

Hagerman v Hagerman
2012 NY Slip Op 30484(U)
February 9, 2012
Sup Ct, Nassau County
Docket Number: 10600/08
Judge: Karen V. Murphy
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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 11 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

_____ **x**

**ERIC J. HAGERMAN and PAULA HAGERMAN,
his wife,**

Index No. 10600/08

Plaintiff(s),

**Motion Submitted: 12/19/12
Motion Sequence: 006**

-against-

JOAN HAGERMAN,

Defendant(s).

_____ **x**

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....X
 Answering Papers.....X
 Reply.....X
 Briefs: Plaintiff's/Petitioner's.....
 Defendant's/Respondent's.....

Defendant moves this Court for a judgment of possession related to certain real property, a warrant of eviction, and an Order canceling plaintiffs' notice of pendency filed against the real property. Plaintiffs oppose the requested relief.

Plaintiffs sought to impose a constructive trust on the subject premises located in East Meadow, New York. The subject premises, a single-family residence, is owned by defendant Joan Hagerman and is occupied by plaintiffs. The plaintiffs are husband and wife. The premises were titled in Joan's and Walter Hagerman III's (Eric's father) names, prior to Walter's death.

According to the complaint, the premises were formerly owned by Paula Hagerman's mother, and in 1999, were in foreclosure. Plaintiffs resided at the premises since 1990 and

could not prevent the foreclosure as they did not have the necessary credit to secure a mortgage.

Plaintiffs further alleged in their complaint that Walter and Joan Hagerman agreed to purchase the subject premises and hold same in trust in order to allow plaintiffs to reside there and maintain the premises until such time as plaintiffs could secure a mortgage and purchase the premises from Walter and Joan Hagerman.

Walter Hagerman died in 2006, and Joan Hagerman took sole title to the subject premises. In April 2008, Joan Hagerman served plaintiffs, her stepson and his wife, with a notice to quit pursuant to Real Property Law § 232-b. In response thereto, plaintiffs filed the instant action seeking to impose a constructive trust.

On November 19, 2009, the parties to this action entered into a Settlement Stipulation and Rider ("Stipulation and Rider"). At the time the parties entered into the Stipulation and Rider, they were represented by counsel. Each of the parties signed both the Stipulation and the Rider.

On September 23, 2011, the Stipulation and Rider were filed with the Nassau County Clerk, by defendant's counsel.

Based on a review of the Court's file on this matter, no express stipulation of discontinuance, or actual entry of judgment in accordance with the terms of the settlement has been filed and/or entered in this matter.

Thus, the Court retains its supervisory power over the action and may lend aid to a party moving for enforcement of the settlement upon motion rather than by a plenary action (*Teitelbaum Holdings, Ltd. v. Gold*, 48 N.Y.2d 51, 396 N.E.2d 1029, 421 N.Y.S.2d 556 (1979); *Church Extension Plan v. Harvest Assembly of God*, 79 A.D.3d 787, 913 N.Y.S.2d 717 [2d Dept., 2010]).

Defendant asserts that, because plaintiffs have failed to exercise their option to purchase the subject premises within the time period as set forth in the Stipulation and Rider, she is entitled to possession of the premises according to the terms and conditions set forth in those documents.

"Stipulations of settlement are favored by the courts and will not be set aside in the absence of fraud or overreaching" (*Matter of Galasso*, 35 N.Y.2d 319, 321, 320 N.E.2d 618, 361 N.Y.S.2d 871 (1974); *Hallock v. State of New York*, 64 N.Y.2d 224, 474 N.E.2d 1178, 485 N.Y.S.2d 510 (1984); *Freight Brokers Global Services, Inc. v. Molfetta*, 2011 N.Y. Slip

Op. 9267, 2011 N.Y. App. Div. LEXIS 9091 [2d Dept., 2011]). “A stipulation of settlement is a contract, enforceable according to its terms” (*McKenzie v. Vintage Hallmark, PLC*, 302 A.D.2d 503, 504, 755 N.Y.S.2d 288 [2d Dept., 2003]).

“As with any contract, where the terms of a stipulation of settlement are unambiguous, the Supreme Court must give effect to the parties’ intent based upon the plain meaning of the words used by the parties” (*Alshawhati v. Zandani*, 82 A.D.3d 805, 807, 918 N.Y.S.2d 173 [2d Dept., 2011]).

Furthermore, “[o]nly where there is a cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation” (*Hallock, supra* at 230; *see also Vlassis v. Corines*, 247 A.D.2d 609, 669 N.Y.S.2d 361 [2d Dept., 1998]).

In this case, at the time the Stipulation and Rider were entered into by the parties on November 19, 2009, plaintiffs were represented by Adam Weiss, Esq. of Russo, Darnell & Lodato, LLP,¹ and defendant was represented by her present counsel, Mark E. Nadjar, Esq.

The Stipulation provides in pertinent part:

In the event plaintiffs fail to exercise their option to purchase the Premises or fail to execute a formal contract of sale for the purchase, of the property within fifteen (15) days of receipt of the contract from Joan Hagerman or her attorneys but in no event later than on or before August 31, 2011, then upon written notice by defendant, the defendant shall be entitled to immediate possession of the Premises and monetary sums specified in paragraphs FIFTEENTH and SIXTEENTH

(Paragraph SEVENTEENTH).²

The Rider provides in pertinent part that, in the event of any default by the plaintiffs in the performance of their obligations under the parties’ settlement,

¹Plaintiffs’ counsel was relieved by Decision and Order of this Court on February 25, 2011.

²Paragraphs Fifteenth and Sixteenth require plaintiffs to pay late fees and for property damage caused or allowed by plaintiffs, as well as to pay “arrearages owing from the time of their possession of the property during the term of this agreement, until the last day of the month in which broom clean vacant possession is actually delivered to the defendant” Upon the instant motion, defendant is not requesting the monetary sums provided for in the Stipulation.

the defendant shall be entitled to judgment against the plaintiffs for all amounts due and unpaid under the terms of the Settlement Stipulation, together with judgment against the plaintiffs under the counterclaims, as follows:

(a) on the first counterclaim, for the immediate entry of a judgment of possession and the immediate issuance of a warrant of eviction, without stay;

(b) on the second counterclaim, vacating and canceling of record the plaintiffs' notice of pendency, filed on June 9, 2008, against premises known as 2104 Franklin Avenue, East Meadow, Nassau County, NY (hereinafter, the "Premises"). . . .

(Rider, paragraph 1).

The Rider also provides that, "[i]n the event the plaintiffs fail or decline to exercise the option to purchase in accordance with the terms of the Settlement Stipulation, then the plaintiffs shall surrender possession of the entire premises to the defendant in vacant, broom clean condition and in good order and repair, reasonable wear and tear excepted" (Rider, paragraph 10).

Paragraph 11 of the Rider explicitly states that, "plaintiffs shall have the right to purchase the Premises from the defendant such that title actually closes on or before October 31, 2011, TIME BEING OF THE ESSENCE, under the terms of a Contract of Sale to be signed by the plaintiffs no later than August 31, 2011."

The proposed residential contract of sale is attached to the Stipulation and Rider.

Based on the foregoing, the terms of the Stipulation and Rider are explicitly stated and the parties' intentions are clear to this Court. If, by dates certain, plaintiffs had not signed a contract of sale and closed on the subject premises, defendant is to be put immediately in possession of the subject premises.

This Court engaged in many conferences of this matter in an effort to attempt to resolve it by affording plaintiffs an opportunity to obtain mortgage financing to purchase the subject premises from defendant. Finally, at the April 25, 2011 conference, plaintiffs advised the Court and defendant that they had been denied a mortgage.

Defendant's previous order to show cause for a judgment to be entered against the plaintiffs pursuant to the terms of the parties' Stipulation and Rider was denied with leave to renew upon proof of filing of the Stipulation and Rider with the Nassau County Clerk. That Decision and Order is dated September 8, 2011, and the Stipulation and Rider were filed with the Clerk on September 23, 2011.

Defendant did not make the instant motion until November 22, 2011, well after the time period in which plaintiffs were to sign the contract of sale and close on the subject premises.

It is undisputed that plaintiffs have not yet obtained a mortgage, and have never executed the contract of sale, which was required to be executed on or before August 31, 2011.

Plaintiffs' submission of a letter from First United Services, LLC in opposition to the instant motion is unavailing. The letter is dated December 9, 2011, and merely states that the company "is in process to procure a mortgage" for the plaintiffs.

Moreover, plaintiffs' statement that they "only agreed to the 'stipulation of settlement' because [they] no longer were able to afford legal representation and felt [they] had no other option"³ is likewise unpersuasive in light of the fact that they were represented by counsel when they executed the Stipulation and Rider.

The Court does not find, and plaintiffs do not allege, that there was fraud, collusion, mistake, accident, or overreaching in the procurement of the Stipulation and Rider. Moreover, the Court does not find that enforcement of the Stipulation and Rider would be unjust or inequitable given the fact that plaintiffs have been attempting to obtain a mortgage on the premises as early as the 1990's but were unable to do so. In any event, plaintiffs had nearly two years to obtain financing since the execution of the Stipulation and Rider, but were again unable to do so.

Thus, plaintiffs have utterly failed to comply with the terms of purchase contained in the Stipulation and Rider (*cf. Bank of New York v. Forlini*, 220 A.D.2d 377, 631 N.Y.S.2d 440 (2d Dept., 1995); *C.L.B. Check Cashing, Inc. v. NY Hobbies, Inc.*, 2012 NY Slip Op. 50174U, 2012 N.Y. Misc. LEXIS 436 [App. Term, 2d Dept., 2012]). Accordingly, defendant is entitled to the relief specified pursuant to the Stipulation and Rider executed on November 19, 2009, and it is hereby

³This statement is not signed by either of plaintiffs, but is simply attached to the opposition papers, after the signature page.

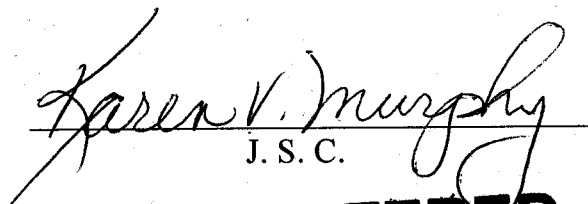
ORDERED that defendant Joan Hagerman is granted immediate possession of the subject premises known as 2104 Franklin Avenue, East Meadow, Nassau County, New York, and it is further

ORDERED that the Clerk of Nassau County is directed to immediately cancel and vacate plaintiffs' notice of pendency filed on June 9, 2009 against the subject premises known as 2104 Franklin Avenue, East Meadow, Nassau County, upon receipt of this Order.

A separate warrant of eviction shall issue upon this date.

The foregoing constitutes the Order of this Court.

Dated: February 9, 2012
Mineola, N.Y.


J. S. C.

ENTERED
FEB 21 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE