

Christian Holiness Ministries, Inc. v Gordon
2008 NY Slip Op 32590(U)
September 12, 2008
Supreme Court, Nassau County
Docket Number: 8480-05/
Judge: Karen V. Murphy
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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 22 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

_____ x

**CHRISTIAN HOLINESS MINISTRIES, INC.
AND AUBREY GREENIDGE,**

Index No. 18480/05

**Motion Submitted: 6/19/08
Motion Sequence: 003**

Plaintiff(s),

-against-

BURCHELL GORDON,

Defendant(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

This motion by plaintiffs Christian Holiness Ministries, Inc. ("the Church") and plaintiff Aubrey Greenidge for an order pursuant to CPLR §3212 granting it summary judgment: (1) imposing a constructive trust on the property where the Church is located and directing the defendant Burchell Gordon to convey his interest in that property to the Church; (2) issuing a warrant of eviction and a money judgment in the amount of rent owed by Gordon; and (3) an award of attorneys' fees and litigation expenses, is determined as provided herein.

By way of their first cause of action, the plaintiffs seek to impose a constructive trust on defendant Gordon's interest in the property where the Church is located at 111-07 Jamaica Avenue in Richmond Hills. The plaintiffs allege that when Greenidge and Gordon acquired title to that property in their names, they entered a confidential and/or fiduciary relationship expressly agreeing that they were maintaining title to the property in their names as trustees and/or constructive trustees of the Church. Plaintiffs allege that it was agreed that at their request, Gordon would transfer his interest in the property to the Church and/or Greenidge in his capacity as pastor of the Church. Plaintiffs further allege that in reliance on that promise, the Church furnished the consideration necessary for the acquisition of the property and routinely paid the mortgage and all of the expenses associated with the property. They allege that Gordon did not contribute financially to the purchase of the property or its maintenance and repair. The plaintiffs specifically allege that Gordon has refused to convey his interest in the property to the Church despite their demand that he do so since September 2005. Thus, the plaintiffs seek to impose a constructive trust and to compel Gordon to transfer his interest in the property to the Church.

As and for their second cause of action, the plaintiffs allege that in 1999 when the property was purchased, they and Gordon entered into a lease agreement whereby Gordon agreed to rent an apartment on the third floor of the premises for \$650 per month for one year. They allege that Gordon has lived there ever since and that he has nevertheless not paid rent since January 1, 2002. Thus, the plaintiffs seek a warrant of eviction against Gordon.

As and for their third cause of action, the plaintiffs seek damages in the form, *inter alia*, of costs and attorneys' fees.

As and for their fourth cause of action, the plaintiffs seek rent owing to date and any costs associated with restoring the third floor of the premises to good condition.

The plaintiffs presently seek summary judgment on all causes of action.

"On a motion for summary judgment pursuant to CPLR §3212, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Sheppard-Mobley v. King*, 10 A.D.3d 70, 74, 778 N.Y.S.2d 98 (2d Dept., 2004), *aff'd. as mod.*, 4 N.Y.3d 627 (2005), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 501 N.E. 2d 572, 508 N.Y.S.2d 923 (1986); *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 476 N.E.2d 642, 487 N.Y.S.2d 316 [1985]). "Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*Sheppard-Mobley v. King, supra*; *Alvarez v. Prospect Hosp., supra*; *Winegrad v. New York Univ. Med. Ctr., supra*. Once the movant's burden is met, the burden shifts to the opposing party

to establish the existence of a material issue of fact. *Alvarez v. Prospect Hosp.*, *supra*.

The evidence presented by the opponents of summary judgment must be accepted as true and they must be given the benefit of every reasonable inference. See, *Demshick v. Community Housing Management Corp.*, 34 A.D.3d 518, 824 N.Y.S.2d 166 (2d Dept., 2006), citing *Secof v. Greens Condominium*, 158 A.D.2d 591, 551 N.Y.S.2d 563 [2d Dept., 1990]).

“Generally, there are four requirements for the imposition of a constructive trust: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment.” (*A.G. Homes, LLC v. Gerstein*, 52 A.D.3d 546, 860 N.Y.S.2d 582 (2d Dept., 2008), citing *Sharp v. Kosmalski*, 40 N.Y.2d 119, 121, 351 N.E.2d 721, 386 N.Y.S.2d 72 (1976); see also, *Iwanow v. Iwanow*, 39 A.D.3d 476, 834 N.Y.S.2d 251 [2d Dept., 2007]). These requirements, however, are not rigidly applied because “[t]he purpose of a constructive trust is to prevent unjust enrichment.” *A.G. Homes, LLC v. Gerstein*, *supra*, citing *Simonds v. Simonds*, 45 N.Y.2d 233, 241, 380 N.E.2d 189, 408 N.Y.S.2d 359 (1978); *Kaufman v. Cohen*, 307 A.D.2d 113, 127, 760 N.Y.S.2d 157 (1st Dept., 2003); *Nastasi v. Nastasi*, 26 A.D.3d 32, 38, 805 N.Y.S.2d 585 (2d Dept., 2005); *Cruz v. McAneney*, 31 A.D.3d 54, 58-59, 816 N.Y.S.2d 486 [2d Dept., 2006]). “The constructive trust doctrine is given broad scope to respond to all human implications of a transaction in order to give expression to the conscience of equity and to satisfy the demands of justice.” *Iwanow v. Iwanow*, *supra*, citing *Simonds v. Simonds*, *supra*; *Sharp v. Kosmalski*, *supra*; *Nastasi v. Nastasi*, *supra*. “Performance of a wrongful act by the party unjustly enriched is not required. Rather, what is required, generally, is that a party ‘hold property under such circumstances that in equity and good conscience he [or she] ought not to retain it.’” *Iwanow v. Iwanow*, *supra*; citing *Simonds v. Simonds*, *supra*. Previously, a promise to convey or reconvey an interest in property was unenforceable if the promisee acquired the promise before he acquired an interest in the property. (See, *Matter of Wells*, 36 A.D.2d 471, 321 N.Y.S.2d 200 (4th Dept., 1971), *aff’d*, 29 N.Y.2d 931 (1972); see also, *Schwab v. Denton*, 141 A.D.2d 714, 529 N.Y.S.2d (2d Dept., 1988); *Scivoletti v. Marsala*, 97 A.D.2d 401, 467 N.Y.S.2d 228 (2d Dept., 1983), *aff’d*, 61 N.Y.2d 806 [1984]). However, “[m]ore recent case law takes a less restrictive view and includes creation of interests in real property within the purview of a ‘transfer in reliance’ for purposes of a constructive trust.” (*Hira v. Bajaj*, 182 A.D.2d 435, 582 N.Y.S.2d 197 (1st Dept., 1992); citing *Lester v. Zimmer*, 147 A.D.2d 340, 542 N.Y.S.2d 855 (3d Dept., 1989); *Washington v. Defense*, 149 A.D.2d 697, 540 N.Y.S.2d 491 (2d Dept., 1989), *lv den.* 74 N.Y.2d 609 (1989); see also, *Marini v. Lombardo*, 39 A.D.3d 824, 835 N.Y.S.2s 332 (2d Dept., 2007); *Nastasi v. Nastasi*, *supra*; *Weadick v. Herlihy*, 16 A.D.3d 223, 792 N.Y.S.2d 25 (1st Dept., 2005); *Gottlieb v. Gottlieb*, 166 A.D.2d 413, 560 N.Y.S.2d 477 (2d Dept., 1990); *Mendel v. Hewitt*, 161 A.D.2d 849, 555 N.Y.S.2d 899 [3d Dept., 1990]).

In support of plaintiffs' motion, Greenidge, the founder and senior pastor of the Church, alleges that the property where the church is located was acquired in his and Gordon's names because the Church did not have a credit history and could not obtain a mortgage. He alleges that he and Gordon always understood and agreed that the property belonged to the Church and agreed to transfer it to the Church when called upon to do so. He further maintains that the Church has always paid the mortgage and maintenance costs of the property itself. He accordingly seeks to impose a constructive trust on Gordon's interest in the property and to compel him to convey his interest in the property to the Church.

Greenidge also alleges that Gordon has lived on the third floor of the property with his family since 1999 but has failed to pay the agreed upon rent of \$650 per month since January 1, 2002. Greenidge notes that checks prove that all mortgage payments were made by the Church and drawn on the Church's bank account: There is no evidence that mortgage payments were made by Greenidge or Gordon individually. Furthermore, all of Gordon's checks from 2002 through 2005 reflect tithing payments to the Church and were acknowledged by the Church as donations for tax purposes. There is no evidence that Gordon paid rent or mortgage payments and Gordon's tax returns for those years do not reflect that he made any interest payments on the mortgage.

The plaintiffs have established the elements of a constructive trust. That is, they have established that there was a confidential or fiduciary relationship between Gordon, who was the assistant pastor, treasurer and a signatory on the Church's bank account and the Church; that Gordon promised to convey his interest in the property to the Church when asked to do so; that the Church spent monies to acquire and maintain the property predicated on that promise; and, that Gordon would be unjustly enriched if a constructive trust is not imposed on Gordon's interest in the property.

The plaintiffs have also established their entitlement to summary judgment on the second and fourth causes of action. That is, they have established that Gordon agreed to pay \$650 rent per month and that while he did so for several years, he has not done so for several years.

The plaintiffs have not established their entitlement to summary judgment on their third cause of action seeking costs and attorneys' fees. Absent an agreement or statutory entitlement, such damages do not lie. *Matter of A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 5, 503 N.E.2d 681, 511 N.Y.S.2d 216 (1986); *Gray v. Hilltop Village Co-op # Three Inc.*, 50 A.D.3d 739, 855 N.Y.S.2d 631 [2nd Dept., 2008].

The burden accordingly shifts to Gordon to establish the existence of a material issue of fact with respect to the first, second and fourth causes of action.

Gordon, a former assistant pastor, treasurer and bank signatory of the Church, admitted at his examination-before-trial that the property was bought on the Church's behalf. He acknowledged that he and Greenidge utilized their credit to acquire a mortgage for the property for the Church and that his and Greenidge's name were put on the deed for that reason alone. In fact, he admitted that it was always their intention to turn the property over to the Church. Gordon admitted that he did not contribute towards the down payment on the property, which came from a loan by a Church member nor did he contribute toward the costs of renovations, which were paid for by the Church. While Gordon could not recall precisely how the living agreement came about, he testified that the mortgage required that the property be owned-occupied so he agreed to live there. He testified that there was no rent agreement but that he agreed to pay \$650 per month towards the mortgage for approximately two-and-one-half years. While he could not recall how the \$650 figure was reached, he recalled that that was the amount of rent paid by the former tenant. Gordon admitted that he only made the \$650 monthly contribution for two to two-and-one-half years but nevertheless testified that thereafter, he made cash payments to the Church to be used towards the mortgage when deficits arose. Gordon admitted that at one point when the mortgage payments were late, he himself tried to have his name removed as an owner and to turn the property over to the Church so that he would be removed from the mortgage but the bank refused. In opposition to this motion, Gordon attests that he "made payments to the mortgage from 1999 . . . up to the year 2004" and that he maintained the premises by "shoveling snow, cleaning and removing garbage, painting and physically performing renovations to the property. . . ." He alleges that he "often had to take cash out of his savings to make up the [shortfalls in] the mortgage payments" and again admits that he "inquired of Mr. Greenidge and the lender/bank about taking [his] name off the deed and mortgage to the subject property since the late payments were adversely affecting [his] creditworthiness."

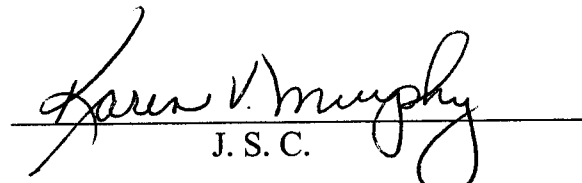
Defendant Greenidge's motion for summary judgment on his first cause of action is granted and defendant Gordon is directed to convey his interest in the property to the Church, forthwith. Standing alone, that Gordon made payments to the Church to be used towards the mortgage does not give rise to an interest in the property, particularly since Gordon appears to maintain that he made payments towards the mortgage in consideration for living in the apartment. Furthermore, Gordon's defense of unclean hands fails miserably. In fact, plaintiff Greenidge "concedes that the purchase of the property . . . was recorded in his name but is held in trust for [the Church] and that the property was placed in his name and the name of defendant Burchell Gordon with an express understanding that the property would be held in trust for the [Church]." Greenidge "is not seeking to obtain or retain any ownership interest in [the Church's] property, but rather joins [the Church] in seeking a constructive trust to remedy the present situation in which property paid for by [the Church] has been recorded under the names of Mr. Greenidge and defendant Burchell Gordon." The plaintiffs specifically represent that they do not "ask this Court to allow Greenidge to retain any

existing property interest in the property” In view of Greenidge’s admissions and the fact that the property is held by Greenidge and Gordon as joint tenants with a right of survivorship, in order to avoid any clearly unintended results, Greenidge is directed to convey his interest in the property to the Church forthwith also.

As for the alleged rental agreement and breach thereof, issues of fact clearly exist. Summary judgment on the second and fourth causes of action is accordingly denied.

The foregoing constitutes the Order of this Court.

Dated: September 12, 2008
Mineola, N.Y.


J. S. C.

ENTERED

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