

Tompkins v Jackson

2008 NY Slip Op 32430(U)

August 22, 2008

Supreme Court, New York County

Docket Number: 0104745/2008

Judge: Carol R. Edmead

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

PRESENT: HON. CAROL EDMEAD

PART 35

Justice

Tompkins

INDEX NO. 104745/08

MOTION DATE _____

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

- v -

Jackson

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

AUG 25 2008

NEW YORK

CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion be granted.

In accordance with the accompanying Memorandum Decision, it is hereby

**ORDER IMPLEMENTED
MOTION SUPPORT OFFICE
DATE: AUG 22 2008**

ORDERED that plaintiff's order to show cause is granted solely to the extent that defendant and his agents, attorneys, servants and employees, are enjoined from expending any insurance proceeds derived from the fire damage to the real property located at 2 Sandra Drive, Dix Hills, New York 11747; the order to show cause is denied in all other respects; and it is further

ORDERED that plaintiff post an undertaking in the amount of \$200,000.00 within 20 days of service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff shall file the note of issue by October 15, 2008, notwithstanding any outstanding discovery; and it is further

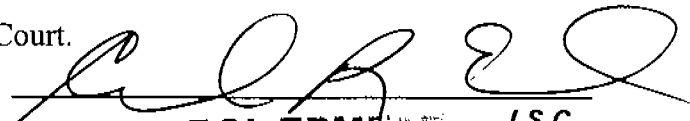
ORDERED that the parties shall appear in Part 40 for trial on Tuesday, December 16, 2008, 9:30 a.m.; and it is further

ORDERED that the appearance scheduled for September 4, 2008 is moot; and it is further

ORDERED that defendant serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: 8/22/08


HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----x
SHANIQUA TOMPKINS,

Index No. 104745-2008

Plaintiff,

-against-

DECISION/ORDER
Motion #003

CURTIS JACKSON,

Defendant.

FILED

AUG 25 2008

-----x
HON. CAROL ROBINSON EDMEAD, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE,

MEMORANDUM DECISION

In this action for, *inter alia*, breach of contract and constructive trust, Shaniqua Tompkins (“plaintiff”), sues for \$50 million representing a one-half interest in the assets of Curtis Jackson, p/k/a, “50 Cent” (“defendant”) accumulated during their 13-year relationship.

Familiarity with the facts and prior decisions is assumed,¹ and the facts will be repeated here only as necessary.

In granting partial relief sought in plaintiff’s previous order to show cause, this Court found that in the context of plaintiff’s claim for a constructive trust of defendant’s home in Dix Hills, Long Island (the “Dix Hills home”), “The complaint alleges facts sufficient to permit the parties to explore, through discovery, whether plaintiff contributed any finances or labor toward the Dix Hills home to support a claim for constructive trust.”² The Court also found that the non-sexual services allegedly performed by the plaintiff in exchange for defendant’s promise to share

¹ See Orders entered May 2, 2008, May 20, 2008, June 11, 2008, and June 12, 2008 and Transcripts dated June 10, 2008 and July 15, 2008.

² Order entered May 20, 2008, page 13.

NYS SUPREME COURT
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AUG 22 2008
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in the fruits of his entertainment career were sufficient to support her breach of contract claim.³ Thus, the Court enjoined defendant from transferring, encumbering, selling or disposing of the Dix Hills home. This Court also continued its temporary stay of the warrant of eviction from the Dix Hills home previously issued against plaintiff.⁴

Subsequent to the issuance of the Court's decision,⁵ the Dix Hills home was completely destroyed by a fire. The fire has been deemed "suspicious."

Having been dispossessed of the Dix Hills home by fire, plaintiff now seeks a stay enjoining defendant from expending any insurance proceeds derived from the destruction of the Dix Hills home, and an order imposing a constructive trust upon the insurance proceeds. Defendant opposes plaintiff's application, arguing that plaintiff's conclusory allegations, and claims for nothing more than monetary relief, fail to provide any basis for injunctive relief. Defendant maintains that a restraining order cannot be ordered for the mere purpose of satisfying any future monetary award. Further, in the event a preliminary injunction is granted, plaintiff should be directed to post an undertaking pursuant to CPLR 6312(b).

Analysis

To be entitled to a preliminary injunction, plaintiff must clearly demonstrate: (1) a likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities in her favor (*see W.T. Grant Co. v Srogi*, 52 NY2d

³ *Id.* page 8.

⁴ Suffolk County District Court Judge C. Stephen Hackeling issued a judgement of possession and warrant of eviction against the plaintiff on April 7, 2008, but stayed her eviction until May 1, 2008.

⁵ *See* Order entered on May 20, 2008.

496, 517 [1981]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]; *Borenstein v Rochel Props., Inc.*, 176 AD2d 171, 172 [1st Dept 1991]). With respect to this new aspect of the case, the issue is now whether plaintiff is entitled to restrain the proceeds from the insurance policy, which flow from plaintiff's alleged interest in the insured property. The inquiry is twofold: Is a constructive trust over the insurance proceeds a possible form of relief? Is a restraint on the distribution of such insurance proceeds a possible form of relief? The Court answers yes to both.

Based on this Court's previous decision,⁶ plaintiff's alleged interest in defendant's assets, including the Dix Hills home, remains an issue in this action. Although plaintiff has not alleged that she is a named insured on any insurance policy, she claims entitlement to a constructive trust over the proceeds of such policy. Whether a plaintiff may assert such a claim under these circumstances has not been specifically addressed by the First Department.

There is a line of cases that supports the proposition that a stranger to an insurance policy may interject herself into a policy even where she is not a party to that insurance contract. In such cases, a constructive trust on the proceeds of an insurance policy has been imposed when an agreement obligated the insured to maintain a life insurance policy designating the insured's first spouse as a beneficiary, and the insured allowed such policy to lapse and obtained another policy naming a subsequent spouse as a beneficiary (*Rogers v Rogers*, 63 NY2d 582 [1984]; *Simonds v Simonds*, 45 NY2d 233 [1978] [constructive trust imposed on proceeds of latter policies after they were paid to named beneficiaries on husband's death; husband's previous separation agreement with former spouse vested equitable rights in then-existing policies in first wife, and husband's subsequent substitution of policies did not deprive former wife of her equitable

⁶ Order entered on May 20, 2008.

interest, which was transferred to new policies]; *National Ben. Life Ins. Co. v Kelly*, 160 AD2d 570, 554 NYS2d 523 [1st Dept 1990] [where husband agreed in a separation agreement to maintain a \$100,000 life policy naming former wife as one of no more than three beneficiaries, former wife was entitled to \$33,333.33 of husband's \$50,000 policy naming new wife as sole beneficiary]).

However, when it comes to interjecting oneself into an insurance policy covering *real property*, caselaw from the Third and Fourth Departments articulates the rule that unless the owner who insured the property can be found to have assumed a duty to do so for the benefit of all the owners, "a stranger to an insurance policy is not ordinarily entitled to share in the proceeds simply because he has an interest in the insured property" (*Bellnier v Bellnier*, 158 AD2d 947, 550 NYS2d 963 [4th Dept 1990]; *Furnace v Comins*, 263 AD2d 856, 857, 693 NYS2d 755, 756 [3d Dept 1999]).

In *Bellnier v Bellnier*, two brothers constructed a house on their unimproved property, with one, Francis, providing the bulk of the labor, and the other, David, supplying the majority of the funds for the construction. Francis later commenced the action for partition, in which a Referee found that David was entitled to 60% interest in the structure, and Francis was entitled to 40%. When Francis moved to confirm the Referee's findings, the house was destroyed by fire, and Francis sought a declaration that he was entitled to 40% of the insurance proceeds. David argued that since he was the only named insured on the policy, he was solely entitled to the proceeds. The Fourth Department acknowledged that a stranger to an insurance policy is not entitled to the insurance proceeds simply because he has an interest in the property. However, it found that David assumed a duty to insure the property for the benefit of both parties since (1)

the owners shared in the expenses of the property, in that Francis paid all the utility bills and David paid the real estate taxes, (2) the property was once insured in the names of both parties, and (3) David never informed Francis that he later obtained insurance in his name alone.

Yet, in *Furnace v Comins*, the Third Department declined to impose a constructive trust of proceeds resulting from fire damage to a home. In *Furnace*, plaintiff, the former wife of the defendant/father, sought to impose a constructive trust on behalf of their children on the proceeds of an insurance policy after a fire destroyed a mobile home owned by defendant and their children. As the named insured, the defendant/father received approximately \$69,000 and built a home elsewhere. After a bench trial, the Supreme Court imposed a constructive trust upon the insurance proceeds and granted a money judgment. On appeal, the Third Department distinguished *Bellnier (supra)*, noting that the “children made no contribution toward the expenses of the property, nor did defendant expect them to do so. Defendant . . . continued to make the requisite payments . . . while paying utilities, taxes and insurance premiums. Moreover, the record makes plain that defendant undertook substantial renovations throughout his occupancy of the residence.” The Court found no obligation on defendant’s part “to protect the children’s interest against loss by fire and no unjust enrichment in his retaining the proceeds of the insurance, which reimbursed him for the actual expenditures made solely by him during his occupancy of the residence.”

The case cited by plaintiff, though not controlling, also supports plaintiff’s assertion of a right to or interest in the insurance proceeds. In *AOMO 1703 v Akbar Malik* (13 Misc 3d 1212 [Supreme Court 2006]), plaintiffs, as tenants claimed that the defendant/landlord breached two written lease agreements, which gave the tenants a right of first refusal and the option to purchase

the properties three years after the leases were effective. Defendant allegedly repudiated the leases and rejected the tenants' right to purchase the two properties. After the tenants commenced the action against the defendants, there was a fire at one of the properties which rendered the property uninhabitable. The tenants then moved to enjoin the defendant from dissipating any of the insurance proceeds defendant received on the account of the fire. The Court held that the "subject of the action" was the two leases, which included a provision which entitled the tenants to the insurance proceeds which defendant received on a claim involving a fire. Therefore, the Court found, the insurance proceeds were "clearly specific funds which are a subject of this action" and that plaintiffs will suffer irreparable harm if they are dissipated by the defendant.

The Court also opined that the balance of the equities favored the tenants, as defendant failed to indicate that she intended to use whatever insurance proceeds she received to restore the building, and plaintiffs indicated that their interests in the property would be substantially diminished if the monies are spent elsewhere.

In the instant case, plaintiff is likewise seeking to interject herself into an insurance policy on real property to which she does not allege she is a party. The right plaintiff asserts concerning the insurance proceeds is akin to the right asserted in *Bellnier v Bellnier*, and unlike that which was asserted in *Furnace v Comins*, where there was no allegation that the children made a contribution toward the expenses of the insured property. Although not expressly articulated in the moving papers, the complete record contains, although scant, allegations indicating that defendant had an obligation to insure the Dix Hills home on behalf of both parties. In her complaint, plaintiff alleges that she contributed time, labor, and "assets and abilities" toward the

accumulation and acquisition of, *inter alia*, property; whether plaintiff can *establish* these allegations is not an issue presently before this Court, and discovery currently pending may more fully reveal the nature and extent of such services and/or contributions, if any.

As to irreparable harm, there is no indication that defendant intends to use the proceeds received from any insurance policy to rebuild the Dix Hills home. And, plaintiff should not have to rely on defendant's good will to make her whole in the event she obtains a money judgment in this action.

Further, based on the record before the Court, the balance of the equities tips in favor of injunctive relief.

Accordingly, it is hereby

ORDERED that plaintiff's order to show cause is granted solely to the extent that defendant and his agents, attorneys, servants and employees, are enjoined from expending any insurance proceeds derived from the fire damage to the real property located at 2 Sandra Drive, Dix Hills, New York 11747; the order to show cause is denied in all other respects; and it is further

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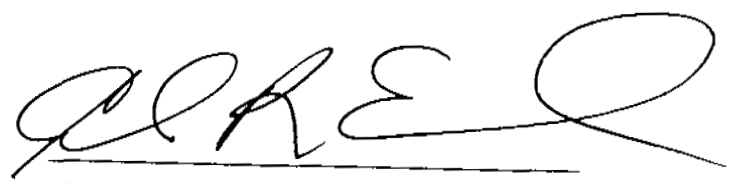
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Dated: August 22, 2008



Hon. Carol Robinson Edmead, J.S.C.

CAROL EDMead
J.S.C.

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