

**Langford v Johnson**

2009 NY Slip Op 30078(U)

January 12, 2009

Supreme Court, New York County

Docket Number: 105520/07

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN

PART 17

Index Number : 105520/2007

LANGFORD, SUZANNE

vs  
JOHNSON, DAVID

Sequence Number : 001

DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

... were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion and cross motion

~~be denied for all value~~

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

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 1/12/09

[Signature]  
EMILY JANE <sup>J.S.C.</sup> GOODMAN

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : I.A.S. PART 17  
-----X  
SUZANNE LANGFORD

Index#105520-07

Plaintiff,

-against-

Motion Seq.#001

DAVID JOHNSON

Defendant.

-----X  
EMILY JANE GOODMAN, J.S.C.:

Plaintiff, the niece of deceased Barbara Constance Johnson, brings this action to enjoin Defendant, who is the deceased's husband, from (1) selling the premises which was owned by Defendant and the deceased, located at 230 West 137<sup>th</sup> Street (the premises), from (2) evicting Norman Langford from the premises, and from (3) disposing, handling or managing the assets of the deceased. Plaintiff bases the action upon the "Will of Barbara Constance Johnson," dated 5/19/03, which includes a provision stating, in relevant part, that "I leave my entire estate including residence at 230 West 137<sup>th</sup> St. NY, New York 10030 to Suzanne Langford" and "a room in my residence located at 230 West 137<sup>th</sup> St. MY NY for living purposes to Norman Langford."

Defendant moves to dismiss Plaintiff's complaint and to vacate the lis pendens, based on the failure to state a cause of action, and moves for an award of sanctions. Plaintiff concedes that Defendant is correct in stating that it is well settled that real property held by husband and wife, as tenants by the

entirety, passes in the entirety to the surviving spouse, even where it is alleged that the surviving spouse abandoned or failed to support the other spouse. Plaintiff alleges that Defendant abandoned his spouse and has refused to support her, despite having the means to do so, and, that the law should be changed to disqualify him from ownership of the premises. Specially, Plaintiff notes that the law already provides that a spouse who abandons the other spouse can be disqualified from asserting his or her right of election (see EPTL § 5-1.2 [5] and [6]; see also Arrathoon v Goldstone, 49 AD3d 325 [1st Dept 2008]). Plaintiff also moves to amend her complaint to include more factual allegations and to add the Second Cause of Action for reimbursement of the amounts she paid to "bring the premises back into a habitable condition."

The motion to dismiss is granted as to the First Cause of Action, and lis pendens is vacated. The First Cause of action seeks a change to the well settled law that real property held by husband and wife, as tenants by the entirety, should not pass in the entirety to the surviving spouse, where it is alleged that the surviving spouse abandoned or failed to support the other spouse.<sup>1</sup> There may be future developments in the law which might

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<sup>1</sup>The Proposed Amended Complaint does not seek any relief enjoining Defendant from disposing, handling or managing the assets of the deceased. To the extent that Plaintiff wishes to pursue a claim with respect to the deceased's assets (other than the real property at issue here), that claim should be made in Surrogates Court, as the basis for the claim is the deceased's will, which Defendant claims is not valid, and the Surrogate's Court is the preferred forum.

merit such an extension; however, the Court will not determine that such an extension is warranted now, especially where the legislature has created such an such an exception in the context of a spouse's right of election, but not in the real property context, and, where the well settled law is not so inequitable on its face as to warrant a change. However, sanctions are denied as unwarranted under Rule 130 because the relief sought "is supported by a reasonable argument for an extension, modification or reversal of existing law."

The cross motion to amend the complaint is granted with respect to the Second Cause of action seeking reimbursement. Defendant has failed to oppose the cross motion to this extent, and such a cause of action states a claim for unjust enrichment and/or quantum meruit.

Accordingly, it is hereby

ORDERED that motion to dismiss is granted as to the First Cause of Action; and it is further

ORDERED that the lis pendens is vacated, but sanctions are denied; and it is further

ORDERED that the cross motion to amend the complaint is granted as to the Second Cause of action; and it is further

ORDERED that Plaintiff serve the amended complaint within 30 days of receipt of a copy of this Decision and Order; and it is further

ORDERED that the Defendant shall serve an answer to the

amended complaint within 30 days thereafter.

This constitutes the Decision and Order of the Court.

Dated: January 12, 2009

ENTER:

  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK