

Williams v HSBC Bank USA

2011 NY Slip Op 33258(U)

October 28, 2011

Supreme Court, Queens County

Docket Number: 9372/2011

Judge: David Elliot

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M E M O R A N D U M

SUPREME COURT - QUEENS COUNTY
I.A.S. PART 14

BRENDA WILLIAMS,
Plaintiff,

-against-

HSBC BANK USA, et al.,
Defendants.

Index No. 9372/2011

By: **ELLIOT, J.**

Date: October 28, 2011

Motion Cal. No. 24

Motion Seq. No. 1

Motion Date: October 4, 2011

This action was commenced by filing a copy of the summons and complaint on April 15, 2011. In her complaint, plaintiff seeks, inter alia, a judgment declaring that she is entitled to a lien and sale of the premises located at 138-14 223rd Street in Laurelton (subject premises), which is currently owned by the Buchanans, and that she have a money judgment in the sum of \$78,306.04. Defendants Aldrich and Jennifer Buchanan (collectively Buchanans) move to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (7).

The relevant facts reveal that in June 2005, plaintiff and defendant Lloyd Francis (Francis) entered into an agreement whereby the two would invest in the subject premises as co-owners. Accordingly, plaintiff issued a bank check to Francis in the amount

of \$46,000 representing her share of the investment. However, by deed dated November 26, 2004, only Francis appeared as the purchaser of the property, said deed having been recorded on September 2, 2005. Thereafter, plaintiff commenced a lawsuit against Francis in Kings County for breach of contract, seeking only money damages. Plaintiff also filed a notice of pendency against the property in Queens County on January 13, 2006. As a result of the Kings County action, plaintiff obtained a default judgment against Francis, entered on March 27, 2007, in the amount of \$78,306.04.

In the meantime, before plaintiff filed the notice of pendency against the subject premises, Francis sold same to defendants Karine Cambry and Natalie Cambry Douglas by deed dated November 30, 2005. The deed was recorded on March 2, 2006. The Buchanans then became the owners of the subject premises by deed dated October 10, 2008, said deed having been recorded on October 16, 2008. In the instant action, plaintiff asserts that, at the time they purchased the subject premises, the Buchanans knew or should have known that plaintiff had an interest therein.

The Buchanans move to dismiss the complaint against them based on the fact that: (1) the notice of pendency filed in Queens County on January 13, 2006 is a nullity; and (2) the money judgment obtained against Francis was never filed on Queens and, thus, no lien was obtained against the premises.

CPLR 6501 provides that:

“[a] notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, or

the possession, use or enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as a party.”

Strict compliance with the requirements of CPLR 6501 is a condition precedent to a valid notice of pendency; same may only be properly filed when the relief being sought is “directly related to” the title to, or possession, use or enjoyment of, the premises (*5303 Realty Corp. v O & Y Equity Corp.*, 64 NY2d 313 [1984]). As the title of CPLR 6501 suggests (“Notice of pendency; constructive notice”), the notice of pendency acts as constructive notice to third parties of the pending action and, hence, the plaintiff’s purported interest in the premises (*see generally* 3 NYPrac, Com. Litig. in New York State Courts § 17:56 [3d ed.] [notice of pendency provides constructive notice of a potential cloud on a claimant’s title to real property]). However, a notice of pendency filed in conjunction with an action that seeks only money damages, as it was here, is improper (*see Stangel v Zhi Dan Chen*, 74 AD3d 1050 [2010]; *Distinctive Custom Homes Bldg. Corp. v Esteves*, 12 AD3d 559 [2004]; *Rajic v Sarokin*, 214 AD2d 663 [1995]; *Tsiporin v Ziegel*, 203 AD2d 451 [1994]). Since plaintiff never sought a judgment in the Kings County action, for example, declaring herself to have an interest in the subject premises, the filing of the notice of pendency in connection with that action was improper and, thus, the only notice the Buchanans could

have possibly had given the nature of the Kings County action was that plaintiff was seeking money damages from Francis for breach of contract. To hold otherwise – that the filing of an improper notice of pendency as constructive notice of plaintiff’s interest in a certain premises – would result in court-sanctioned improper filings thereof, which this court will not do. Consequently, this court holds that the improper filing of the notice of pendency did not act as constructive notice to the Buchanans that plaintiff had an interest in the premises, within the context of CPLR 6501. Nor has it been shown that the Buchanans had any actual notice of plaintiff’s purported interest in the subject premises. As such, the Buchanans are entitled to the relief being sought.

The Buchanans’ remaining contentions need not be addressed in light of the aforementioned discussion.

The court notes that, along with the Buchanans’ motion and memorandum of law in support, the court has also received the Buchanans’ “reply affirmation in further support of the motion to dismiss and in partial opposition to cross-motion,” and reply memorandum of law. However, neither cross motion nor opposition, to which the Buchanans refer, has been received by this court. Further, County Clerk records reveal that no filing fee for any such cross motion has been paid. As such, the Buchanans’ reply affirmation was not considered herein.

Accordingly, the motion to dismiss the complaint made by defendants Aldrich and Jennifer Buchanan is granted without opposition. The complaint against them is

dismissed.

Submit Order on notice.

J.S.C.