

**Lopez v Chase**

2009 NY Slip Op 30005(U)

January 5, 2009

Supreme Court, Wayne County

Docket Number: 65623/2008

Judge: Dennis M. Kehoe

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STATE OF NEW YORK  
COUNTY COURT COUNTY OF WAYNE

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JESSICA LOPEZ,

Plaintiff

-vs-

SYDNEY L. CHASE, SR., and JULIE CHASE,

Defendants

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DECISION  
AND  
ORDER

Index No. 65623

2008

Appearances:

Douglas M. Jablonski, Esq.  
Attorney for Plaintiff

Arthur B. Williams, Esq.  
Attorney for Defendants

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This matter is before the Court on appeal from a decision issued by the Small Claims Part of the Town Court of Wolcott. The record indicates that this matter was heard by the trial court on June 19, 2008. The lower court found in favor of the Plaintiff, and awarded a judgment against the Defendants in the amount of \$2,000.00. Oral argument was waived by both parties, and this appeal was deemed submitted on papers.

The Plaintiff's claim arises from a "Rental Agreement" entered into by

the parties on November 26, 2007, regarding premises located at 11961 Butler Street, Wolcott, New York. The parties also executed a "Seller Option to Purchase Real Estate" on the same date. On December 3, 2007, the parties signed a "Receipt for Non-Refundable Deposit", indicating the payment of the sum of \$2,000.00 by the Plaintiff to the Defendants, to be applied in connection with the sale of the premises. The Plaintiff testified that she subsequently experienced numerous problems with the premises, most notably the alleged presence of lead in the paint used in a number of rooms. She and her children ultimately left the premises.

The Plaintiff has now sued to recover the \$2,000.00 deposit paid to the Defendants. At trial, the Plaintiff testified that it was never her intent to purchase the property. She maintained that she made the payment to the Defendants with the understanding that it constituted a security deposit, together with additional rent. She further alleged that the Defendants misinformed her as to the nature of the transaction and never explained that the documents constituted any sort of purchase agreement.

The trial court found that the Plaintiff's testimony regarding her belief that she was merely entering into a rental agreement was credible, and

that she was “incapable of making an informed decision or sound decision due to her being unable to comprehend the legal process”. The court further found that the Defendants did not adequately explain the details of the transaction to her, in terms which would be understood by “someone who can barely read or write”. Therefore, the Court awarded judgment to the Plaintiff in the amount of the deposit.

Normally, the standard of review in small claims matters is limited to whether “substantial justice has not been done between the parties according to the rules and principles of substantive law.” (See, Uniform Justice Court Act §1807). Only where a judgment rendered in a small claims action is “so shocking as to not be substantial justice”, should such judgment be overturned. (See, Coppola v Kandey Company, 236 AD2d 817 (4<sup>th</sup> Dept, 1997), citing Blair v Five Points Shopping Plaza, Inc., 51 Ad2d 167 (3<sup>rd</sup> Dept, 1976); Sten v Desrocher, 8 AD3d 9155 (3<sup>rd</sup> Dept, 2004).

However, in this instance, the Court does not reach the issue as to whether or not substantial justice was done as a result of the lower court’s decision. Just prior to trial, the Defendants moved to dismiss the Plaintiff’s claim, based on their argument that they were not proper parties to the

proceeding. The subject premises were purchased and owned by Chase Real Estate Solutions, LLC, a limited liability company. Under §609 of the New York Limited Liability Law, no member of the company is individually responsible for any of the liabilities of the company. In this case, both the Rental Agreement and the Receipt were executed by “Julie Chase, POA”, for “Sydney L. Chase, Sr., member.” (Emphasis added). Therefore, any legal proceedings regarding the contract at issue must be brought against the limited liability company, not against the individuals.

Had this Court been in a position to examine the merits of the proceeding, numerous issues would have required consideration. It is well-settled that the trial court is in the best position to assess the credibility of the witnesses. That assessment, together with the statutory standard of review, requires the appellate court to give due deference to the lower court’s findings. The Plaintiff’s allegations regarding the condition of the premises might have raised questions regarding contractual interpretation and breach of implied warranties. Any ambiguities in the documents must be construed against the party who prepared the contract. On the other hand, the issues surrounding the Plaintiff’s capacity to understand the nature of the agreement, as well as the plain language of the Receipt, and

the alleged duty on the part of the Defendants to advise the Plaintiff, would also have merited the Court's scrutiny. However, none of these questions require further discussion, due to the dispositive nature of the motion to dismiss.

Therefore, the lower court's denial of the Defendant's motion to dismiss is hereby reversed. The motion is granted, the judgment against the Defendants is vacated, and the proceeding is dismissed without prejudice.

This Decision constitutes the order of the Court.

Dated: January 5, 2009  
Lyons, New York

  
Honorable Dennis M. Kehoe  
County Court Judge

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