

Hinds v Joseph

2011 NY Slip Op 30511(U)

March 7, 2011

Supreme Court, Queens County

Docket Number: 25032/2010

Judge: Robert J. McDonald

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The plaintiffs allege that Cynthia E. Hinds was the owner of the subject premises. Hinds executed a power of attorney on April 2, 2009 appointing her niece, Denise Lawson, age 41, as her agent and giving Lawson the authority to act on behalf of Hinds for certain specific purposes including real estate transactions.

Ms. Hinds made a written statement, incorporated as part of the power of attorney, that she was assigning title of her house to Mario Andrew Joseph, the son of her niece Denise Lawson, "and such property is to be reassigned to Denise Lawson at a time of her discretion." On April 27, 2009, Ms. Hinds, age 90, transferred the deed to her house to Mario Andrew Joseph, the defendant herein, without consideration. After the transfer of the deed, the plaintiffs continued to reside in the house. Mr. Joseph resided in premises located in Brooklyn and has not made any contribution toward the costs or maintenance of the subject premises.

As a result of certain family differences, Mr. Joseph brought a hold-over summary proceeding in Queens County Civil Court seeking to evict his mother, Ms. Lawson and his great aunt, Ms. Hinds, from the premises. That matter is presently pending in the Housing Part under Index No. 075866/10. There is also a pending matter in Brooklyn Housing Court wherein Ms. Lawson is seeking to evict the defendant from certain premises owned by her in Brooklyn.

In support of the application to stay the Civil Court proceedings pending the disposition of the Supreme Court matter, plaintiff Hinds states in an affidavit dated January 21, 2011, that she acquired title to the premises in 1973. She states that the transfer of the deed to the defendant was performed with the full understanding of all parties that the assignment of title to defendant without consideration was only temporary. The deed was to be transferred back to defendant's mother, Ms. Lawson, upon her demand. The plaintiffs state that they have demanded the transfer of the property and defendant has failed to comply. The plaintiffs have also annexed affidavits from other family members, all of whom state that they were aware that the transfer of the premises to the defendant was only temporary, that defendant was not entitled to ownership of the house, and that ultimately the defendant was to transfer title to Ms. Lawson. As a result of the defendant's failure to deed the house to Ms. Lawson upon her request, the plaintiffs brought the within action in Supreme Court (1) to impose a constructive trust; (2) to compel the transfer of the deed; (3) for unjust enrichment; (4) for a judgment declaring that Denise Lawson is the sole lawful owner of the subject premises; and (5) for an order restraining the defendant from conveying or encumbering the premises pending the disposition of this action.

In opposition to the motion, the defendant contends that the transfer of the deed was unrestricted and that the plaintiffs have failed to set forth evidentiary facts sufficient to demonstrate, prima facie, that the plaintiffs are entitled to a constructive trust. In addition, defendant contends that there is no writing relating to the promise allegedly made by the defendant to transfer the property to Ms. Lawson and as such the power of attorney does not satisfy the statute of frauds.

Upon review and consideration of the plaintiffs' order to show cause, the defendant's affirmation in opposition and the plaintiffs' reply thereto, this court finds that the plaintiffs' motion for a stay of the civil court proceeding pending the disposition of the with action for a constructive trust is granted.

"Generally, a constructive trust may be imposed when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest (see Sharp v Kosmalski, 40 NY2d 119 [1976]; also see Tampa v Delacruz, 77 AD3d 910 [2d Dept. 2010]). Here, the plaintiffs sufficiently alleged the elements of a cause of action to impose a constructive trust, including the existence of a confidential or fiduciary relationship, a promise, a transfer in reliance thereon, and unjust enrichment (see Berger v Berger, 2011 NY Slip Op 1229 [2d Dept. 2011]; Klamar v Marsans, 79 AD3d

973 [2d Dept. 2010]; Marini v Lombardo, 79 AD3d 932 [2d Dept. 2010]; Panish v Panish, 24 AD3d 642 [2d Dept. 2005]). Further, the statute of frauds has been held not to be a defense to an action to impose a constructive trust on real property (Ubriaco v Martino, 36 AD3d 793 [2d Dept. 2007], as "such a trust, by its very nature, does not require a writing" (Vanasco v Angiolelli, 97 AD2d 462 [2d Dept. 1983])).

In addition this court finds that the plaintiffs have shown (1) the likelihood of success on the merits; (2) irreparable injury if the stay is not granted, and (3) a balancing of the equities in their favor (see Doe v Axelrod, 73 NY 748 [1988]).

Accordingly, it is hereby

ORDERED, that the plaintiffs' motion for a stay of the pending Civil Court proceedings is granted and the Queens County Civil court shall be stayed from proceeding with the summary holdover proceeding under Index Number 075866/10 pending the resolution of the rights of the parties in this constructive trust proceeding and it is further,

ORDERED, that the defendant, MARIO ANDREW JOSEPH, shall be stayed and enjoined, pending the disposition of this matter, from engaging in any transfer, conveyance, encumbrance, partition or mortgaging of the subject premises located at 224-01 145th Avenue Laurelton, N.Y. to any person other than Denise Lawson until a final disposition of this action has been made determining the

rights of the parties relating to the constructive trust and said property.

Dated: March 7, 2011
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.