

Schwartz v Miltz

2009 NY Slip Op 32431(U)

September 30, 2009

Supreme Court, Nassau County

Docket Number: 11127/04

Judge: Antonio I. Brandveen

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~~ORIGINAL~~
SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

WALTER SCHWARTZ,

Plaintiff,

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 11127/04

- against -

MICHELE FARKAS MILTZ,

Defendant.

TRIAL

The Appellate Division, 2nd Department remitted the underlying action for the partition and sale of 130 West Beech Street, Long Beach, New York to consider the issue of equitable relief. The underlying partition action commenced on August 13, 2004.

The plaintiff seeks an order for \$483,031.31.96 from the defendant. The plaintiff contends the parties recorded the deed on the Long Beach property with the Nassau County Clerk on May 9, 2009, after the defendant added the plaintiff's name to the deed on the property awarded to her in a divorce action with her previous husband. The plaintiff asserts the defendant took these steps as a gift in contemplation of a marriage consummated on June 29, 2003, and in payment of a \$250,000.00 debt owed by the defendant to the plaintiff. The plaintiff claims he spent the money on the defendant, her family and the Long Beach property. The plaintiff avers he gave the money to the defendant because the defendant and her former spouse spent trust funds for their four

children, and the defendant and her children lived above their means during the latter part of the defendant's previous marriage. The plaintiff declares the defendant promised to repay him for his assistance, and the plaintiff relied on these promises making substantial contributions of money and labor for the upkeep and improvement of the Long Beach property.

The defense argues the only issue before this Court is whether the trial record proved the plaintiff was entitled to equitable relief, and if the plaintiff was entitled to equitable relief what is the measure of damages. The defense contends the plaintiff is not entitled to equitable relief because the plaintiff failed to show it, and came to Court with unclean hands. The defense asserts, even assuming the plaintiff showed entitlement to equitable relief, the award of damages should be no greater than \$65,000.00 which the plaintiff admitted was the amount prior to any lawsuit. The defendant maintains she added the plaintiff to the deed after a Court session, and contends the plaintiff promised to place her name on the deed to his house, but never do after making that promise. The defendant claims the deed was not delivered to the plaintiff by the defendant and her prior husband, so the plaintiff is not vested with an interest in Long Beach property.

FACT FINDINGS

In October 1999, the defendant informed the plaintiff she separated from her husband with their four children. The defendant told the plaintiff she could not afford 130 West Beech Street, and sought to negotiate loan money to pay the plaintiff using as

security an unrelated multi-million dollar lawsuit against her former employer. The defendant also promised the plaintiff she would sign over the subject property to secure payment of the debt to the plaintiff. The plaintiff claims he relied upon those promises, and agreed to extend the defendant the money.

In September 2000, the parties got engaged. They married on June 29, 2003. On May 9, 2003, the defendant acquired title to the subject property. The defendant added the plaintiff to the deed, and registered title with the Nassau County Clerk. The defendant subsequently promised many times to repay the money, and told the plaintiff he owned 50% of the subject property. The plaintiff discovered in October or November 2003, the Court dismissed the defendant's lawsuit against her former employer.

The plaintiff advanced the defendant \$483,031.31.96 over time up to April 2004. The defendant made \$200.00 weekly, and paid \$3,200.00 monthly for the mortgage on the subject property. The plaintiff claims he extended \$483,031.31.96 to the defendant because they were engaged, and the defendant told him when she got the subject premises she would sign it over to him, and repay him when she won the lawsuit. The parties had differences during their relationship, obtained a "get," on May 17, 2004, and divorced.

LEGAL CONCLUSIONS

RPAPL § 1501 (1) provides:

Where a person claims an estate or interest in real property; or where he claims such estate or interest as executor or administrator of a deceased person; or where a municipal corporation has purchased an estate or interest in real property at a sale conducted by it for unpaid taxes against the

property and the time within which redemption from such sale may be made has expired and such municipal corporation claims it; such person or municipal corporation, as the case may be, may maintain an action against any other person, known or unknown, including one under disability as hereinafter specified, to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make; provided, however, that where the estate or interest claimed by the plaintiff is for a term of years, the action may not be maintained unless the balance remaining of such term of years is not less than five.

RPAPL § 1501 (2) provides:

Such action may be maintained, even though the defendant's claim appears to be invalid on its face, or the court may have to determine the death of a person, or any statutory limitation of time, or any other question of fact or law upon which an adjudication of the adverse claims of the parties may depend.

Here, the plaintiff was in possession, made improvements to the property, and paid the bills on the Long Beach property. The Appellate Division holds:

In *Chamberlain v Spargur* (*supra*, p 607), it was held that a “grantor who has signed a deed, unattested and unacknowledged, is left with the power of effectively conveying by a later deed properly executed”, and that an unacknowledged and unattested deed has no effect against a subsequent purchaser. In the case of the *City of New York v New York & South Brooklyn Ferry & Steam Transp. Co.* (*supra*, pp 25-26), the court considered the *Spargur* case and said: “We think the equities arising from contract, possession and improvement are not so easily destroyed. The statute nullifies the instrument of transfer considered as a formal grant, but it does not nullify rights and interests which would be maintained and protected irrespective of a grant...In equity its rights were equivalent to those of ownership ... No purchaser with notice would be suffered to ignore them. ***The imperfect deed might be disregarded, but not the equities behind it***

Wallace v. Hosley, 65 A.D.2d 851, 851-852, 410 N.Y.S.2d 164 [3rd Dept., 1978] (emphasis added).

The State Supreme Court, over 70 years ago, stated:

Parol evidence is always admissible to apply a writing to its subject. It is a rule that, where words of general description are used in a deed, oral evidence may be resorted to for the purpose of ascertaining and identifying the premises intended to be conveyed. Such evidence is always received, where doubt arises upon the face of the instrument as to its meaning, not to enable the court to hear what the parties said, but to enable it to understand what they wrote, as they understood it at the time. *Trustees, etc., of Town of Southampton v. Jessup*, 173 N. Y. 84, 65 N. E. 949. The court, therefore, has not merely a right, but it is its duty, to inquire into all the surrounding circumstances which may have acted upon the minds of the parties before it can approach the construction of the instrument itself *People v. Call*, 129 Misc. 862, 223, 261-262, N.Y.S. 257 [N.Y.Sup., 1927].

Here, the defendant conveyed the Long Beach property as a tenant in common in contemplation of marriage to the plaintiff, and to repay the plaintiff for the money he loaned the defendant for her support, the support of her family, and repairs and improvements to the Long Beach property. Moreover, the defendant does not assert the plaintiff's name on the deed is a mistake, rather it is clear from the evidence the defendant wanted the plaintiff's name on it, and immediately wrote his name there.

The Court of Appeals holds:

The purpose of equitable estoppel is to preclude a person from asserting a right after having led another to form the reasonable belief that the right would not be asserted, and loss or prejudice to the other would result if the right were asserted. The law imposes the doctrine as a matter of fairness. Its purpose is to prevent someone from enforcing rights that would work injustice on the person against whom enforcement is sought and who, while justifiably relying on the opposing party's actions, has been misled into a detrimental change of position (*see generally Nassau Trust Co. v Montrose Concrete Prods. Corp.*, 56 NY2d 175, 184 [1982]) *Shondel J. v. Mark D.*, 7 N.Y.3d 320, 326, 820 N.Y.S.2d 199 [2006].

The plaintiff has a remedy in equity, and the effect of equitable estoppel is to preclude the

defendant from denying the effect on the plaintiff, to wit his reliance upon the defendant's promise to repay him for the money loaned to her (*see Lawriw v. City of Rochester*, 14 A.D.2d 13, 217 N.Y.S.2d 113 [4th Dept., 1961]). The evidence shows the defendant represented to the plaintiff, in words and conduct, she would repay him by adding his name to the deed, and equitable estoppel now prevents the defendant from denying the facts upon which the plaintiff relied.

The plaintiff is entitled to share in the sale proceeds from the Long Beach property. Civil Rights Law § 80-b provides:

Nothing in this article contained shall be construed to bar a right of action for the recovery of a chattel, the return of money or securities, or the value thereof at the time of such transfer, or the rescission of a deed to real property when the sole consideration for the transfer of the chattel, money or securities or real property was a contemplated marriage which has not occurred, and the court may, if in its discretion justice so requires, (1) award the defendant a lien upon the chattel, securities or real property for monies expended in connection therewith or improvements made thereto, (2) deny judgment for the recovery of the chattel or securities or for rescission of the deed and award money damages in lieu thereof.

The purpose of this statute is to return the parties to the position they were prior to becoming engaged. It is the break which triggers the cause of action, and allows this plaintiff to proceed despite the fact the deed was not delivered within the specifications of the property law (*see generally, Gaden v. Gaden*, 29 N.Y.2d 80, 323 N.Y.S.2d 955 [1971]).

Accordingly, the court awards the plaintiff one half of the proceeds of the sale of the real property known as 130 West Beech Street, Long Beach, New York, the sum

which is currently being held in escrow by the attorney for the plaintiff.

Submit judgment.

So ordered.

Dated: **September 30, 2009**

ENTER:



J. S. C.

FINAL DISPOSITION xxx

NON FINAL DISPOSITION

ENTERED

OCT 08 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**