

Security Pac. Natl. Bank v Evans

2008 NY Slip Op 31318(U)

April 29, 2008

Supreme Court, New York County

Docket Number: 0022899/1992

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Emily Jane Goodman
Justice

PART 17

Security Pacific National
Bank
- v -
Patricia Evans et al

INDEX NO. 022899/92
MOTION DATE _____
MOTION SEQ. NO. 012
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided for

attached

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE
DATED: _____ J.S.C.

FILED
MAY 08 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/28/08 _____ J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

EMILY JANE GOODMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----x
SECURITY PACIFIC NATIONAL BANK,

Plaintiff,

-against-

Index No.: 22899/92

TRACIE EVANS, ARNOLD LEPELSTAT, MELVYN
GORDON, PEOPLE OF THE STATE OF NEW YORK,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, UNITED STATES OF AMERICA and
BOARD OF MANAGERS OF GRAMERCY PLACE
CONDOMINIUM,

Defendants.

-----x

FILED
MAY 08 2008
COUNTY CLERK'S OFFICE
NEW YORK

EMILY JANE GOODMAN, J.S.C.:

Defendant Tracie Evans moved by Order to Show Cause, dated February 6, 2008, for an order pursuant to CPLR §5519 (a) (6), setting an amount for an undertaking, pending her appeal of this Court's Decision and Order, dated January 14, 2008 (the Decision). The Order To Show cause sought a TRO, which the Court granted after oral argument, as follows: "Pending the hearing of the instant application, the executory directives of this Court's Decision and Order, dated 1/14/08, are stayed upon the filing of an undertaking in the amount of \$35,700.00."

The undertaking was filed. Plaintiff opposes the motion on the basis that the automatic stay, pursuant to CPLR 5519 (a) (6), does not apply. That provision applies where "the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an

undertaking in a sum fixed by the court of original instance is given that the appellant or moving party shall not commit waste." Plaintiff argues although Evans is admittedly "in possession or control of real property" the executory directives of the Decision only "reinstates Plaintiff's ownership" by vacating and cancelling a February 27, 2007 order, by reinstating a June 7, 2002 order and the July 9, 2001 decision on which the order was based, and by reinstating a Referee's Deed recorded in the office of the County Clerk on August 16, 1996. Plaintiff contends that the executory directives themselves do not direct the conveyance or delivery of possession or control of the real property, but rather, such conveyance or delivery is merely a consequence of the directives, rendering CPLR 5519 (a) (6) inapplicable, citing Pokoik v Department of Heath Services, County of Suffolk, 220 AD2d 13 [2d Dept 1996] [the automatic stay does not "extend to matter which are not commanded but which are the sequelae of granting or denying relief)]. Even though Plaintiff concedes that the automatic stay pursuant to CPLR 5519 (a) (6) applies following the issuance of a warrant of eviction or other orders directing a tenant deliver possession or control of real property, Plaintiff maintains that, because the order did direct Evans to "relinquish, transfer, convey and/or deliver her possessory rights and/or interests in the Subject Property to Plaintiff or to anyone else", the stay is inapplicable.

In reply, belatedly submitted but accepted by the Court, Evans argues that but for the Court's Decision she "would still

have possession and/or control of the subject premises whereas after the order of January 14, 2008, arguably she does not"

Discussion

Although, as Plaintiff notes, in some cases involving the application of CPLR 5519 (a) (6), the orders direct the sale of real property (see e.g., Hall v Hall, 802 NYS2d 781 [3d Dept 2005]), the provision applies to all judgments or orders directing the conveyance or delivery of property. As Plaintiff points out, the Decision directs the County Clerk to reinstate the Referee's Deed, which Plaintiff itself believes is a necessary prerequisite to "reinstatement of Plaintiff's ownership interest". A deed is defined to include "[a] written instrument *by which land is conveyed*" and "[a]t common law, any written instrument that is signed, sealed, and delivered and *that conveys some interest in property.*" (Black's Law Dictionary, Seventh Ed. at 423) (emphasis added). Accordingly, the Decision directs the conveyance or delivery of property by directing the Clerk to reinstate a deed--regardless of the Plaintiff's prior ownership of the property. Moreover, CPLR 5519 (a) (6), is not limited to orders directing the party in possession or control of the real property to convey or deliver the real property, but covers any instance where the judgment or order directs the conveyance or delivery of real property, as is the case here.

The parties have also differed as to the amount of the undertaking. The Court has no control over when the appeal will be decided, which depends upon the litigants and the appellate

court. The longer the period of time it takes for a decision on the appeal, the higher the undertaking should be. Accordingly, should the appeal not be decided by November 30, 2008, Evans shall increase the undertaking of \$35,700 by an additional \$3,500 per month, to be deposited by the first of each month until the appeal is decided.


It is hereby

ORDERED that the motion is granted to the extent that the amount of the undertaking is set at \$35,700 unless the appeal is undecided by November 30, 2008, at which time Evan shall increase the amount of the undertaking of \$35,700 by an additional \$3,500 per month, to be deposited by the first of each month, with proof to Plaintiff by the sixth of each month, until the appeal is decided.

This Constitutes the Decision and Order of the Court.

Dated: April 29, 2008

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED
MAY 08 2008
COUNTY CLERK'S OFFICE
NEW YORK