

Jing Chen v Huynh

2012 NY Slip Op 31125(U)

April 13, 2012

Supreme Court, Queens County

Docket Number: 12761/11

Judge: Howard G. Lane

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE
Justice

IAS PART 6

JING CHEN,

Plaintiff,

-against-

ALAN HUYNH a/k/a ALAN LUAN HUYNH
and JENNY LU,

Defendants.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

JENNY LU,
Petitioner-Landlord

-against-

JING CHEN
142-18 38th Avenue, #7A
Flushing, New York 11354
Respondent-Tenant,

"JOHN DOE & JANE DOE"
142-18 38th Avenue, #7A
Flushing, New York 11354

Respondent-Undertenant.

Index No. 12761/11

Motion
Date March 27, 2012

Motion
Cal. No. 5

Motion
Sequence No. 2

Housing Part
Index No. 084229/10

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Upon the foregoing papers it is ordered that the branch of the motion by plaintiff, Jing Chen seeking an order pursuant to

CPLR 6301, enjoining and restraining defendants, their officers, agents, servants and employees, and all other persons acting under it or on its behalf, during the pendency of this action, from evicting plaintiff, or selling or renting the subject premises to a third person on the ground that the defendants' acts evicting plaintiff, or selling or renting the subject premises to a third person interfere with the plaintiff's property rights and would cause the plaintiff irreparable harm is hereby granted.

The instant action was brought by plaintiff, Jing Chen, against defendants, Alan Huynh a/k/a Alan Luan Huynh and Jenny Lu seeking: a declaratory judgment adjudging two (2) title conveyances dated June 4, 2010 and August 23, 2010 to be fraudulent, null, and void, and of no effect; an order directing the Clerk of Queens County to cancel and set aside the purported deeds of record; and damages based on fraud, unjust enrichment, and taking titles fraudulently and without paying any consideration as a bona fide purchaser. The Complaint alleges that: plaintiff was the title owner of an apartment located at 142-18 38th Avenue, Apt. 7A, Flushing, New York 11354 ("the Premises") since 2004, plaintiff divorced defendant Alan Huynh a/k/a Alan Luan Huynh in 2008, defendant Alan Huynh a/k/a Alan Luan Huynh took the title of the premises fraudulently and without paying any consideration, and defendant Alan Huynh a/k/a Alan Luan Huynh allegedly conveyed the title of the Premises to defendant Jenny Lu fraudulently in order to hide and conceal the transfer between plaintiff, Jing Chen and defendant Alan Huynh a/k/a Alan Luan Huynh without any consideration.

There is a second action brought by petitioner, Jenny Lu against respondents, Jing Chen and John Doe & Jane Doe under Index #084229/10 in the Civil Court of the City of New York Queens County Housing Part which action is a holdover proceeding wherein there is a Petition alleging that Jenny Lu is the landlord/owner of the subject Premises, and Jing Chen as tenant holds over the Premises after the expiration of the alleged term. Jenny Lu alleges that she is the rightful landlord of the Premises as a result of taking title from the defendant in the Supreme Court action, Alan Huynh a/k/a Alan Luan Huynh and seeks the relief of possession and eviction.

"The law is well settled that to prevail on an application for preliminary injunctive relief, the moving party must demonstrate "(1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of equities favors [the movant's] position" (*Barone v. Frie*, 99 AD2d 129, 132, [2d Dept

1984] quoting from *Gambar Enterprises v. Kelly Servs.*, 69 AD2d 297, 306, 418 [2d Dept 1979]; *Aetna Ins. Co. v. Capasso*, 75 NY2d 860, 552 [1990]; and *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, [1981]; see also, *Merscorp, Inc. v. Romaine*, 295 AD2d 431, 562 [2d Dept 2002]; and *Neos v. Lacey*, 291 AD2d 434, [2d Dept 2002]). The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the status quo (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]). The determination as to whether to issue a preliminary injunction is a matter left to the sound discretion of the court (see, *Doe v. Axelrod*, 73 NY2d 748, 750 [1988]). Preliminary injunctive relief is a drastic remedy which will not be granted unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant (*First Nat. Bank of Downsville v. Highland Hardwoods*, 98 AD2d 924, 926, 471 NYS2d 360; accord 607 *Buegler v. Walsh*, 111 AD2d 206, *Orange County v. Lockey*, 111 AD2d 896, 897 [1985]; *William M. Blake Agency, Inc. v. Leon*, 283 AD2d 423, 424 [2d Dept 2001]; and *Peterson v. Corbin*, 275 AD2d 35, 36 [2d Dept 2000]). As the court stated in *Tucker v. Toia*, 54 AD2d 322, 325-326, however, "it is not for this court to determine finally the merits of an action upon a motion for preliminary injunction; rather, the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits (*Hoppman v. Riverview Equities Corp.*, 16 AD2d 631; *Weisner v. 791 Park Ave. Corp.*, 7 AD2d 75, 78-79; *Peekskill Coal & Fuel Oil Co. v. Martin*, 279 App Div 669, 670; *Swarts v. Board of Educ.*, 42 Misc 2d (761,) 764, *supra*; cf. *Walker Mem. Baptist Church v. Saunders*, 285 NY 462, 474)." The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the status quo (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]).

The plaintiff, Jing Chen seeks an order pursuant to CPLR 6301, enjoining and restraining defendants, their officer, agents, servants and employees, and all other persons acting under it or on its behalf, during the pendency of this action, from evicting plaintiff, or selling or renting the subject premises to a third person on the ground that the defendants' acts evicting plaintiff, or selling or renting the subject premises to a third person interfere with the plaintiff's property rights and would cause the plaintiff irreparable harm. The plaintiff submits in support of this application, inter alia,

an attorney's affirmation and plaintiff's own affidavit.

To prevail on an application for preliminary injunction relief the first prong of the test is a demonstration by plaintiff of a likelihood of success on the merits. Here, the plaintiff has asserted causes of action for: fraud regarding the deed recorded on July 14, 2010, fraud regarding the deed recorded on September 3, 2010, bona fide purchaser for value against defendant Huynh, unjust enrichment against defendant Huynh, unjust enrichment against defendant Lu, and undue influence against defendant Huynh.

This court finds that plaintiff has made a sufficient showing of likelihood of success. As to likelihood of success, "(i)t is enough if the moving party makes a prima facie showing of his right to relief; the actual proving of his case should be left to the full hearing on the merits (citations omitted)" (*Tucker v. Toia, supra*, 54 AD2d at 326). Plaintiff has set forth facts supporting her claims. Accordingly, upon the record presented and in the exercise of its discretion, the court concludes that the plaintiff has demonstrated a reasonable likelihood of success on the merits.

With regard to the second prong of the test, the plaintiff has demonstrated that she will suffer an irreparable injury if the preliminary injunction is not granted. The plaintiff's allegations that she is subject to the loss of her property, constitutes an immediate injury which cannot be adequately compensated by monetary damages, and qualifies as an irreparable injury supporting an award of injunctive relief (*see, Jiggets v. Perales*, 202 AD2d 341 [1st Dept 1994]; *Housing Works, Inc. v. City of New York*, 255 AD2d 209 [1st Dept 1998]).

With regard to the third prong of the test, the plaintiff has demonstrated that equity is balanced in her favor. The court, having weighed the drastic nature of the relief sought against the plaintiff's allegations of loss of her property and eviction, finds that the plaintiff demonstrated the existence of the extraordinary circumstances which would tip the balance of equity in her favor (*Di Marzo v. Fast Trak Structures, Inc.*, 298 AD2d 909 [2002]; *Penfield v. New York*, 115 App Div 502 [1st Dept 1906]).

Moreover, upon review of the parties' factual averments, the court concludes that the equities balance in favor of maintaining the status quo pending resolution of the underlying dispute (*Merscorp, Inc. v. Romaine, supra*; *Alside Div. of Associated Materials Inc. v. Leclair*, 295 AD2d 873, 875 [3d Dept 2002]; and

State v. City of New York, 275 AD2d 740, 713 NYS2d 360 [2d Dept 2000]). That is, the harm to be suffered by plaintiff by the loss of her property and eviction outweighs the harm to defendants resulting from the granting of the requested injunctive relief.

Finally, CPLR 6312(b) directs the court to fix the undertaking in an amount that will compensate the defendants for damages incurred "by reason of the injunction", in the event it is determined that the plaintiff was not entitled to the injunction (see, *Margolies v. Encounter, Inc.*, 42 NY2d 475, [1977]; and *Schwartz v. Gruber*, 261 AD2d 526 [2d Dept 1999]). The fixing of the amount of an undertaking is a matter which rests within the sound discretion of the court (*Clover Street Associates v. Nilsson*, 244 AD2d 312, 313 [2d Dept 1997]). Upon a review of the papers submitted on the motion by the parties, the court is unable to determine the amount of undertaking that will be reasonable and adequate under the circumstances presented. Accordingly, the court's determination on this issue is reserved pending compliance with the directives set forth hereinafter.

Accordingly, it is,

ORDERED, that the plaintiff's motion for a preliminary injunction is granted; and it is further

ORDERED, that the plaintiff shall post a bond in an amount to be determined upon the serving and filing of a motion by plaintiff to fix the bond amount pursuant to CPLR 6312(b) within fifteen (15) days of entry of this decision. Defendants may submit their position on the amount of the bond in the form of opposition or a cross motion. Alternatively, the parties may stipulate to the waiver of a bond or as to the amount and nature of the bond. If such undertaking is not posted or if such motion to fix the bond amount is not filed within fifteen (15) days of entry of this decision, this motion is denied. Such undertaking shall be in the form of surety, deposited with the Queens County Clerk or in a joint interest bearing escrow account.

That branch of plaintiff's motion staying the Holdover Proceeding entitled *Jenny Lu v. Jing Chen and John & Jane Doe*, under Index No. 084229/10 in the Civil Court of the City of New York County of Queens Housing Part, pending the hearing and determination of this action is hereby granted on the condition that plaintiff is in compliance with this court's hereinbefore order concerning posting a bond, if any. The matter entitled *Jenny Lu v. Jing Chen*, Index No. 084229/10 in the Civil Court of the City of New York County of Queens Housing Part, is hereby

stayed.

This constitutes the decision and order of the court.

A courtesy copy of this order is being mailed to counsel for the respective parties.

Dated: April 13, 2012

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Howard G. Lane, J.S.C.