

Lipman v Vebeliunas
2009 NY Slip Op 31192(U)
April 28, 2009
Supreme Court, New York County
Docket Number: 1317/04
Judge: F. Dana Winslow
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

DANIEL LIPMAN and MELISSA LIPMAN,

**TRIAL/IAS, PART 6
NASSAU COUNTY**

Plaintiffs,

-against-

**MOTION SEQ. NO.: 006
MOTION DATE: 2/3/09**

**VYTAUTAS VEBELIUNAS and VANDA
VEBELIUNAS, as Trustee for Vart Trust,**

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Defendants.

The following papers having been read on the motion (numbered 1-3):

Notice of Motion.....	1
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This motion by non-parties Gunnar S. Overstrom and Claudia Taylor Overstrom for an order: (1) pursuant to CPLR 1012 or in the alternative, CPLR 1013 (a) permitting them to intervene in the above-entitled action and join as parties in interest; (b) directing that they be added as parties in interest; (c) directing that the caption in the above-entitled action be amended by adding them as intervening parties; and, (d) allowing them to serve an answer within twenty (20) days after the entry of an order granting this motion; or, alternatively, (2) pursuant to CPLR 1018 joining them as parties, is **granted** as provided herein.

The Overstroms purchased one of the pieces of property that is involved in this action from the Vart Trust of which the defendant Vanda Vebeliunas was and is the Trustee on January 26, 2006. That property adjoins the other piece of

property that is involved in this action which is owned by the plaintiff Lipmans. When the Overstroms acquired the property, this action had been pending for several years. The Overstroms now seek to intervene in this action. The pertinent history is as follows:

Via a Lease and Easement agreement dated March 4, 1989, the preceding owners of the Lipmans' property, the Knechts, agreed to lease one acre of their property known as Lot 381 to the Vebeliunas in exchange for ten dollars rent per month and an easement over the Vebeliunas' property known as Lot 382 to the lake. That agreement was allegedly entered into in order to resolve an error in the boundaries effectuated by the subdivision of a 65 acre plot known as the Lattingtown Estate in the mid-1980s, whereby an acre of the Vebeliunas' property was erroneously included in the Knechts' property. The Lease and Easement agreement ran for 100 years and the Vebeliunas had an option to purchase the leased parcel for ten dollars after twenty years. The Lease and Easement agreement was executed by the Knechts and the defendant Vytautas Vebeliunas and was recorded in the County Clerk's Office on July 9, 1993.

The Lipmans acquired the Knechts' property on October 17, 1996, subject to the Lease and Easement agreement. When the Lipmans purchased their property, their title report revealed that although the Lease and Easement agreement had been executed by Vytautas Vebeliunas, the deed reflected that the Vart Trust owned the property. Nevertheless, it appears that the Lease and Easement agreement were honored by both the Lipmans and the Vebeliunases until the Lipmans allegedly learned as a result of Vytautas Vebeliunas' bankruptcy proceeding in 2000 that the Lease and Easement agreement had been executed by Vytautas Vebeliunas personally and not by the titled owner of the property, Vanda

Vytautas as Trustee of the Vart Trust. On September 27, 2000 the Lipmans declared the Lease and Easement agreement void at its inception and refused to accept any further rent.

On or about December 18, 2003, the Lipmans commenced this action advancing three causes of action. By way of their first cause of action, the Lipmans seek rescission of the Lease and Easement agreement on the grounds that it was void at its inception because Vebeliunas willfully and fraudulently materially misrepresented his ownership of Lot 382. By way of their second cause of action, the Lipmans seek to recover six years rent for the rented parcel in the amount of \$20,000 per year. By way of their third cause of action, the Lipmans seek to recover rent owed pursuant to the Lease and Easement agreement since 1999.

By decision dated April 21, 2006, this Court (Davis, J.) denied the Vebeliunas' motions for summary judgment and granted the Lipmans' cross-motion for summary judgment declaring the Lease and Easement agreement null and void. By decision dated April 3, 2007, the Appellate Division, Second Department (39 AD3d 488) reversed, holding that although Vytautas Vebeliunas could not create or transfer an interest in the property and that the Lease and Easement agreement would be void under most circumstances (General Obligations Law § 5-703[2]), " 'an unauthorized execution of an instrument affecting the title to land or an interest therein may be ratified by the owner of the land or interest so as to be binding on him.' " Lipman v Vebeliunas, *supra*, at p. 490, quoting Holm v C.M.P. Sheet Metal, 89 AD2d 229, 232 (4th Dept. 1982). The Appellate Division held that issues of fact exist as to whether Vanda Vebeliunas, the Trustee of the Vart Trust which owned the property, "had full

knowledge of the material facts relating to the transaction such that she, as trustee for the Vart Trust, ratified the agreement.”

This case was restored to this court’s trial calendar in 2008; shortly thereafter, this motion to intervene was made. On October 22, 2008, Vanda Vebeliunas, as Trustee of the Vart Trust, executed a confirmation of Express Ratification of Mutual Lease and Easement Agreement.

CPLR 1012(a)(3) provides that where, like here, “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment,” that party “shall be permitted to intervene in [the] action upon timely motion.” Similarly, pursuant to CPLR 1018, upon the transfer of an interest, the action continues against the original party “unless the court directs the person to whom the interests transferred to be substituted or joined in the action (emphasis added).” This Section “addresses the situation in which a party transfers [his or her] interest in the subject matter of the action to another person while the action is pending, as, for example, . . . conveyance of the relevant property.” Alexander, Practice commentaries, Cons. Laws of N.Y., Book 7B CPLR 1018 at 222.

“The principal guideposts in the evaluation of timeliness are whether disposition of the action will be unduly delayed and whether the original parties will be prejudiced.” Alexander, Practice Commentaries, McKinney’s Cons. Laws of N.Y., Book 7B, CPLR 1012:5, at 159.

As the owners of the real property involved, the Overstroms will be directly affected by the resolution of in this case. Under the Lease and Easement agreement, as tenants and lessees, the Overstroms now possess possible lease rights and obligations, easement obligations as well as a purchase option. This

action will be determinative of the property owners' landlord and tenant rights and obligations, purchase and sale options and obligations, as well as their easement rights and obligations. In fact, the judgment in this case will be binding on the Overstroms. Froehlich v Town of Huntington, 159 AD2d 606 (2nd Dept. 1990), app. dism. 76 NY2d 935 (1990), app. den. 77 NY2d 803 (1991). "As purchasers of the subject property, the [proposed] intervenors ha[ve] a real and substantial interest in the outcome of this litigation warranting their intervention." George v Grand Bay Associates Enterprises, Inc., 45 AD3d 451 (1st Dept. 2007), citing CPLR 1012(a)(3); Greenpoint Sav. Bank v McMann Enterprises, Inc., 214 AD2d 647 (2nd Dept. 1995); see also, NYCTL 1999-1 Trust v Chalom, 47 AD3d 779 (2nd Dept. 2008), lv. den. 11 NY3d 709 (2008) (possible ownership interest in property entitles non party to intervene under CPLR 1012[a][2], [3]). Furthermore, the Overstroms' intervention will not unduly delay the determination of this action nor prejudice the substantial right of any party.

The Overstroms' motion is **granted** and they are joined as parties in interest with the defendants in this action. They are directed to serve their Answer within 20 days of the date of this order.

This Constitutes the Order of the Court.

Dated: *April 28, 2009*

ENTER:

ENTERED

[Signature]
J.S.C.

MAY 26 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE
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