

Palmateer v Cassidy

2007 NY Slip Op 32919(U)

September 18, 2007

Supreme Court, Greene County

Docket Number: 0006532/0071

Judge: Joseph C. Teresi

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

PAUL A. PALMATEER,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 07-0653

RJI No.: 19-07-3176

JOHN CASSIDY and CLAIRE CASSIDY,

Defendants.

Supreme Court, Greene County, All Purpose Term, August 24, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

JAMES F. KEEFE, ESQ.
Attorney for the Plaintiff
527 Main Street, PO Box 1136
Cairo, NY 12413

JOHN CASSIDY and CLAIRE CASSIDY
Defendant Pro Se
510 Joel Austin Road
Purling, NY 12470

TERESI, J.:

The Plaintiff moves for summary judgment pursuant to CPLR 3212. This action is one for specific performance of a real estate agreement based on the application of the General Obligations Law, Statute of Frauds. For the following reasons, Plaintiff's motion for summary judgment is denied.

A December 30th agreement between the Plaintiff and the Defendants refers to the sale of the Defendants' property at 890 Bogart Road in Palenville, New York. The Plaintiff alleges that

the agreement signed by both parties represents the Defendants' promise to sell the previously mentioned property to the Plaintiff, and that the statute of frauds requires the Defendants to adhere to the written agreement. The Defendants contend that the written agreement was made not as a promise to sell the property to the Plaintiff, but rather was made as a promise to give the Plaintiff first bid on the property once the Defendants were ready to sell the property many months later. The Defendants claim that when the Plaintiff got news of the Defendants' intentions to sell their property in Palenville, New York, he incessantly asked the Defendants if he could buy it from them. The Defendants allege that they made the written agreement with the Plaintiff to give him first bid on the property when they were ready to sell so that the he would stop bothering them with questions about the upcoming sale.

General Obligations Law provides the statute of frauds to enforce any written agreement in the event that one of the parties to the agreement does not perform. Gen. Oblig. Law § 5-703. The statute of frauds requires a "writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought." Gen. Oblig. Law § 5-701(3)(d). This writing, to satisfy the statute of frauds, must state who the parties involved are, describe the subject matter, and include "all essential terms of a complete agreement." O'Brien v. West, 199 A.D.2d 369, 370, 605 N.Y.S.2d 366, 367 (2nd Dept. 1993). Furthermore, if there is an incomplete contract in question, and parol evidence is necessary to determine what the parties agreed to, specific performance is not an available remedy. Id.

Here, the December 30th written agreement signed by the Defendants and the Plaintiff states, "John Cassidy and Claire Cassidy promised to sell the property on 890 Bogart Rd, Palenville NY 12463 to Paul for the sum of \$24,000.00". Simply agreeing to a proposed price for the sale of real property does not mean that the buyer and seller came to a meeting of the

minds regarding the sale of that property. Penzotti v. Broda Co., 37 A.D.2d 340, 341, 325 N.Y.S.2d 228, 228 (4th Dept. 1971). Essential terms on which the parties must agree before signing an agreement must be included in the agreement. Nesbitt v. Penalver, 40 A.D.3d 596, 596, 835 N.Y.S.2d 426, 429 (2nd Dept. 2007). This ensures that both parties intended for the agreement to be final and that they have agreed to all of the essential terms. Id.

An agreement for the sale of real property must include terms customarily encountered in such a transaction. Id. Some of the terms customary in real estate transactions include the purchase price, time and terms of payment, required financing, and the closing date. Id. The agreement here simply includes a purchase price, and does not include any of the other elements customarily encountered in a real estate transaction. This tends to show that the parties did not have a complete agreement on the sale of the property, but rather were still in the negotiation phase of the transaction with essential terms of the agreement left to be determined. Without these essential elements of the transaction, the court must conclude that the writing here fails to satisfy the statute of frauds. It is for the above reasons that this court denies the Plaintiff's motion for summary judgment.

All papers, including this Decision and Order, are being returned to the Defendant. The signing of the 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: September 18, 2007

Albany, New York



Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion of James F. Keefe, Esq. dated August 8, 2007.
2. Affidavit of James F. Keefe, ESQ. dated August 8, 2007.
3. Affidavit of Paul A. Palmateer, dated August 8, 2007 with Attached Exhibit A.
4. Defendants' Response Affirmation, dated August 24, 2007.