

Cruz v Morris

2007 NY Slip Op 32141(U)

May 30, 2007

Supreme Court, Queens County

Docket Number: 0015853/2005

Judge: Augustus C. Agate

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

-----x

ANA CRUZ,

Plaintiff,

-against-

DIANA MORRIS,

Defendant.

-----x

Index No.: 15853/05

Motion Dated:
March 20, 2007

Cal. No.: 14

Having come to the court's attention that the court, in the order dated May 21, 2007, did not address the branch of the defendant's motion to discharge and cancel the notice of pendency, this court's order dated May 21, 2007 is vacated and the following is substituted in its place and stead:

The following papers numbered 1 to 7 read on this motion by defendant to dismiss the complaint on the ground that the action is barred by the Statute of Frauds pursuant to CPLR 3211(a) (5) and on the ground of failure to state a cause of action pursuant to CPLR 3211(a) (7) and other relief; or in the alternative, for summary judgment.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1 - 4
Answering Affidavits - Exhibits	5 - 7
Defendant's Memorandum of Law	

Upon the foregoing papers it is ordered that this motion by defendants to dismiss the complaint is decided as follows:

At the outset, the attorneys for plaintiff and defendant are respectfully reminded to please use tabs for all annexed exhibits so all exhibits are readily referable and ascertainable by the court.

Pursuant to defendant's request in the notice of motion, and in view of the fact that the parties have submitted admissible evidence in support of their positions, the court will treat this

motion as one for summary judgment. (CPLR 3211[c].)

Plaintiff alleges that she lived with the defendant's father, Pedro Dominguez, from 1987 until his death in 2004. Plaintiff alleges that she is the common law wife of Pedro Dominguez, and they have one 18 year-old daughter, Vanessa. The couple and Vanessa lived in Mr. Dominguez's home, located at 153-38 60th Avenue in Flushing, NY. Mr. Dominguez purchased the subject premises in 1983 with his then wife, Josephina and became the sole owner of the premises when Josephina died in 1986. Defendant is the daughter of Mr. Dominguez and his wife, Josephina.

In 1996, Mr. Dominguez conveyed the premises to the defendant, although he, plaintiff and Vanessa continued to live there. The complaint alleges that Mr. Dominguez transferred the deed to the premises to defendant's name because of a large hospital bill. Plaintiff contends that Mr. Dominguez promised her that after his death, plaintiff and Vanessa would own the premises. Plaintiff also maintains that she contributed her services and money over the years to maintain the subject premises.

After Mr. Dominguez's death, defendant put the premises up for sale. Defendant states that she informed the plaintiff that she and Vanessa could remain in the premises until Vanessa graduated from high school in June 2005. According to defendant, she informed plaintiff that she would give her a stipulated amount of money after the premises was sold. On July 19, 2005, plaintiff commenced this action for the imposition of a constructive trust. The instant motion ensued.

In support of her motion to dismiss, defendant contends that the complaint fails to state a cause of action for the imposition of a constructive trust. Defendant also notes that at her deposition, plaintiff testified that when he returned from the hospital, Mr. Dominguez told plaintiff that he was going to put the premises back in his name, but he never did. Defendant also asserts that Mr. Dominguez's alleged oral promise to the plaintiff is insufficient for the imposition of a constructive trust since such oral promise violates the Statute of Frauds.

In opposition to the motion, plaintiff asserts that Mr. Dominguez trusted that the defendant, his daughter, would keep the premises in trust for the benefit of plaintiff and Vanessa. Plaintiff further argues that Mr. Dominguez did not intend that the premises be a gift for the defendant inasmuch as plaintiff and Vanessa were living at the premises.

Generally, a constructive trust may be imposed when property has been acquired under such circumstances that the holder of legal title may not in good conscience retain the beneficial interest therein. (Rasool v Gohar, ___ AD3d ___, ___ NYS2d ___, 2007 NY Slip Op 04096 [May 8, 2007]; Scivoletti v Marsala, 97 AD2d 401, 402 [1983], affd 61 NY2d 806 [1984].) The elements of a constructive trust are a confidential or fiduciary relationship, a promise, a transfer in reliance upon the promise, and unjust enrichment. (Sharp v Kosmalski, 40 NY2d 119, 121 [1976]; Osborne v Tooker, 36 AD3d 778 [2007]; Lipton v Donnenfeld, 5 AD3d 356, 357 [2004].) The doctrine of constructive trust gives expression to the conscience of equity, and it is used to prevent unjust enrichment in a wide range of circumstances. (see Lipton v Donnenfeld, 5 AD3d at 358; Jacobs v Abramoff, 148 AD2d 497, 498 [1989].) “[T]he gravamen of an action to impose a constructive trust is the transfer of property in reliance upon a promise to convey, reconvey or hold the property for the benefit of another ...” (Matter of Estate of Chicola, 224 AD2d 1005, 1006 [1996]; see Whalen v Harvey, 235 AD2d 792, 794 [1997].) The promise may be express or implied. (Bankers Sec. Life Ins. Socy. v Shakerdge, 49 NY2d 939, 940 [1980].)

Before addressing the summary judgment motion, the court notes that, contrary to defendant’s contention, it is well settled that the Statute of Frauds is not a defense to a properly pleaded cause of action to impress a constructive trust upon real property. (Ubriaco v Martino, 36 AD3d 793 [2007]; Cilibrasi v Gagliardotto, 297 AD2d 778, 779 [2002]; Crane v Crane, 77 AD2d 858, 858 [1980].)

The defendant made a prima facie showing of her entitlement to judgment as a matter of law. (Zuckerman v City of New York, 49 NY2d 557, 562 [1980].) In opposition, plaintiff fails to raise a triable issue of fact. The admissible evidence fails to indicate that the plaintiff had an interest in the subject premises before it was conveyed to the defendant. Indeed, a constructive trust may not be imposed by one who has no interest in the subject property prior to obtaining a promise that such an interest will be given to him or her. (see Matter of Lefton v Bedell, 160 AD2d 702, 703 [1990]; Gargano v V.C. & J. Constr. Corp., 148 AD2d 417, 419 [1989].) Further, any bills and expenses paid by the plaintiff with respect to the premises may be explained by her desire to improve the surroundings in which she lived and because of the mutual love and affection between plaintiff and Mr. Dominguez. (see Matter of Lefton v Bedell, 160 AD2d at 703.) Moreover, plaintiff has failed to demonstrate that defendant would be unjustly enriched if she retained the subject

premises. (see Thornton v McGrath, 277 AD2d 14, 15 [2000].) While the facts herein may reveal plaintiff's unrealized expectations, such unrealized expectations are not a basis for the imposition of a constructive trust. Indeed, a constructive trust is a "fraud-rectifying remedy rather than an intent-enforcing one." (Bankers Sec. Life Ins. Socy. v Shakerdge, 49 NY2d at 940.)

Accordingly, this motion by defendant for summary judgment is granted, and the action is dismissed.

The branch of the motion to cancel and discharge the notice of pendency is granted, and it is

ORDERED, that the County Clerk of Queens County is directed, upon payment of proper fees, if any, to cancel and discharge a certain Notice of Pendency filed in this action on July 19, 2005, against property known as BLOCK 6441 LOT 19 and said clerk is hereby directed to enter upon the margin of the record of same a Notice of Cancellation referring to this Order; and it is further

ORDERED, that the Clerk of the County of Queens be served with a copy of this Order with Notice of Entry.

A copy of this order is being faxed on this date to both sides.

Dated: May 30, 2007

AUGUSTUS C. AGATE, J.S.C.