

Amatuzio v STP Assoc., LLC

2008 NY Slip Op 30867(U)

March 20, 2008

Supreme Court, Nassau County

Docket Number: 1154-07/

Judge: Thomas P. Phelan

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice

TRIAL/IAS PART 5
NASSAU COUNTY

AMATUZIO PHILIP, ANDERSON HELEN, BAUMAN MICHEL, BOCCA ANDREW, BOCCA LAURIE, BONNER GINGER, BOWE MARTIN, CARAMICO JOSEPH, CARAMICO LISA, CARMAN MARGARET, CARPENTER CAROLYN, COZZA KENNETH, DIETRICH SHIRLEY, DOLA CHARLIE, DRASSER NANCY, DUPRE ROGER, DYCKMAN BOB, EBERSBURGER DALE, FUNK DARLENE, GAFFNEY PATRICIA, HESS NELSON, JAROSLOWSKI JEANETTE, JOHNSON DIANE, KARSCH ROSE RENATE, KESSLER EDWARD, KIM KUMLAN, KOSTRO ALEXANDRIA, LAKE CATHERINE, LAKE JACOB, LANGE FRED, LEWANDOWSKI DIANE, MARTIN LESLIE, MCCANN ROSE ANN, MCCAULEY ELIZABETH, MITCHELL JOSEPHINE, NARGI JACQUELINE, NIKITINA TAMARA, PEDOTE BARBARA, PORTNOY RANDI, RAPPAPORT MARCY, SCHAUER GREGG, SCHMIDT PHILIP, SESSA CONNIE, SNYDER CATHERINE, ST. CLAIR DEBBIE, STONESTREET SUSAN, STONESTREET WILLIAM, SZABLINSKI KENNETH, WALCH THERESA, WESTERVELT MAUREEN, HOME OWNERS PROPERTY AND EQUITY ASSOCIATION, OR HOPE ASSOCIATION OF SYOSSET,

ORIGINAL RETURN DATE:
01/03/08

SUBMISSION DATE: 01/31/08

INDEX No.: 021154/07

Plaintiffs,

-against-

MOTION SEQUENCE #1

STP ASSOCIATES, LLC, and HORMI HOLDING CO. INC.,

Defendants.

The following papers read on this motion:

Order to Show Cause.....	1
Summons and Verified Complaint.....	2
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RE: AMATUZIO, et al. v. STP ASSOCIATES, et al.

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This application by plaintiffs for an order staying the eviction proceedings pending in the District Court of Nassau County or transferring same to the Supreme Court, Nassau County, and restraining defendants from commencing any further proceedings for the eviction of plaintiffs pending a hearing regarding defendant's, STP Associations, LLC, compliance with Real Property Law § 233 ("RPL § 233) is denied.

In support of their application plaintiffs submit the affidavit of Marcy Rappaport, one of the plaintiffs and Vice President of the Hope Association. The subject property is the Syosset Mobile Home Park located at 80-16 West Jericho Turnpike, Syosset, New York, which has existed since 1926 and is currently comprised of 51 families. According to Ms. Rappaport, the mobile-home owners (the "Owners") rent the land from the "park" owners.

Ms. Rappaport alleges that defendant, Hormi Holding Co. Inc. ("Hormi"), left a notification in their mailboxes on or about April 9, 2007, informing the Owners that the "park" had been sold to STP Associates, LLC ("STP"). The Owners continued to pay the same rent to STP. Thereafter, and on or about June 2, 2007, the Owners received a new lease from STP increasing the monthly rental to \$750.00 per Owner commencing September 1, 2007, and to \$1,000.00 beginning March 1, 2008. It is further alleged by Ms. Rappaport that the Owners received termination notices dated September 21, 2007, notwithstanding the understanding that the status quo was to be maintained pending negotiations between the parties regarding the rent increases. Ms. Rappaport states that STP informed them that the termination notices were sent by mistake and to ignore them, but that on or about November 12, 2007, eviction notices were taped to the Owners' doors, five days after new termination notices were sent, together with the return of the rent checks.

In opposition to plaintiffs' application, defendant, STP, submits the affirmation of its counsel who alleges that the Owners were offered an opportunity to execute a new lease. In the event the lease was rejected a month-to-month tenancy would result. It is further alleged that reminder letters were sent to the Owners on August 9, 2007, informing them that if the lease was not signed by August 31, 2007, the offer would be deemed declined. Counsel submits that none of the leases were executed by the plaintiffs.

Also submitted in opposition is an affidavit of Larry Rush, principal of STP. Mr. Rush submits that on September 11, 2007, a letter was sent to the Owners informing them that their failure to pay the full rent would result in commencement of eviction proceedings. Contrary to the allegations of Ms. Rappaport, Mr. Rush avers that STP never agreed to stay pursuit of its rights nor did STP state that the termination notices were sent by mistake and should be ignored.

STP argues that RPL § 233 is inapplicable inasmuch they are pursuing the eviction based upon a permitted exception, to wit: the holdover status of the Owners and not a change in use. Plaintiffs counter that STP is disingenuous contending that, among other things, its statements made to News 12 on June 14, 2007, clearly show that STP has no intention of maintaining the premises as a mobile-home park and, therefore, should be subject to the provisions of RPL § 233.

Although the transcript of that meeting does indicate that at some time STP does intend to put the premises to another use, it also indicates that at that time the thrust of the discussion was the increase in the rent in the new leases (Schlüssel Reply Ex. C). It was asked what would happen if the leases were not signed, and STP responded that the Owners would be on a month-to-month tenancy. At that time STP acknowledged that they would have to give six-months' notice to the Owners when the time came for it to file an application but also indicated that they did know at that time what it would be making an application for. It was anticipated that approvals would not be received until 2009.

The court recognizes the hardship on plaintiffs, but the reality of the situation is that the mobile-home park has been purchased by a developer, the defendant, STP. It is inevitable that the Owners will have to move at some point in time. The issue before the court is whether plaintiffs have met their burden of proof for a preliminary injunction. "To obtain a preliminary injunction, a movant must demonstrate a likelihood of success on the merits, danger of irreparable harm unless the injunction is granted, and a balance of the equities in its favor [citations omitted]" *Dana Distributors, Inc. v. Crown Imports, Inc.*, _____ NYS2d _____, 2008 WL 458577 (2d Dept.).

Likelihood of Success on the Merits

Plaintiffs' first cause of action seeks to declare the transfer from Hormi to STG void because of STP's failure to comply with the requirements of RPL § 233(b)(6). Assuming *arguendo* that STP did fail to comply with the requirements of RPL § 233(b)(6), such failure would have occurred after the transfer of the property to STG. Plaintiffs provide no basis in law for the relief sought. Moreover, the court notes that "[t]here is no question that restraint of alienation on a fee simple absolute is as void [sic] against public policy (*Hacker v. Hacker*, 153 App.Div. 270, 138 N.Y.S. 194)" (*Application of Nelson*, 134 Misc.2d 936 [N.Y. Sur. 1987]).

The second cause of action prays that STP be ordered to provide the requisite notice. Even though it is clear that STP ultimately intends to develop the property for a use other than a mobile-home park, plaintiffs have failed to show that the eviction proceedings commenced in the District Court were not truly based upon a holdover. STP offered leases to plaintiffs in accordance with the statute. None were executed, thereby creating a month-to-month tenancy. The Owners received notices terminating the month-to-month tenancy prior to the commencement of the holdover proceedings.

The relief sought in the third cause of action is for STP to offer the Owners a new lease "with reasonable and realistic terms based on the 31-year average of the 'park' existence. This is not required by the statute. "Real Property Law 233 is a detailed and comprehensive provision regulating the relationship between the owners and operators of 'manufactured' or mobile home parks and the owners of mobile homes located in those communities." (*MHC Greenwood Village NY, L.L.C. v. County of Suffolk*, 18 Misc.3d 312 [Sup. Ct. Nassau Co. 2007]). In the absence of any statutory requirement for renewal leases, the court should not impinge further on STG's freedom to contract. (*Lanz v. Lifrieri*, 104 AD2d 400 [2d Dept. 1984]).

The fourth cause of action prays for an order requiring STP to provide 90 days' notice of the rent increase in an amount certain. Ostensibly, plaintiffs are alleging that since the parties met on September 20, 2007, to further negotiate the rent increase that this meeting negates the 90-day notice previously given. In dispute is whether STP agreed at that meeting to stay pursuit of its rights and that the termination notices were sent by mistake and should be ignored.

The transcript of the meeting with News 12 on June 14, 2007 (shortly after the presentation of the proposed leases), indicates that STP was making an effort to be sensitive to the situation while at the same time bringing "the rents a little more inline [sic] with what the market would bear" (Def. Aff. Ex. C, p. 4). At that time STP indicated that it would "think about it" and get back to the Owners to let them know if the rent was negotiable (*Id.*). It was also emphasized that the lease would not be renewable in September 2008 but that STP would be willing to meet with the Owners periodically and that they should be looking for a transition.

Based upon the foregoing, plaintiffs have not demonstrated "a clear right to relief which is 'plain from the undisputed facts' (citation omitted). Where the facts are in sharp dispute, a temporary injunction will not be granted (citations omitted)" *Blueberries Gourmet, Inc. V. Aris Realty Corp.*, 255 AD2d 348 [2d Dept. 1998]). Plaintiffs have failed to show their likely success on the merits. Moreover, if there is any chance of any success, plaintiffs could raise these issues as affirmative defenses in the eviction proceedings in the District Court.

Danger of Irreparable Harm

Although STG contends that plaintiffs have not shown the danger of irreparable harm, they have shown that many, if not most, of the manufactured homes cannot be moved creating a potential loss of equity for the Owners. This in and of itself is insufficient, however, as the Owners still have an adequate remedy at law in the District Court proceeding

Balance of the Equities

The court is cognizant of and sympathizes with the plight of plaintiffs. It is alleged that they stand to lose their homes, life savings and jobs. This must be balanced, however, against the rights of STP. Counsel for plaintiffs has alleged that STP purchased the property from Hormi for 9.4 million dollars. The transaction appears to have taken place after Harry and Muriel Horowitz's interest in the property was passed to their son, Sanford. As alleged by plaintiffs' counsel, the Horowitz family owned the premises from 1960-2007. The Owners were given proposed leases on or about June 2, 2007, which they did not sign for various reasons, be it the inability to pay the increase in rent or a desire to try to relocate prior to the termination of the proposed lease in light of the anticipated change of use.

Counsel for plaintiffs argues that "the tenant must be given at least ninety days notice of any rent increase and at least ninety days to remove if the tenant objects to the increase" citing *Comoford v. Jones*, 121 Misc. 2d 141, 467 N.Y.S.2d 329 (County Ct. 1983) (Schlissel Aff. ¶ 28). Counsel

uses the wrong conjunction. The *Comoford* court held that "under the terms of section 233 of the Real Property Law which provides for a 90-day notice for any increase in rent or the tenant may remove from the park within the 90-day period." (*Id.* at 712). Here, plaintiffs were given the proposed leases on June 2, 2007, which would increase the rent as of September 1, 2007, a 90-day period.

In balancing the equities the Owners submit that "Defendant STP's damage is its inability to maximize and realize its potential profits at the soonest possible time," whereas "plaintiffs stand to lose their homes, life savings, their friends, their jobs and community." concluding that equity "favors the 51 families that the developer STP seeks to evict . . ." (Schlissel Reply ¶¶ 42, 43 and 45). STP contends that "[i]nstead of litigating the merits of their eviction proceedings, [plaintiffs] commenced this unfounded, specious, and arguably frivolous lawsuit." (Mason Aff. ¶51). Moreover "because Plaintiffs have adequate remedies at law within the context of the eviction proceedings, injunctive relief is not needed to protect them in this matter." (*Id.* ¶53).


The court notes that it is almost one year since the transfer of the property took place. It appears that there has been extensive negotiation in the interim to no avail. The instant motion seeks an order staying the eviction pending the hearing regarding STP's compliance with RPL § 233. Based upon all of the foregoing, the court finds that STP was in compliance with RPL § 233 and that a hearing is unnecessary. Plaintiffs' request for a preliminary injunction, therefore, is denied as moot.

The court directs, however, that plaintiffs be permitted to interpose an answer and any affirmative defenses they may have in the District Court of Nassau County. It is further noted that pursuant to RPL § 233(d)(1) "mobile home tenants must be given 90 days to move after a judgment of eviction" (*Matter of State v. Magley*, 105 AD2d 208 [3d Dept. 1984]).

This decision constitutes the order of the court.

Dated: 3-20-08

HON THOMAS P. PHELAN


THOMAS P. PHELAN, J.S.C.

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ENTERED

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