

Baldeo v Rambaran

2012 NY Slip Op 33624(U)

January 24, 2012

Supreme Court, Queens County

Docket Number: 19690/08

Judge: Robert J. McDonald

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

MEMORANDUM

SUPREME COURT - STATE OF NEW YORK
COUNTY OF QUEENS - **IAS PART 34**

- - - - - x

PHILIP BALDEO,

BY: McDONALD, J.

Plaintiff,

Index No.: 19690/08

- against -

DECISION AFTER
NON-JURY TRIAL

HEMANT RAMBARAN a/k/a HEMCHAND RAMBARRAN
a/k/a HEMANT RAMBARRAN, SEEMA RAMBARAN and
SUSHMA RAMBARAN,

Defendants.

- - - - - x

At the conclusion of all the evidence and exhibits presented at this non-jury trial, the Court finds as follows:

Pursuant to the prior order of Justice Martin Shulman, the answer of the defendant Seema Rambaran was stricken for failure to appear for trial and an Inquest was ordered at the time of trial.

The Court will not go over every fact or piece of evidence brought out at the trial but will instead rely on the record and discuss each cause of action separately.

A brief statement of facts, however, will be useful to understand the underlying action. After numerous business transactions between the plaintiff and the defendant, Hemant Rambaran, on July 13, 2006 after arm's length extensive negotiations, the defendant Hemant Rambaran executed a Promissory Note in favor of the plaintiff Philip Baldeo in the amount of

\$913,500.00. The Promissory Note required defendant Hemant Rambaran to pay the Note in full on or before October 4, 2006. The defendant Hemant Rambaran failed to pay any amount on the Note by October 4, 2006 and was therefore in default of the Note as of October 5, 2006. At the time of the default, defendant Rambaran was the owner of the property known as 85 Blake Avenue, Brooklyn, New York, which property was free and clear of any mortgage liens or encumbrances. On March 30, 2007, while still in default on the Note, the defendant Hemant Rambaran transferred title to the property to his two daughters, defendants Seema and Sushma Rambaran, for no consideration as evidenced by all the closing documents and a zero consideration affidavit. On the same day as the transfer, the defendants Seema and Sushma Rambaran, obtained a mortgage on the property in the sum of \$423,750.00. It appears from the record that neither Seema nor Sushma received any of this money but instead the money was used to pay off the debts of Hemant Rambaran.

As to the first cause of action under Debtor and Creditor Law § 273, the Court finds that the plaintiff has proven by a fair preponderance of the credible evidence that the defendant, Hemant Rambaran, was insolvent or rendered insolvent on March 30, 2007 at the time of the transfer of the property to his two daughters, Seema and Sushma Rambaran, and that the conveyance was made without fair consideration.

As to the second cause of action under Debtor and Creditor Law § 276, the Court finds that the plaintiff has proven by a fair preponderance of the credible evidence that on March 30, 2007, the defendant with actual intent to hinder, delay or defraud present or future creditors conveyed the property known as 85 Blake Avenue, Brooklyn, New York to his two daughters without consideration.

As to the third cause of action under Debtor and Creditor Law § 276-a, the Court having already determined that the plaintiff has proven in the second cause of action that the defendant, with actual intent to hinder, delay or defraud either present or future creditors, made a conveyance of property, the Court finds that the plaintiff is entitled to reasonable attorneys fees against Hemant Rambaran only. The plaintiff's attorney shall submit with his settled judgment an affidavit and accounting of his fees on notice to the defendant.

The Court finds that the plaintiff failed to prove by a fair preponderance of the credible evidence that the defendants Seema and Sushma Rambaran had actual or constructive knowledge of the purpose of the transfer of property, and therefore is not entitled to a money judgment against those defendants.

The Court finds that the defendants have failed to sustain their burden of proof as to any of the six affirmative defenses contained in their Verified Answer. The Court notes that on January 23, 2012, the Court received a letter from the defendant

Hemant Rambaran dated January 17, 2012, requesting an opportunity to submit a post-trial brief on the issue of Usury, one of the defendants' affirmative defenses. Since the letter was written after the trial and received six days later with no opportunity for the plaintiff to respond, the Court will not grant the application. In addition, the Court finds that insufficient, if any, evidence was adduced at trial on the issues of Usury.

Accordingly, the plaintiff is granted a judgment setting aside the March 30, 2007 conveyance of property known as 85 Blake Avenue, Brooklyn, New York to his two daughters, Seema Rambaran and Sushma Rambaran and is also granted reasonable attorneys fees as to Hemant Rambaran.

Settle judgment on notice.

Dated: Long Island City, N.Y.
January 24, 2012

ROBERT J. McDONALD
J.S.C.