

Crawford v Dublin

2012 NY Slip Op 33132(U)

November 13, 2012

Sup Ct, Queens County

Docket Number: 12916/12

Judge: Augustus C. Agate

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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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CARMEL CRAWFORD,

Index No.: 12916/12

Plaintiff,

Motion Dated:
October 2, 2012

-against-

Cal. No.: 4

ESTHER DUBLIN,

M# 1

Defendant.

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In this action to impose a constructive trust and for other related relief, plaintiff moves, by Order to Show Cause, to stay the Landlord-Tenant proceeding in Civil Court, Queens County.

This is an action by the plaintiff to impose a constructive trust upon real property located at 136-33 220th Place in Laurelton, New York. Defendant became the title owner of the subject premises on June 23, 2005. Plaintiff alleges that she is the equitable owner of the premises. Plaintiff asserts that she and defendant, who were good friends, orally agreed that defendant would supply plaintiff her credit and become the title owner of the premises since plaintiff did not have a green card and could not obtain a mortgage. Plaintiff contends that she and defendant agreed that as soon as she got a green card, she would apply for a mortgage and either refinance or pay off the mortgage that defendant signed, and defendant would transfer title to the plaintiff.

Plaintiff states that she has lived in the premises since the closing and paid all costs and expenses relating to the property. Plaintiff also avers that although her son obtained his green card on November 4, 2006, she and her son were unable to refinance the property because the deed and mortgage for the subject property were not recorded until July 6, 2007. Plaintiff further contends that defendant demanded cash from the plaintiff to pay the mortgage, but plaintiff refused and paid the mortgage herself. Thereafter, plaintiff states that defendant advised the bank not to accept payments from plaintiff since she was not the owner of the property. As a result, the bank refused to accept further payments from plaintiff, and the property went into foreclosure.

Defendant contends that plaintiff occupies the premises as a licensee. She states that plaintiff has never paid any rent for the premises, and plaintiff never entered into a rental agreement with defendant for the premises.

Defendant commenced a holdover proceeding against the plaintiff in the Civil Court, Queens County, seeking to evict the plaintiff and her family from the subject premises. Plaintiff brought an Order to Show Cause to stay the Civil Court proceeding. This court signed the Order to Show Cause and granted a Temporary Restraining Order staying the Civil Court proceeding.

The decision to grant a preliminary injunction is a matter ordinarily committed to sound discretion of the court hearing the motion. (Dixon v Malouf, 61 AD3d 630, 630 [2009]; Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc., 50 AD3d 1072, 1073 [2008]; Nelson, L.P. v Jannace, 248 AD2d 448, 448-449 [1998].) In order to demonstrate entitlement to a preliminary injunction, the movant must establish (1) a probability of success on the merits, (2) the danger of irreparable injury in the absence of injunctive relief, and (3) a balancing of the equities in favor of the movant. (Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 [1990]; Doe v Axelrod, 73 NY2d 748, 750 [1988]; Matter of Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co. Ltd., 53 AD3d 612, 613 [2008].)

A constructive trust may be imposed when property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest. (Sharp v Kosmalski, 40 NY2d 119, 121 [1976]; Tampa v Delacruz, 77 AD3d 910, 912 [2010].) The elements of a constructive trust are (i) a confidential or fiduciary relationship; (ii) a promise; (iii) a transfer in reliance thereon; and (iv) unjust enrichment. (Klamar v Marsans, 79 AD3d 973, 973-974 [2010]; Marini v Lombardo, 79 AD3d 932, 933 [2010]; O'Brien v Dalessandro, 43 AD3d 1123, 1124 [2007].)

In the case at bar, plaintiff has demonstrated the

likelihood of success on the merits on her cause of action for the imposition of a constructive trust. Plaintiff presented evidence that a confidential relationship existed between herself and the defendant and that she paid the mortgage and closing expenses herein. Plaintiff annexes documentary evidence of these payments. She also avers that she made these payments in reliance on defendant's promise to transfer the subject premises to plaintiff as soon as she was able to refinance the mortgage. Plaintiff also submits evidence that defendant would be unjustly enriched absent the imposition of a constructive trust.

Plaintiff has also shown that she will suffer irreparable harm in the absence of an injunction. Indeed, the failure to enjoin plaintiff's eviction from the premises may render any later judgment in her favor ineffectual. (see Ruiz v Meloney, 26 AD3d 485, 486 [2006].) Under these circumstances, the equities lie in favor of preserving the status quo. (see S.P.Q.R. Co., Inc. v United Rockland Stairs, Inc., 57 AD3d 642, 642 [2008]; McNeil v Mohammed, 32 AD3d 829, 830 [2006].)

Accordingly, this Order to Show Cause by the plaintiff is granted to the extent that the Landlord - Tenant proceeding pending in the Civil Court, Queens County entitled "Esther Dublin v Carmel Crawford, Jmeil Crawford, Rohan Crawford", under Index No. 54860/12 is stayed during the pendency of this action.

The foregoing is conditioned upon plaintiff timely paying

use and occupancy in the amount of the current mortgage to defendant on the 1st of every month beginning December 2012 and the filing of an undertaking in accordance with CPLR 6312.

Upon settlement of the order, the parties may submit proof as to the monthly mortgage and recommendations as to the undertaking, which sums shall be fixed in the order to be entered hereon.

Settle Order.

Dated: November 13, 2012

AUGUSTUS C. AGATE, J.S.C.