

McDaniel v Maddison
2011 NY Slip Op 31653(U)
April 5, 2011
Supreme Court, Nassau County
Docket Number: 22050/08
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

BARRINGTON McDANIEL,

Plaintiff,

- against -

SANDRA MADDISON and J.P.MORGAN CHASE,
F/K/A CHASE MANHATTAN MORTGAGE
CORPORATION,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 22050/08
Motion Seq. Nos.: 05, 06
Motion Date: 12/13/10
02/03/11

The following papers have been read on these motions:

	<u>Papers Numbered</u>
<u>Notice of Motion (Seq. No. 05), Affidavit, Affirmation and Exhibits</u>	<u>1</u>
<u>Notice of Cross-Motion (Seq. No. 06), Affidavit and Exhibits</u>	<u>2</u>
<u>Reply Affirmation and Opposition to Cross-Motion and Exhibits</u>	<u>3</u>
<u>Reply Affirmation in Further Support of Plaintiff's Cross-Motion and in Further Opposition to Defendant's Motion</u>	<u>4</u>

Defendant Sandra Maddison ("Maddison") moves (Motion Seq. No. 05), pursuant to CPLR § 2221(e), for an Order granting renewal of her motion for summary judgment, and upon renewal, for an Order, pursuant to CPLR § 3212, granting summary judgment on her counterclaim and dismissing plaintiff's claims for a constructive trust. Plaintiff opposes defendant Maddison's motion and cross-moves (Motion Seq. No. 06), pursuant to CPLR § 2221(e), for an Order granting renewal of his motion for summary judgment and upon renewal, for an Order, pursuant to CPLR § 3212, granting summary judgment in his favor deeming a

constructive trust to exist between himself and defendant Maddison for the ownership of the subject premises. Plaintiff also moves for an order granting him summary judgment dismissing the counterclaim of defendant Maddison in which she requests child support as he submits that the child support issue has already been determined by the Nassau Count Family Court.

Defendant Maddison opposes plaintiff's cross-motion.

As previously stated, this is an action to impose a constructive trust with defendant bringing a counterclaim for money owed. On June 5, 2009, the Honorable Daniel Martin, Acting Supreme Court Justice, issued an Order in which plaintiff's motion for summary judgment and defendant's cross-motion for summary judgment were denied. Said Order stated,

"The complaint alleges that the plaintiff and the defendant had a 'loving' relationship since 1992. The plaintiff claims that they agreed to purchase premises in which to reside in 1995, but for reasons not set forth in the complaint, title was to be reposed in the defendant. In 1996 the plaintiff moved into the premises. In 1999 the parties became parents of a child conceived from this relationship. The plaintiff alleges that from 1999-2008 he made the monthly mortgage payments and through his labor renovated the kitchen and the bathroom. The plaintiff left the premises in 2008. The parties have settled with respect to the defendant JP Morgan Chase and all references to the defendant shall be deemed the defendant Maddison. The defendant's answer consists of denials and two counterclaims in the nature of monies owed for child support arrears.

On this application, the plaintiff submitted an affidavit and the various pleadings. In the affidavit the plaintiff reiterates the allegations of the complaint. The affidavit avers that through the plaintiff's efforts in "reconstructing the house" the value of the premises substantially increased. The affiant claims to have paid half of all household furnishings. There is no documentary or other corroborative evidence submitted in support of the application.

In opposition the defendant submits an affidavit which reiterates the assertions contained in her answer. The defendant avers that she bought the house for her own home and subsequently allowed the plaintiff to reside in the home provided he made financial contributions for the expenses incurred by his presence in the home. Other than submitting a copy of the deed demonstrating title solely in her name (a fact not in dispute), the defendant offers no other documentary or other corroborative proof of her defense to the plaintiff's action or in support of her counterclaim....

The proof offered by the plaintiff fails to satisfy his *prima facie* burden. Similarly, the defendant's proof is insufficient to negate the possibility of a constructive trust and at best raises an issue of fact as to the intentions of the parties. There is also no substantiation of the defendant's counterclaims. Accordingly, the motion and cross-motion are both denied."

Both plaintiff and defendant Maddison allege that new facts, upon which their motions are based, emerged from the deposition of plaintiff taken on September 16, 2009 and the deposition of defendant Maddison taken on September 23, 2009 and from further discovery responses served by plaintiff and defendant Maddison. The parties submit that these facts were not available when the original motions for summary judgment were heard in April 2009.

Pursuant to CPLR 2221(e):

A motion for leave to renew: (1) shall be identified specifically as such; (2) shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and (3) shall contain reasonable justification for the failure to present such facts on the prior motion. *See 515 Ave. I Corp. v. 515 Ave. I Tenants Corp.*, 44 A.D.3d 707, 844 N.Y.S.2d 79 (2d Dept. 2007); *Veitsman v. G & M Ambulette Service, Inc.*, 35 A.D.3d 848, 827 N.Y.S.2d 207 (2d Dept. 2006).

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. *See Friends of Animals, Inc. v.*

Associated Fur Mfrs., Inc., 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. See CPLR § 3212 (b); *Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. See *Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. See *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. See *Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

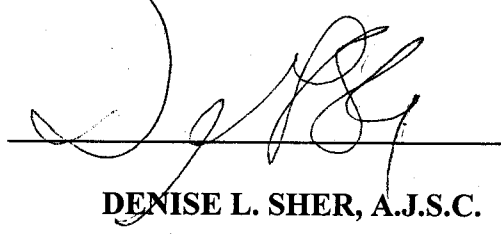
Having reviewed the depositions of the parties and the documents served in their discovery responses, the Court finds that the alleged "new facts" do not change the Court's prior holding that "[t]he proof offered by the plaintiff fails to satisfy his *prima facie* burden. Similarly, the defendants proof is insufficient to negate the possibility of a constructive trust and at best raises an issue of fact as to the intentions of the parties." Therefore, while this Court grants plaintiff's and defendant Maddison's motions to renew, upon renewal, this Court denies

the underlying motions for summary judgment.

All parties shall appear for a Trial Re-Certification Conference in Nassau County Supreme Court, Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, on April 26, 2011 at 9:30 a.m.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
April 5, 2011

ENTERED
APR 21 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE