

Whitney Lane Holdings, LLC v Don Realty, LLC

2007 NY Slip Op 34528(U)

February 5, 2007

Supreme Court, Saratoga County

Docket Number: 2006-2874

Judge: Stephen A. Ferradino

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

WHITNEY LANE HOLDINGS, LLC

Plaintiff,

-against-

DECISION and ORDER
RJI #45-1-2006-1581
Index # 2006-2874

DON REALTY, LLC; DONOVAN and ADRIANNA
LITTLEFIELD (a/k/a ADRIANNA LITTLEFIELD)
by their Guardian MATTHEW J. SGAMBETTERA, ESQ.
and DDA & A REALTY, LLC
Defendants.

APPEARANCES:

Gleason, Dunn, Walsh & O'Shea
Attorneys for the Plaintiff
40 Beaver Street
Albany, New York 12207

Sgambettera & Associates, P.C.
Attorneys for the Defendants
323 Ushers Road., P.O. Box 1550
Clifton Park, New York 12065

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SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY

FILED

STEPHEN A. FERRADINO, J.

The plaintiff requests an order of this Court granting damages to the plaintiff for breach of contract and further granting a permanent stay and injunction of the terms of an amended and restated mortgage note. The plaintiff fails to cite any statutory authority so it is unclear if it is seeking relief pursuant to CPLR 2201 or CPLR 6301. The plaintiff also seeks to amend its complaint nunc pro tunc to include DLL Family Limited Partnership as a defendant and to consolidate this action with the action pending before Thomas Nolan, J.S.C. The defendants oppose the motion for a permanent stay and

injunction.

This matter arises out of a commercial real estate transaction. The plaintiff purchased property commonly know as North County Commons from the defendants Don Realty, L.L.C. and Donovan and Adrianna Littlefield. The sale was subject to a standard form contract for the purchase and sale of real estate. The plaintiff made a cash payment at the time of the closing held on November 4, 2004. On November 5, 2004 the plaintiff executed, acknowledged and delivered to DDA & A Realty, LLC an Amended and Restated Promissary Note in the principle sum of three million five hundred thousand dollars. The plaintiff executed, acknowledged and delivered to DDA & A Realty, LLC a Purchase Money Mortgage to secure its obligation to make payments pursuant to the terms of the promissary note. The plaintiff agreed to make monthly interest only payments for 24 months and a single payment for the unpaid principal on December 1, 2006. The plaintiff made the monthly payments. In October 2006 the plaintiff sought to extend the December 1, 2006 maturity date of the note for six months. The parties entered into discussions but were unable to negotiate terms acceptable to all parties. The plaintiff failed to make the single payment due on December 1, 2006 pursuant to the terms of the Amended and Restated Promissary Note.

The defendant claims the plaintiff is in default. The plaintiff does not refute the fact it has not made the December 1, 2006 payment. DLL Family, LLC, the holder of the note by assignment, commenced an action to accelerate the mortgage and assign a court appointed receiver. Judge Nolan signed an ex parte order dated December 14, 2006 assigning a receiver. The plaintiff seeks to stay those proceedings. The parties have agreed with the Court's concurrence to stay any action by the receiver pending a

decision on this order to show cause. The plaintiff seeks to proceed with its action alleging a breach of contract premised upon defendants failure to apprise the plaintiff of the Town of Clifton Park's intent to commence an eminent domain proceeding.

The pending actions involve common questions of law and fact. Initially the foreclosure action was assigned to Judge Nolan. The foreclosure action has been transferred to this Court. Both actions are now pending before this Court. The roles of the parties as plaintiff and defendant are reversed in each action. Therefore to avoid potential juror confusion the actions will be joined for trial but not consolidated. See, CPLR 602(a). The plaintiff's motion to amend its complaint nunc pro tunc to include DLL Family Limited Partnership as a defendant is unopposed. The motion to amend the complaint is granted.

CPLR 2201 authorizes a court to stay its own proceedings "in a proper case, upon such terms as may be just". A stay may suspend the case entirely or hold up some phase of the case such as discovery. A stay produces the same effect as an injunction because it stops the proceedings or some portion of the proceedings until lifted by the Court. When determining whether a stay is appropriate the Court generally considers all of the principles of equity applicable to injunctions.

CPLR 6301 authorizes the grant of a preliminary injunction. Preliminary injunctive relief is a drastic remedy which is not routinely granted. See, *Cool Insuring Agency v Rogers*, 125 AD2d 758, 760 (3d Dept. 1986) *appeal dismissed* 69 NY2d 1037. As a discretionary determination, a preliminary injunction is warranted only when the movant demonstrates (1) a likelihood of success on the merits, (2) irreparable harm if interim relief is not granted, and (3) that the equities militate in its favor. *Aetna Ins. Co.*

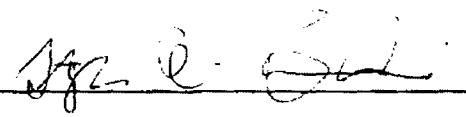
v Capasso, 75 NY2d 860 (1990). More important, equitable relief under CPLR 6301 is unavailable if the suit is essentially one for money only, and money damages will provide adequate compensation. *Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 548-549 (2000). Injunctive relief does not lie when the applicant has an adequate remedy at law, and such is the case here. *Equestrian Assocs. v Freidus*, 192 AD2d 572 (2nd Dept. 1993). The ultimate relief the plaintiff seeks is to obtain money damages and stop the foreclosure action from progressing. This is a commercial property. It has not been described a unique property. Even if the foreclosure proceeds, the plaintiff is not left without a remedy if it succeeds in its cause of action against the defendants. The remedy remains money damages. This fact undermines the plaintiff's argument of a likelihood of success on the merits with respect to the request for an injunction. The plaintiff has not made an adequate showing of irreparable harm. There is no proof that the defendant lacks the assets to satisfy a potential judgment if plaintiff succeeds and sets the contract aside. Furthermore this case involves challenges to a contract that plaintiff has performed according to its terms for approximately twenty-four months. It is an interesting coincidence that on the day before the plaintiff is obliged to make a payment that it is unable to meet, suit is filed and a stay is requested. The record also reveals that the information regarding the contemplated eminent domain proceedings was readily available at the Clifton Park Clerk's office and had been originally noticed in 2002. Furthermore, the plaintiff became involved in negotiations with the Town of Clifton Park as early as January 2005 regarding fixing a price for the property the Town was appropriating for its property for a road rehabilitation project. The foregoing does not support a likelihood of success on the merits. See, *Lindenwood Development Corp.*

v Levine, 178 AD2d 633 (2d Dept. 1991); *Edison Stone Corp. v 42nd Street Development Corp.*, 145 AD2d 249 (1st Dept. 1989). Finally the Court does not find that the balance of the equities tips in the plaintiff's favor, nor is it a proper case for a stay.

The plaintiff's motion is denied. Any relief not specifically granted is denied. No costs are awarded to any party. This decision shall constitute the order of the Court. The original papers shall be forwarded to the attorney for the defendant for filing and entry.

Dated: February 5, 2007

Malta, New York


STEPHEN A. FERRADINO, J.S.C.

ENTERED
Kathleen A. Marchione

Saratoga County Clerk

Papers Received and Considered:

Order to Show Cause with Temporary Restraining Order

Affidavit of Arman Noghreh, sworn to December 6, 2006 with attached Exhibits A-C

Affidavit of J. Kip Finck, sworn to January 16, 2007

Affidavit of Matthew J. Sgambettera, Esq., sworn to January 17, 2007 with attached Exhibits A-M

Affidavit of Allison E. Dilallo, sworn to January 17, 2007

Memorandum of Law in Support of Defendant's Opposition to Plaintiff's Request for a Preliminary Injunction

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ENTERED