

**New Hope Missionary Baptist Church, Inc. v 466
LaFayette Ltd.**

2013 NY Slip Op 34040(U)

October 4, 2013

Supreme Court, Kings County

Docket Number: 34774/08

Judge: Bernadette Bayne

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At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, Brooklyn, New York, on the 4th day of October 2013.

P R E S E N T:

HON. BERNADETTE BAYNE

Justice.

THE NEW HOPE MISSIONARY BAPTIST CHURCH, INC., a Religious Corporation, and GLORIOUS TEMPLE CHURCH OF GOD IN CHRIST, SAYEL E. TAYAR,

Plaintiffs,

- against -

466 LAFAYETTE LTD., DEAN HOLDING CORP., JMARC PROPERTIES, INC., 66 GEORGE STREET REALTY CORP., NESHAMA, INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., as Nominee for BNC MORTGAGE, INC., U.S. BANK NATIONAL ASSOCIATION, OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK, DAISEY MASON, CHARLES LAMBO, MICHAEL GUERRA, MONICA GUERRA, MARJORIE BEECHER, RAJ MOHAN, SUJATHA MOHAN, ANGEL RODRIGUEZ, THE NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, THE NEW YORK CITY PARKING VIOLATIONS BUREAU, THE NEW YORK CITY TRANSIT AUTHORITY, TRANSIT ADJUDICATION BUREAU, THE NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, CRIMINAL COURT OF THE CITY OF NEW YORK, KINGS SUPREME COURT, POB 5350 TCD-CSE, RAB PERFORMANCE RECOVERIES LLC, AND USA/IRS, and "JOHN DOE #1" through "JANE DOE #10", the last

DECISION AND ORDER

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10 names being fictitious and unknown to the Plaintiff, the persons or parties intended being the occupants, tenants, persons or entities, if any, having or claiming an interest in or lien upon the mortgaged premises described in the verified complaint,

Defendants.

ANGEL RODRIGUEZ,

Third-Party Plaintiff,

-against-

Third-Party Index No.
76072/09

VINCENT LONGOBARDI, JOHN D'EMIC, and
EDWARD (EDDIE) DORAN,

Third-Party Defendants.

<u>The following papers numbered 1 to 3 read on this motion:</u>	<u>Papers Numbered</u>
Notice of Motion/ Affidavits (Affirmations) Annexed _____	<u>1</u>
Affirmations in Opposition _____	<u>2</u>
Affirmations in Reply _____	<u>3</u>

In this action involving ownership rights and title to real property, defendant/third-party plaintiff ANGEL RODRIGUEZ (hereinafter referred to as defendant RODRIGUEZ) moves this Court for an Order, pursuant to CPLR §3212, granting him summary judgement and “dismissing the complaint of Plaintiff GLORIOUS TEMPLE CHURCH OF GOD IN CHRIST” (hereinafter referred to as plaintiff GLORIOUS) in its entirety. The property in question is located at 470 Lafayette Avenue in Brooklyn, New York, and is designated as Block 1950, Lot 18.

Defendant RODRIGUEZ claims that he “[h]olds record title to the property located at

470 Lafayette which he purchased for \$400,000 on August 21, 2008 in an arm's length transaction, taking a \$200,000 mortgage to finance the purchase." Defendant RODRIGUEZ goes on to state that "[t]he property consists of a 25' x 100' foot lot improved by a 2-story commercial building. Since the time I purchased, Glorious Temple has occupied the entire building, and I have received absolutely no rental income from the property. I have attempted to inspect the property on several occasions but have been denied access by Glorious Temple."

Defendant RODRIGUEZ further claims that after he purchased the property, he tried to obtain possession of the premises from plaintiff GLORIOUS and served a thirty-day notice of his intent to obtain possession in November of 2008. Soon thereafter, plaintiff GLORIOUS commenced the within action against defendant RODRIGUEZ. As a result of the commencement of the aforementioned action, Justice Arthur Schack, the Judge originally assigned to the action, issued a temporary restraining Order which defendant RODRIGUEZ claims has been violated by plaintiff GLORIOUS in that he has been denied access and/or an opportunity to inspect the premises. The aforementioned Order specifically directed that, during the pendency of this action, defendant RODRIGUEZ was forbidden from proceeding with his landlord/tenant proceeding while permitting plaintiff GLORIOUS to continue occupying the premises rent free, but plaintiff GLORIOUS was obligated "[t]o pay real estate taxes and water and sewer charges for the property and maintain the property". Justice Schack's Order further directed that plaintiff GLORIOUS "[s]hall allow, upon adequate notice, Angel Rodriguez or his representative to inspect the premises at 470 Lafayette Avenue". Defendant RODRIGUEZ states that "[w]ithout any income from the property whatsoever, I was not able to pay he mortgage, and a foreclosure action as been commenced and was consolidated with this case."

Defendant RODRIGUEZ argues that he is entitled to possession of the premises due to the fact that plaintiff NEW HOPE MISSIONARY BAPTIST CHURCH, INC. (hereinafter referred to as plaintiff NEW HOPE), which had also claimed superior title to the property in question, “[f]ailed to properly prosecute its claim”, and as a result, “its claim has been dismissed.” Finally, defendant RODRIGUEZ contends that “[I] can see no logical reason why Glorious Temple, which has no claim to title at all, should be permitted to continue with its claim and also remain in the property under these circumstances”, and that “[a]s a matter of basic fairness, Glorious Temple’s claims should be dismissed and I should be allowed to occupy the property as any property owner.”

Summary judgment standard

The proponent of summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. See Alvarez v Prospect Hospital, 68 NY2d 320, 324 (1986); Zuckerman v City of New York, 49 NY2d 557, 562 (1980); Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 (1957). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. Matter of Redemption Church of Christ v Williams, 84 AD2d 648, 649 (3d Dept 1981); Greenburg v Manlon Realty, 43 AD2d 968, 969 (2nd Dept., 1974); Winegrad v New York University Medical Center, 64 NY2d 851 (1985).

CPLR §3212 (b) requires that for a court to grant summary judgment the court must determine if the movant’s papers justify holding as a matter of law, “that the cause of action or defense has no merit.” The evidence submitted in support of the movant must be viewed in the

light most favorable to the non-movant. Marine Midland Bank, N.A. v Dino & Artic's Automatic Transmission Co., 168 AD2d 610 (2nd Dept., 1990). Summary judgment shall be granted only where there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law. Friends of Animals, Inc., v Associated Fur Mfrs., 46 NY2d 1065, (1979).

Discussion

After hearing the oral arguments and reviewing the papers submitted by the parties, the Court finds that plaintiff GLORIOUS neither has standing to maintain the within action nor does it have a valid claim to the property in question. Despite the fact that plaintiff GLORIOUS has occupied a portion of the premises in question for a considerable period of time, this fact, in and of itself, does not confer title upon plaintiff GLORIOUS.

Although proof of tenancy might confer standing upon plaintiff GLORIOUS, absolutely no proof has been offered that would establish that a landlord-tenant relationship ever existed between plaintiff GLORIOUS and plaintiff NEW HOPE, who was the owner when plaintiff GLORIOUS started to utilize a portion of the premises. It is well settled that a tenant is one who has, by express or implied consent, been afforded the exclusive use and occupation of another's space or property with the duration and terms of this occupancy usually fixed by an instrument called a lease. *See, Hosford v. Ballard*, 39 N.Y. 147, (Ct. Of Appeals, 1868); Resolution Trust Corp. v. Diamond, 18 F.3d 111 (U.S. Ct. Of Appeals, 2nd Cir., 1994).

In addition to exclusive use and occupation of a specified portion of property, two other elements that are pivotal to the creation of a lease or tenancy are the term, or duration, and the rent, or consideration. Resolution Trust Corp. v. Diamond, *supra*; Fifty States Management Corp.

v. Pioneer Auto Parks, Inc., 46 N.Y.2d 573, 389 N.E.2d 113, 415 N.Y.S.2d 800, (Ct. Of Appeals, 1979); Bernstein v. 1995 Associates, 185 A.D.2d 160, 586 N.Y.S.2d 115 (1st Dept., 1992); Cyber Land, Inc. v. Chon Property Corp., 36 A.D.3d 748, 830 N.Y.S.2d 198 (2nd Dept., 2007).

No written lease agreement has been offered by plaintiff GLORIOUS regarding its use and/or occupancy of a portion of the premises in question, and even if it could prove that, by either express or implied consent, it had been afforded the exclusive use and/or occupation of the space in question, there is no proof of either the term of the lease or of the consideration.

Moreover, any claim by plaintiff GLORIOUS that the agreement with plaintiff NEW HOPE for the use and/or occupancy of the space was oral in nature is undermined by the Statute of Frauds and General Obligations Law §5-703, which states that an oral agreement to transfer an interest in real property is void, and that conveyances and contracts concerning real property, other than a lease for a term not exceeding one year, are required to be in writing.

As plaintiff GLORIOUS is not a tenant under the law, at best it can be viewed as either a squatter or a licensee. A squatter has been defined as one who "settles" on the land of another without legal authority. Williams v. Alt, 226 N.Y. 283, 123 N.E. 499 (Ct. Of Appeals, 1919); Morillo v. City of New York, 178 A.D.2d 7, 582 N.Y.S.2d 387 (1st Dept., 1992); Paulino v. Wright, 210 A.D.2d 171, 620 N.Y.S.2d 363 (1st Dept., 1994); Lee v. New York City Dept. of Housing Preservation and Development, 212 A.D.2d 453, 622 N.Y.S.2d 944 (1st Dept., 1995).

A "license" is generally defined as a personal, revocable, and nonassignable privilege, conferred either orally or in writing, which permits a particular act, or series of acts, upon the property of another. It is a non-possessory right to use the property, or any part thereof, as specified by the parties' express or implied agreement. Senrow Concessions, Inc. v. Shelton

Properties, Inc., 10 N.Y.2d 320, 178 N.E.2d 726, 222 N.Y.S.2d 329 (Ct. Of Appeals, 1961). “A license, within the context of real property law, grants the licensee a revocable non-assignable privilege to do one or more acts upon the land of the licensor, without granting possession of any interest therein.” Ark Bryant Park Corp. v. Bryant Park Restoration Corp., 285 A.D.2d 143, 730 N.Y.S.2d 48 (1st Dept., 2001), *citing* Greenwood Lake & Port Jervis R.R. Co. v. New York & Greenwood Lake R.R. Co., 134 N.Y. 435, 440, 31 N.E. 874 (Ct. Of Appeals, 1892); Loren v. Marry, 195 A.D.2d 776, 600 N.Y.S.2d 369 (3rd Dept., 1993), *lv. dismissed* 82 N.Y.2d 800, 604 N.Y.S.2d 554, 624 N.E.2d 692, *lv. dismissed in part, denied in part* 83 N.Y.2d 824, 612 N.Y.S.2d 103, 634 N.E.2d 598.

In this case, the facts suggest that plaintiff GLORIOUS is more likely a licensee than a squatter, but this determination is, ultimately, irrelevant, as neither a squatter nor a licensee has standing to maintain a proceeding to recover possession of real property. *See*, RPAPL §713; RPAPL §721.

Plaintiff GLORIOUS also claims that it has an ownership interest in the subject property by virtue of its contention that it was the intention of plaintiff NEW HOPE to transfer title to the subject premises to plaintiff GLORIOUS. However, even if the Statute of Frauds and General Obligations Law §5-703 were not equally applicable to this claim and contention, which they are, and even if plaintiff GLORIOUS had produced some evidence to prove its contention that it either purchased the subject property or were given the subject property as a gift, which it hasn't, the Court would still be constrained to find that plaintiff GLORIOUS could not own the subject premises.

In New York State, it is well settled that unincorporated religious organizations, like

other unincorporated associations and societies, ordinarily cannot, since they have no legal existence unless recognized by statute, take or hold property in the organization name, either by way of gift or purchase, in the absence of statutory authorization. See, Baxter v. McDonnell, 155 N.Y. 83, 49 N.E. 667 (Ct. Of Appeals, 1898); Lougheed v. Dykeman's Baptist Church, 129 N.Y. 211, 29 N.E. 249 (Ct. Of Appeals, 1891); Chomkowitz v. Russian Greek Orthodox Nat. Ass'n, 219 A.D. 592, 220 N.Y.S. 260 (1st Dept., 1927); In re Clendenin's Estate, 9 N.Y.S.2d 875 (Sur. Ct., 1939); In re Kirby's Will, 39 Misc. 2d 190, 240 N.Y.S.2d 214 (Sur. Ct., 1963).

Despite its claims to the contrary in both its pleadings and its filings, this Court finds that plaintiff GLORIOUS is not a religious corporation. Plaintiff GLORIOUS has never offered any proof in support of its claim that it “[w]as and is a religious corporation, organized pursuant to the law of the State of New York, having its offices and place of worship located at 470 Lafayette Avenue, Brooklyn, New York”, and a search of New York State records, conducted by this Court, found no record of a religious corporation bearing the name GLORIOUS TEMPLE CHURCH OF GOD IN CHRIST. As such, plaintiff GLORIOUS can be viewed, at best, as an unincorporated religious organization.

As plaintiff GLORIOUS can neither establish that it has standing to maintain the within action nor can it establish that it has any ownership interest in the property located at 470 Lafayette Avenue in Brooklyn, New York, this Court is compelled to grant the motion of defendant RODRIGUEZ in its entirety and to declare that defendant RODRIGUEZ is the legitimate owner of the premises in question. The temporary restraining order issued by Justice Schack is, hereby, lifted, and plaintiff GLORIOUS is directed to vacate the premises within sixty (60) days of entry of this Order.

Conclusion

Accordingly, it is

ORDERED, that defendant RODRIGUEZ's motion for summary judgement and dismissal of plaintiff GLORIOUS' action, pursuant to CPLR §3212, is granted in its entirety.

This constitutes the Decision and Order of the Court.

E N T E R

Bernadette Bayne
HON. BERNADETTE BAYNE
J. S. C.

BERNADETTE BAYNE
Supreme Court Justice

[Signature]
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