

**Siniscalchi v Siniscalchi**

2007 NY Slip Op 32852(U)

September 14, 2007

Supreme Court, Richmond County

Docket Number: 0101205/2006

Judge: Philip G. Minardo

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

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THOMAS SINISCALCHI and MARINA  
SINISCALCHI,

Plaintiffs,

DCM PART 6

Present:

Hon. Philip G. Minardo

-against-

Decision and Order

CATHERINE SINISCALCHI and  
JAMES SINISCALCHI,

Defendants.

Index No. 101205/06

Motion Nos. 651-006

1419-008

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The following papers numbered 1 to 4 were used on these motions the 19<sup>th</sup> day of July, 2007:

	Pages Numbered
Notice of Motion with Supporting Papers and Exhibits (dated February 27, 2007).....	1
Affirmation in Opposition (dated May 9, 2007).....	2
Notice of Cross Motion with Supporting Papers and Exhibits (dated May 11, 2007).....	3
Reply Affirmation (dated July 17, 2007).....	4

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Upon the foregoing papers, the motion (No. 651) and cross motion (No. 1419) for summary judgment are denied.

Plaintiffs commenced this declaratory judgment action seeking to reform a deed executed by them in connection with their purchase of a one-family residence located at 39 Hunter Avenue in Staten Island, New York. In addition, plaintiffs seek money damages from their alleged tenant,

defendant CATHERINE SINISCALCHI. It is undisputed that plaintiffs THOMAS SINISCALCHI and MARINA SINISCALCHI (hereinafter “plaintiffs”) entered into a residential contract for the purchase of a one-family home from its owner defendant JAMES SINISCALCHI. At that time, both plaintiffs and defendant CATHERINE SINISCALCHI, the seller’s mother, were living together at the residence. Plaintiffs had been paying rent to the seller, but MRS. SINISCALCHI had not.

Plaintiffs claim that the contract of sale included a Rider which granted CATHERINE SINISCALCHI a life tenancy *geographically limited to the portion of the residence she was currently occupying*. Defendant JAMES SINISCALCHI denies ever signing such a document. Moreover, the deed executed at the closing granted CATHERINE SINISCALCHI an unrestricted life tenancy. There were no geographical limitations, and no provision regarding her payment of rent. When the relationship between plaintiffs and MRS. SINISCALCHI deteriorated, the latter demanded that plaintiffs vacate the premises and served them with a Notice of Holdover based upon her alleged life tenancy in the premises. Plaintiffs subsequently commenced this action for, *inter alia*, a declaration of their rights.

In moving for summary judgment, plaintiffs ask this Court to reform the subject deed to include a geographical limitation on the elder SINISCALCHI’s life tenancy to conform with the purported Rider. Plaintiffs also seek a money judgment in the amount of \$13,117.37 representing the accrued rent attributable to MRS. SINISCALCHI’s tenancy since closing, as well as an order directing her pay rent in the sum of \$472.00 per month for the duration of her tenancy. In support, plaintiffs claim that there are no triable issues of fact regarding the parties’ intentions, as their continued dual occupancy of the residence is consistent with the terms of the alleged Rider limiting the scope of the life tenancy. According to plaintiffs, the deed contains a *mistake*, and should be

reformed to reflect the living arrangement agreed to by all of the parties. In further support, plaintiffs refer to the EBT testimony of defendant JAMES SINISCALCHI, who stated that he had intended the parties to continue sharing the premises as they had previously.

In his cross motion, and in opposition to plaintiffs' motion, defendant JAMES SINISCALCHI insists that the Rider to the contract limiting his mother's life tenancy is a forgery, and that he would never have agreed to such a provision. As proof, he submits the sworn report of a forensic document examiner, who states that after reviewing the authentic signatures of each of the parties and comparing them with the purported Rider, the only authentic signature thereon appears to be that of the plaintiff MARINA SINISCALCHI. In addition, the cross-moving defendant avers that when he questioned his attorney about the need to include a provision in the contract regarding his mother's tenancy, the attorney told him that it was not necessary. As a result, a rider regarding his mother's life tenancy was never executed. It is also claimed that plaintiffs have mischaracterized his EBT testimony. According to MR. SINISCALCHI, while he anticipated that the parties would continue to live together after the sale, the deed was intended to provide CATHERINE SINISCALCHI with an unrestricted life tenancy. Based on the foregoing, it is claimed that material issues of fact clearly exist regarding the parties' intentions, and that the deed cannot be reformed on the basis of plaintiffs' alleged mistake.

In her opposition papers, defendant CATHERINE SINISCALCHI contends that issues of fact exist regarding the limitation, if any, on her life tenancy, and that plaintiffs' motion for summary judgment must be denied. In addition, MRS. SINISCALCHI contends that plaintiffs are attempting to re-write the deed to suit their own needs, and that they never asserted this alleged "mistake" until two years after the closing, when their relationship with MRS. SINISCALCHI began to deteriorate.

Also disputed is plaintiffs' demand for accrued rent and expenses. According to MRS. SINISCALCHI, she was never required to pay either until the relationship between the parties deteriorated. Plaintiffs had never asked her for any money, and she never agreed to make any such payment.

It is well established that summary judgment will be granted only if there are no material issues of fact (*see* Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404). On a motion for summary judgment, the court is not to determine credibility, but rather whether a genuine issue of fact exists (*see* Terranova v. Emil, 20 NY2d 493). This is so because the granting of such a motion is the procedural equivalent of a trial (Falk v. Goodman, 7 NY2d 87, 91). Here, contrary to the parties' contentions, it is the opinion of this Court that material issues of fact exist which cannot be resolved on a motion for summary judgment.

Not only has the seller at bar disavowed his alleged execution of the Rider relied upon by plaintiffs, but he has submitted expert evidence identifying his signature thereon as a forgery. In addition, the presence of conflicting evidence of the parties' intentions regarding, *e.g.*, physical occupancy and the payment of rent, clearly demonstrate that the entry of summary judgment in favor of either party would be inappropriate.

Accordingly, it is

ORDERED that motion and cross motion for summary judgment are denied.

E N T E R,

/s/ Philip G. Minardo  
J.S.C.

Dated: Sept. 14, 2007

