudhury to defendant, Aminar Rahman

An inquest was held before the Court commencing on the 24th of April, 2007 and was continued on the 1st of May, 2007.

Plaintiff testified on his own behalf and also presented the additional testimony of Luke Bigelow, Esq., and Ellen Russell. Two deeds dated the 4th of May, 2005 and 6th of May, 2005, were received into evidence and respectively marked plaintiff's # 1 and # 2.

Defendant, Aminar Rahman, did not appear in this matter.

Based upon a preponderance of the credible evidence, the Court finds and determines as follows:

Background

On the 4th of May, 2005, plaintiff purchased the real property located at 160-15 21st Road Whitestone, from Imran Khan, for a price of \$840,000.00; the purchase was financed by

two (2) purchase money mortgages, the first in the principal amount of \$630,000.00 and the second in the principal amount of \$210,000.00; the mortgagee was American Home Mortgage Acceptance, Inc.

According to the terms of the Contract of Sale between Khan and Choudhury, seller Khan was to give purchaser a credit of 6% of the purchase price at the time of closing; plaintiff's witness, Luke Bigelow, Esq., testified that that credit was later reduced verbally to 3 %, although he could not definitively say since he has no full record of the transaction . In any event, the purchase was made with financing of either 103 % or 106 %.

Plaintiff Choudhury testified that he had put a \$20,000.00 down payment on the premises, allegedly in cash form and paid in small installments over time to defendant Rahman, whose role in the original purchase is of particular interest herein; it is unclear as to whether these alleged payments were before, during or after closing and Mr. Bigelow has no recollection.

Allegedly, plaintiff Choudhury was having minor financial problems, with credit card debt of a few thousand dollars and bank deposits of approximately \$1,000.00 when introduced to Rahman by someone who was "just a friend". Rahman allegedly solicited the use of Choudhury's name for the purchase of the within premises, which was purportedly to be sold in a few months time and the profits from which sale were to be apportioned to each.

Choudhury testified that he never went to a mortgage lender or broker, signing only "papers" brought to him by Rahman, including all financing applications and the contract of sale. Rahman allegedly took care of "everything", including finding legal representation for Choudhury in the person of Luke Bigelow, Esq.

At the time of closing, which took place at the office of George Georgaklis, Esq., 32-75 Steinway Street, Astoria, New York, Mr. Bigelow appeared with Choudhury; Rahman was also present. Mr. Bigelow testified that he had previously represented Rahman but not Choudhury;

Mr. Bigelow testified that he never reviewed the financing documents of his client nor could he recall ever seeing them; further, that he had no copies of cheques, no attendance sheet from the closing, no correspondence from any of the parties or their counsel, no copies of the deed, mortgage or note. In fact, it appears from the record that the only documents in Mr. Bigelow's file were the H.U.D. statements which were generated at closing and which Mr. Bigelow has testified are the only documents he used as a closing statement, and a copy of the undated contract of sale.

The deed executed on the 4th of May, 2005 from Khan to Choudhury and recorded on the 24th of May, 2005 had Khan's name notarized by Bigelow and a return address of Bigelow's law office. Mr. Bigelow testified that he probably sent the recorded copy of the deed to Choudhury, but at which address he does not know.

A second deed dated the 6th of May, 2005, purportedly conveying the premises from

Choudhury to defendant Rahman was recorded on the 5th of August, 2005. This deed bears Mr. Choudhury's signature on its face and the Notary Public seal of Mr. Bigelow on its reverse. Bigelow testified that the seal is his but the signature is not.

Mr. Bigelow testified further that this apparent forgery of his name and misuse of his official stamp of office first came to his attention over one year ago but he took no steps to cure it, i.e., he did not notify the District Attorney, the Office of Court Administration, nor the Nassau County Clerk in which county he was commissioned as a Notary Public. It is also Mr. Bigelow's contention that he had nothing to do with the preparation, execution and recordation of the second deed.

Testimony was also taken on behalf of plaintiff from Ellen Russell, a self-described "loss mitigation service specialist" whose appearance had been requested by Mr. Choudhury and his attorney herein, Craig Tyson, Esq., said attorney being affiliated with Mr. Bigelow's firm.

Ms. Russell testified that it was she who notified plaintiff that he was not the owner of record pursuant to the second deed. Ms. Russell solicited Mr. Choudhury through foreclosure filings on the within premises.

In her testimony Ms. Russell stated that she sought to "mitigate" Mr. Choudhury's losses by installing two tenants in this otherwise vacant one family dwelling and accordingly did so.

This Court is baffled by Ms. Russell's placement of the tenants based on the alleged authorization of Mr. Choudhury, who she acknowledged before the Court, is not the owner of record. Added to that bafflement is total bewilderment that those persons were installed in the premises as non-paying tenants.

It appears to this Court that the "loss mitigation specialist" has incurred a substantial risk of liability to the premises rather than an offset of loss.

It is noted here that both mortgages given by Mr. Choudhury for the purchase of the premises are now in foreclosure.

It is further noted that Mr. Choudhury's attorney, Mr. Tyson has neither appeared in nor filed an answer in defense of his client to those foreclosure actions and has emphatically stated on the record (Page 5 Lines 3 - 4, 12 - 13; Page 96 Line 8) before the Court on the 24 of April, 2007 that he does not contest the validity of the two mortgages totaling \$840,000.00, nor does he see any cause of action or affirmative defenses to be alleged in those cases (Page 100 Lines 4 - 6; Lines 16 - 17).

This Court has heard the testimony of plaintiff that his surname is spelled with the fourth letter being "u", and has received the two deeds presented along with the H.U.D. statements, all of which documents have the fourth letter of the surname spelled with the letter "w", which mistake in the normal course of everyday business might be attributable to typographical error. However, in this Court's experience in real estate matters, such a discrepancy would not be

allowed to pass uncorrected by either a mortgage bank, its broker, nor the title company insuring title. There are in excess of fifty Mohammed (in various spellings) Chowdhurys listed in the Queens telephone book alone, compared to approximately seven using the fourth letter of "u" in their surname.

Commentary

It appears to this Court that there exist several unanswered questions of considerable importance in this matter, not the least of which is how an apparently penniless person can apply for and receive purchase money financing for either 103 % or 106 % of the purchase price of an \$840,00.00 home; how that financing can be processed and credit approved on an incorrectly spelled surname and poor credit history; how an attorney at law can discover an alleged forgery of his name and misuse of his official notarial stamp and not take action to protect his good name; how said attorney can claim to represent a purchaser of real property, make no inquiries as to a down payment, and additionally have no participation in his client's financing, including a review of the same at closing, and yet charge a fee of \$1,500.00 for such representation (transcript of the 1st of May, 2007, Page 63, Line 10) how a "loss mitigation specialist" can install non-paying tenants in a premises without the authorization of the owner of record, and on the pretense of mitigating losses while incurring liability; and how no defenses to the two foreclosure actions concerning this property have been filed alleging either fraud in the factum or predatory lending.

Decision

The Court, having heard the testimony of plaintiff Mohammed A. Choudhury, Luke Bigelow, Esq., and Ellen Russell, finds the entirety of all such testimony to be incredible based upon the facts and circumstances herein;

Accordingly, plaintiff's motion seeking to set aside the deed dated the 6th of May, 2005, conveying the real property located at 160-15 21st Road, Whitestone, New York, from him to defendant, Aminur Rahman, is denied in its entirety.

Dated: June 27, 2007

LAWRENCE V. CULLEN, J.S.C.

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