Brighton Way, LLC v Queen Esther's Temple, Inc.
2010 NY Slip Op 31782(U)
July 9, 2010
Supreme Court, Nassau County
Docket Number: 010253/09
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE TRIAL/IAS PART 20

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BRIGHTON WAY, LLC,

Plaintiff,

-against-

QUEEN ESTHER'S TEMPLE, INC.,

Defendant.

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Index No. 010253/09
Motion Sequence...03
Motion Date... 05/28/10
XXX

Papers Submitted:
Notice of Motion..x
Affirmation in Opposition..........................x
Reply Affirmation.......................................x

Upon the foregoing papers, the motion by the Plaintiff, pursuant to CPLR § 2221(e) (3), seeking to renew its prior motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 is **GRANTED** and upon renewal, the motion for summary judgment is **DENIED** and the action is **DISMISSED**.

In this action, the Plaintiff, Brighton Way, LLC (Brighton Way) seeks to recover monies allegedly due and owing from the Defendant, Queen Esther's Temple, Inc.

(Queen Esther's Temple) under a note[1] dated August 11, 2004 in the principal amount of $140,000.

By order of the Hon. William R. LaMarca, dated December 4, 2009, the Plaintiff's prior motion for summary judgment in lieu of complaint was denied without prejudice to renewal upon proper papers as the Plaintiff, Brighton Way had neglected to include a copy of the summons in accordance with CPLR § 2214. Justice LaMarca is no longer a presiding Justice of this Court. As such, it is proper for this Court to now render a decision upon this application pursuant to CPLR § 2221.

The facts disclosed by the record establish that the note at issue was secured by a mortgage on real property located at 109-35 Farmers Boulevard, St. Albans, New York. A prior action to foreclose on the mortgage, [Index no. 588/07] brought by Brighton Way against Queens Esther's Temple in Supreme Court, Queens County, was dismissed by order of the Hon. Jaime A. Rios, dated May 2, 2008 based on Brighton Way's failure to effect proper service on Queen Esther's Temple. It was the court's finding that the underlying mortgage was a nullity in that it did not comply with the requirements of Religious Corporations Law § 12(a) which provides, in pertinent part, that:

> "A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court, pursuant to section five hundred eleven of the Not-For-Profit Corporation Law."

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[1]Plaintiff failed to include a complete copy of the note on which the motion for summary judgment in lieu of complaint was based.

As leave of court was not obtained, the underlying mortgage was found invalid and no action to foreclose was maintainable. *Bernstein v. Friedlander*, 58 Misc. 2d 492, 495-496 (N.Y. Sup. 1968).

Thereafter, in accordance with § 12(9) of the Religious Corporations Law, Brighton Way commenced a proceeding in Supreme Court, Queens County, [Index no. 13606/08], to confirm, *nunc pro tunc*, the mortgage and note. In denying the petition to grant the requested relief, the Hon. Patricia P. Satterfield stated as follows:

> "The transaction at issue is highly suspect, given the relationship between petitioner and Wright[2], and the methods employed by Wright to establishing [sic] a relationship with Ms. Williams, who was associated with respondent Queen Esther's Temple. Equally troublesome is Wright's receipt of $70,000 from petitioner and his opening of a bank account ostensibly on behalf of respondent and his writing checks on that account for reasons unknown. On the facts of this case, there is no basis for this Court to find that 'the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted.' "

In its decision, the Court found that William Greenspan, Brighton Way's managing agent, and Neil Wright of Total Financial Services, had a long standing business relationship characterized by Mr. Wright's seeking mortgages from Brighton Way on behalf of people or entities in financial difficulty. The Court further found that the mortgage at issue was signed by Neil Wright, purportedly on behalf of Queen Esther's Temple, as a mere

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[2]Neil Wright purportedly executed the mortgage and note as Chairman of the Board of Trustees of Queen Esther's Temple, Inc.

convenience. In the absence of any proof that the members of the Board of Trustees of Queen Esther's Temple approved the execution of the mortgage and note, and/or authorized Mr. Wright to sign on behalf of the church in accordance with the dictates of Not-For-Profit Corporation Law § 510 (a) (2), the court held that the transaction was highly suspect and denied the petition to confirm, *nunc pro tunc*, the mortgage and note executed and delivered on August 11, 2004 to Brighton Way by Queen Esther's Temple.

A religious corporation is an artificial construction of the State, designed to provide the congregants with an orderly procedural framework so as to ultimately permit the free exercise of religion. The property of a religious corporation can be analogized to a trust fund, to be used for religious purposes. The congregational officers denominated as trustees are fiduciaries who must manage and preserve the property for the benefit of its religious purpose. *Kroth v. Congregation Chebra Ukadisha Bnai Israel Mikalwarie*, 105 Misc. 2d 904, 917 (N.Y. Sup. 1980).

In requiring a religious corporation to obtain leave of court to mortgage its property, the Religious Corporations Law seeks to protect the religious purposes of the corporation and to prevent a dissipation and pervasion of the corporate assets. *Muck v. Hitchcock*, 212 N.Y. 283, 287 (1914). "Mindful of that purpose and in furtherance thereof, the courts have construed section 12 strictly and held that compliance with it is 'absolutely necessary' and 'indispensable' to the validity of the transaction." *Diocese of Buffalo v. McCarthy*, 91 A.D.2d 213, 217 (4th Dept. 1983) citing *Dudley v. Congregation of Third

Order of St. Francis, 138 N.Y. 457.

§ 5 of the Religious Corporations Law provides that:

> "The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject . . ."

While it is well settled that an action may be brought upon a bond secured by a mortgage without reference to the mortgage (*Bernstein v. Friedlander, supra* at p. 495), and that neither § 5 nor § 12 of the Religious Corporations Law requires a religious corporation to obtain judicial approval as a condition to borrowing money, it is equally well settled that neither the trustees nor the other officers of a religious corporation have separate individual authority to act on behalf of the corporation to bind it to a contract. *Congregation Anshe Kesser v. Jewish Community Center*, 5 A.D.2d 1011, 1012 (2nd Dept. 1985). Only when acting as a board, may trustees of a religious corporation perform or authorize acts binding on the corporation. *Krehel v. Eastern Orthodox Catholic Church in America,* 22 Misc. 2d 522, 524 (N.Y.Sup. 1959), *aff'd* 12 A.D.2d 465 (1st Dept. 1960), *aff'd* 10 N.Y.2d 831 (1961).

While the Plaintiff asserts that the two prior proceedings, i.e., the foreclosure action and the proceeding to confirm the mortgage, *nunc pro tunc*, were brought only with respect to the mortgage, and that this action pertains solely to the Defendant's default on the note, in dismissing the prior proceeding and declining to grant the requested relief, Justice

Satterfield specifically states that the proceeding was instituted to obtain "judgment confirming, *nunc pro tunc*, a mortgage and note executed and delivered in August 11, 2004" by Brighton Way to Queen Esther's Temple.

The doctrine of collateral estoppel, or issue preclusion, precludes a party from relitigating, in a subsequent action or proceeding, an issue clearly raised in a prior action or proceeding and decided against that party whether or not the tribunals or causes of action are the same. *Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 349 (1999) (internal quotation marks omitted). Preclusive effect, however, may only be given to an issue when it is clear that the issue was necessarily decided in the prior proceeding. *Jeffreys v. Griffin*, 1 N.Y.3d 34, 39 (2003).

Even if the Plaintiff's attempts to recover on the note were not in fact precluded by the doctrine of collateral estoppel as the Defendant, Queen Esther's Temple contends, the action is unsustainable for the reasons stated herein.[3]

The record is devoid of any evidentiary facts to show that Neil Wright was authorized to execute the note herein or that the note was adopted or ratified by the Defendant religious corporation, Queen Esther's Temple. In the absence of any such authority or evidence that the subject note was executed in pursuance of any vote, action or

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[3]Defendant, Queen Esther's Temple is incorrect in arguing that a motion for summary judgment is not the proper vehicle to collect on a note. A document comes within the ambit of CPLR § 3213 where a *prima facie* case can be established by the instrument and a failure to make the payments called for by its terms. Weissman v. Sinorm Deli, 88 N.Y.2d 437, 444 (1996).

resolution of the Board of Trustees of Queen Esther's Temple, the note at issue upon which the Plaintiff sues is not legally binding on the Defendant, Queen Esther's Temple. *People's Bank v. St. Anthony's Roman Catholic Church*, 109 N.Y. 512, 526 (1888).

Pursuant to CPLR § 3213:

> "[W]hen an action is based upon an instrument for the payment of money only, or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of complaint . . . if the motion is denied, the moving papers shall be deemed the complaint and answer, respectively unless the court rules otherwise."

The Court has the authority to dismiss the complaint in the exercise of its discretion. *Shultz v. Barrows*, 94 N.Y.2d 624 (2000).

Accordingly, it is hereby

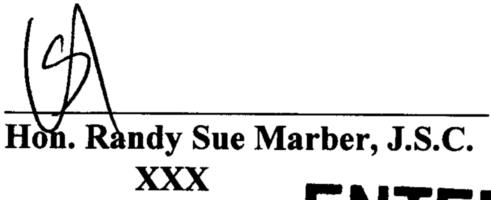
ORDERED, that the Plaintiff's renewal motion for summary judgment in lieu of complaint, pursuant to CPLR § 3213, is **DENIED**; and it is further

ORDERED, that the action is hereby **DISMISSED**.

All matters not decided herein are hereby denied.

This constitutes the decision and order of this Court.

DATED: Mineola, New York
July 9, 2010



Hon. Randy Sue Marber, J.S.C.
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ENTERED
JUL 13 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE