

Ramsarup v C & N Props., Inc.

2007 NY Slip Op 32879(U)

September 14, 2007

Supreme Court, Queens County

Docket Number: 0019496/2007

Judge: John Kelly

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M E M O R A N D U M

SUPREME COURT - STATE OF NEW YORK
 COUNTY OF QUEENS - IAS PART 16

TILOKI RAMSARUP, ET AL,

Plaintiffs,

- against -

C & N PROPERTIES, INC.,

Defendant.

BY: KELLY, J

DATED: SEPTEMBER 14, 2007

INDEX

NUMBER: 19496/07

MOTION

DATE: AUGUST 30, 2007

SEQ. #1

Plaintiffs seek a preliminary injunction restraining defendant, inter alia, from performing further work at a construction project located adjacent to their property, and prohibiting further trespass onto their property. Plaintiffs are owners of a parcel of real estate improved by a one family home and detached garage located at 90-26 176th Street, Jamaica. Defendant owns two adjoining lots (90-18 and 90-20 176th Street) which were formerly occupied by one family homes. Defendant obtained permits and demolished the prior structures and is in the process of erecting five 3-family homes and a private street on the same site.

After a hearing on August 28, 2007 as well as a consideration of the papers submitted and oral arguments of counsel, the court finds that plaintiffs are entitled to the relief requested.

Plaintiffs have produced evidence that defendant's activities have caused damage to their residence, to their real property, and to certain infrastructure adjacent to the construction site.

The photographic and testimonial proof clearly establishes that the defendants have erected at least two foundations alongside the property

line separating plaintiffs' property from the construction site. While this, in and of itself, is not prohibited by New York City building codes, the evidence also discloses there is an issue as to whether certain foundational supports were placed beyond said property line onto plaintiffs' property. The plaintiffs' are seeking to have such supports removed.

There is also evidence that the plaintiffs' residence has sustained cracks in its foundation and walls, that walkways and pipes have been damaged and that the true extent of such damage can only be ascertained by careful excavation of the area around plaintiffs' foundation. This area had, at the time of the hearing of this motion, been refilled by defendant.

Based upon a review of the pleadings as well as the proof submitted, the court finds that plaintiffs have set forth prima facie causes of action, and that to permit defendant to continue construction would allow, at a minimum, the alleged trespass to continue to produce injury to plaintiffs. Moreover, as repairing the damage to the plaintiffs' foundation would require excavation and structural work, common sense dictates that further construction at the subject site will only create a situation where such repairs may not be able to be performed if defendant is allowed to erect two multifamily houses adjacent to a property line approximately three feet from plaintiffs' residence and garage. Plaintiff has also demonstrated that further work on the site may, in fact, cause additional damage.

While mindful that defendant denies a trespass and asserts that any damage to plaintiffs' property is de minimis the court does not have to determine the ultimate validity of plaintiffs' or defendant's claims at this juncture (Livas v Mitzner, 303 AD2d 381).

The proof clearly establishes a likelihood of success on the merits. Likewise, if defendant is allowed to continue its action its alleged trespass would not be alleviated but worsened, and further damage to plaintiff's residence due to defendant's construction activities may very likely occur.

Finally, the damage to the plaintiffs' residence and property and their interest in maintaining same clearly outweighs any pecuniary damage the defendant might possibly incur. In light of the above the court finds plaintiffs are entitled to the relief requested (Robert v Kohs, 2006 NY Slip Op 9106; Sakele Bros, LLC v Safdie, 302 AD2d 20).

With respect to an undertaking, defendant has established it will have to pay real estate taxes, make payments on the loan obtained to purchase the property, and for insurance on the site, and that these payments will be for a period in excess of what would be necessary if construction were to continue. Defendant has not shown it will not make a sizeable return on Mr. Cola's investment on the ultimate sale, nor that the failure to obtain a construction loan now will cost it a greater amount of money in the future.

Accordingly, the court grants plaintiffs a preliminary injunction conditioned upon the plaintiffs' posting an undertaking in the amount of \$175,000.00 with the order to be settled hereon.

If plaintiffs do not submit an order for proposed settlement accompanied by such undertaking within 45 days from the date of this decision the court will deem the motion as withdrawn and the temporary restraining order will be vacated.

Settle order.

Peter J. Kelly, J.S.C.