

Campanella v Campanella
2013 NY Slip Op 33216(U)
December 17, 2013
Sup Ct, NY County
Docket Number: 159217/2013
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: RAKOWER
JusticePART 15CAMPANELLA, ROBYN

INDEX NO.

159217/13

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

- v -
EDWARD CAMPANELLA, ETAL.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

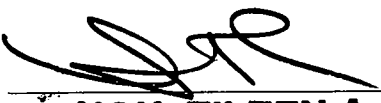
Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1, 23, 4Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**Dated: 12/17/13
HON. EILEEN A. RAKOWERCheck one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST ☐ REFERENCEMOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

*Justice*ROBYN CAMPANELLA,

Plaintiff,

INDEX NO. 159217/2013

- v -

MOTION DATE _____

EDWARD CAMPANELLA,
MANHATTAN BUSINESS INTERIORS, INC.,
OSS REAL ESTATE HOLDINGS, LLC, and
PINNACLE CONTRACTORS OF NY

Defendants.

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1, 2

Answer — Affidavits — Exhibits _____

3, 4

Replying Affidavits _____

Cross-Motion: Yes _____ No X

This is an action for a permanent injunction. Plaintiff, Robyn Campanella ("Plaintiff"), seeks to enjoin the "sale, transfer, disposition, assignment, delegations, devise, hypothecation, or mortgaging" of ten condominium units located in The Sheffield building, at 322 West 57th Street, New York, New York ("Units" or "The Units"). Plaintiff's complaint alleges that Defendant, OSS Real Estate Holdings, LLC ("OSS") owns the Units, and that the Units are marital assets subject to a divorce proceeding between Plaintiff and her husband, Defendant, Edward Campanella, that is currently pending in the State of Florida. Plaintiff's husband allegedly supervises and controls business entity defendant, OSS. In connection with the instant claim for injunctive relief, Plaintiff filed notices of pendency against each of the ten condominium units in question.

Defendants Edward Campanella and OSS (collectively, “Defendants”) now move, by way of Order to Show Cause, for an Order, pursuant to CPLR §§ 6501 and 6514(b), vacating and cancelling the notices of pendency filed against The Units, and for an Order dismissing Plaintiff’s complaint based upon the pendency of a divorce proceeding between Plaintiff and Defendant Campanella, pursuant to § 3211(a)(4).

Plaintiff opposes Defendants’ motion and submits the affidavit of Robyn Campanella in opposition.

CPLR § 6501 provides, in relevant part, “[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.” A notice of pendency, or *lis pendens*, is an “extraordinary privilege” that requires “strict compliance with the statutory procedural requirements,” as well as “a narrow interpretation in interpreting whether an action is one affecting the ‘the title to, or the possession, use or enjoyment of, real property.’” (*5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313, 320, 321 [1984]).

In determining whether an action falls within the scope of § 6501, “a court is not to investigate the underlying transaction . . . the court’s analysis is to be limited to the pleading’s face.” (*5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313, 324 [1984]). “The basic test is whether the pleading on its face directly affects the necessary interests in the land and [a] notice of pendency is improper if the relationship of an action to realty is only indirect.” *Ostad v. Nehmadi*, 2011 N.Y. Misc. LEXIS 1535, *7-*8 (Sup. Ct. N.Y. Co. 2011).

“An action seeking to impose a constructive trust on real property qualifies as one in which the filing of a notice of pendency is allowed.” (*Natasi v. Natasi*, 26 A.D.3d 32, 36; 805 N.Y.S.2d 585 [2d Dep’t 2005]). By contrast, a notice of pendency is not proper in an action concerning personal property that represents a beneficial ownership of real property. (*5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313, 324 [1984]). Similarly, “[a] claim that real property is a marital asset subject to distribution does not, by itself, establish grounds for a *lis pendens*.” (*Sehgal v. Sehgal*, 220 A.D.2d 201, 631 N.Y.S.2d 360, 361 [1st Dep’t 1995]).

Defendants argue that Plaintiff's complaint does not allege a cause of action that falls within the scope of CPLR § 6501 because Plaintiff's complaint does not assert a direct interest in the Units. Rather, Defendants argue that any interest Plaintiff may have, with respect to the Units, amounts to shares in OSS, the corporation that owns the Units. As a result, Defendants contend, Plaintiff's complaint claims an interest in personalty, the corporate shares, which does not constitute an interest in real property for purposes of § 6501. Defendants also argue that a notice of pendency is not warranted based on Plaintiff's claim that the Units are marital assets subject to equitable distribution.

Plaintiff, in turn, argues that the notice of pendency is properly filed because the complaint seeks an injunction that would affect real property, and because the allegations contained in the complaint plead a cause of action for constructive trust that would support the notices of pendency. Specifically, Plaintiff claims that the complaint adequately alleges the elements of constructive trust: 1) a confidential or fiduciary relationship; 2) a promise; 3) a transfer in reliance on the promise; and 4) unjust enrichment, even though this cause of action is not explicitly pled.

Here, Plaintiff's complaint does not allege a direct ownership interest in the Units. Rather, Plaintiff's complaint alleges that OSS owns the Units, and claims that the Units are "material assets in the parties' marital estate subject to the parties' dissolution action in the State of Florida." To the extent that Plaintiff's complaint asserts an interest in OSS, therefore, the complaint claims an interest in personalty, corporate shares, and does not warrant a notice of pendency. (*5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313 [1984]). Similarly, to the extent that Plaintiff's complaint asserts an interest in the marital estate subject to equitable distribution, the complaint does not plead a cause of action that directly affects title to or possession of real property, because it is unclear what, if any, properties the Florida court will order Defendants to convey to Plaintiff. (*Jolley v. Lando*, 99 A.D.3d 1256; 951 N.Y.S.2d 455 [4th Dep't 2012]). Accordingly, Plaintiff's action to protect her purported share of the marital estate does not authorize a notice of pendency against the underlying real property.

Plaintiff's complaint also fails to state a claim for constructive trust, in that the complaint does not allege a promise, express or implied, regarding the Units,

or any transfer in reliance thereon. Nor does the complaint allege that OSS wrongfully acquired title to the Units, or that Defendants fraudulently transferred any of the Units, depriving Plaintiff of a pre-existing interest in the subject real property. Accordingly, even accepting all allegations in the complaint as true, Plaintiff's complaint does not support the notices of pendency.

As for Defendant Campanella's motion to dismiss based on the pendency of a prior divorce proceeding between Plaintiff and Defendant Campanella, CPLR § 3211 provides, in relevant part:

- (a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
 - (4) there is another action pending between the same parties for the same cause of action in a court of any state of the United states; the court need not dismiss upon this ground but may make such order as justice requires

"The purpose of . . . [CPLR 3211 (a) (4)] is to prevent a party from being harassed or burdened by having to defend a multiplicity of suits. In determining whether two causes of action are the same, we consider '(1) [whether] both suits arise out of the same actionable wrong or series of wrongs[] and (2) as a practical matter, [whether] there [is] any good reason for two actions rather than one being brought in seeking the remedy.'" *Rinzler v Rinzler*, 97 A.D.3d 215, 217 (3d Dep't 2012) (internal citations omitted).

Here, Plaintiff's complaint seeks to enjoin certain activity because it "would have a materially adverse effect on Plaintiff's equitable distribution rights in her pending Florida dissolution action." As a practical matter, and in light of the nature of the relief sought, Plaintiff's complaint should be dismissed based on the pendency of the aforementioned Florida dissolution action.

Whereby, it is

ORDERED that the Clerk of the Court for New York County is hereby

directed to take the appropriate action to cancel and vacate the Notices of Pendency filed in its office on October 9, 2013, by Robyn Campanella, as against Edward Campanella, Manhattan Business Interiors, Inc., OSS Real Estate Holdings LLC, and Pinnacle Contractors of NY, pertaining to the real property located at 322 West 57th Street, New York, New York, located at block No. 1047; Lots 2308, 2312, 2320, 2375, 2384, 2458, 2459, 24500, and 2501.

ORDERED that Defendants' motion to dismiss is granted in its entirety.

This constitutes the decision of the court. All other relief requested is denied.

Dated: December 17, 2013

A handwritten signature in black ink, appearing to be 'ER', is written over a horizontal line.

EILEEN A. RAKOWER, J.S.C.