

Maple v McCloud

2014 NY Slip Op 30480(U)

February 28, 2014

Sup Ct, New York County

Docket Number: 151099/2014

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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SHELLEY MAPLE,

Plaintiff,

Index No. 151099/2014

-against-

DECISION/ORDER

SCOTT MCCLOUD, SOPHIE MARIE FREDERIQUE
TOULOUSE MCCLOUD, 141 EAST THIRD OWNERS
CORP. and CENTURY MANAGEMENT SERVICES
INC.,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>1</u>
Exhibits.....	<u>4</u>

Plaintiff Shelley Maple ("Maple") has brought the present motion for removal of the Civil Court proceeding entitled *McCloud v. Maple*, Index 89989/2013, currently pending in Civil Court of the City of New York (the "Civil Proceeding") to this court and consolidating said proceeding with this action for all purposes. For the reasons stated below, plaintiff's motion is granted.

The relevant facts are as follows. Plaintiff and Defendant Scott McCloud ("McCloud") were involved in a relationship for approximately six years. During that time, starting in 2004,

the parties lived together in an apartment located at 141 East 3rd Street in Manhattan (the "Apartment"). The Apartment was originally owed by McCloud and his ex-wife defendant Sophie Marie Frederique Toulouse McCloud ("Toulouse"). However, according to plaintiff's affidavit and the annexed Wire Transfer Agreement, plaintiff made a payment of approximately \$100,000 in 2007 to pay off the Apartment's mortgage. Additionally, by letter dated August 22, 2008, McCloud wrote to the management company of the Apartment requesting a title deed transfer "to change the name on the title/deed to Scott McCloud & Shelley Maple, in other words to remove my ex-wife Sophie Toulouse from the stock certificate." It is undisputed that the title change never went through. Plaintiff has continued to reside in the apartment even after her relationship with McCloud ended approximately four years ago.

On or about December 2, 2013, McCloud initiated a holdover proceeding in housing court against plaintiff seeking to evict her from the Apartment. Thereafter, on or about February 6, 2014, plaintiff commenced the instant action seeking, among other things, a declaratory judgment declaring that she is fifty percent owner of the Apartment and directing that a stock certificate and proprietary lease be issued for the Apartment naming plaintiff as fifty percent owner of the Apartment.

The general rule is that consolidation is generally favored by the courts when there are common questions of law and fact unless the party which is opposing the motion can demonstrate that consolidation will prejudice a substantial right. *See Amtorg Trading Corp. v. Broadway & 56th Street Associates*, 191 A.D.2d 212 (1st Dept 1993). However, "there is 'a strong rule against staying a summary proceeding or removing it, such as for purposes of a consolidation or joint trial with some proceeding in the supreme court or some other superior

court (Siegel, NY Prac Section 577, at 909 [2d ed]).” *Scheff v. 230 East 73rd Owners Corp.*, 203 A.D.2d 151 (1st Dept 1994). The First Department “has consistently adhered to the rule stated by Professor Siegel (citation omitted). Only where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed.” *Id. See also 44-46 W. 65th Apt. Corp. v. Stavn*, 3 A.D.3d 440 (1st Dept 2004).

In the present case, plaintiff’s motion for removal and consolidation is granted as the Civil Court does not have the authority to grant the relief sought in this instance and common questions of law and fact exist between the Civil Proceeding and this action. In this action, plaintiff seeks a declaratory judgment and order compelling issuance of a stock certificate and related proprietary lease, which is beyond the power of the Civil Court to issue and can only be obtained in the Supreme Court. Additionally, it is clear that both proceedings center around the critical legal and factual issue of plaintiff’s ownership of the Apartment and her possessory rights therein. Indeed, a determination of plaintiff’s ownership rights in the Apartment is of dispositive import in both the Civil Proceeding and the subject action. Thus, plaintiff has made the necessary showing compelling removal and consolidation of the Civil Proceeding and defendants have failed to demonstrate any prejudice to a substantial right resulting therefrom.

Additionally, to the extent McCloud argues that this court does not have personal jurisdiction over him in this matter, he must make the appropriate motion and this court need not consider such argument at this time.

Additionally, to the extent McCloud seeks an order from this court compelling plaintiff to deposit into escrow monthly payments for use and occupancy and/or an order directing plaintiff to provide an undertaking or bond during the pendency of this action, he must again make the

appropriate motion seeking such relief and the court need not address such issues at this time.

Based on the foregoing, plaintiff's motion for removal and consolidation is granted.

Thus, it is hereby

ORDERED that the movant is directed to serve a certified copy of this order upon the Clerk of the Civil Court, who shall, upon such service and the payment of any fees, transfer to this court all of the papers heretofore filed in *McCloud v. Maple*, Index No. 89989/2013; and it is further

ORDERED that said Civil Court action shall be consolidated with this action under the index number of this action; and it is further

ORDERED that the caption of the consolidated action shall be the following:

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SHELLEY MAPLE,

Plaintiff,

-against-

SCOTT MC CLOUD, SOPHIE MARIE FREDERIQUE
TOULOUSE MC CLOUD, 141 EAST THIRD OWNERS
CORP. and CENTURY MANAGEMENT SERVICES
INC.,

Defendants.

-----X

and it is further

ORDERED that the papers heretofore filed in the said Civil Court action and in this action shall stand as the papers in the consolidated action; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the County Clerk (Room 141B) and the General Clerk's Office (Room 119), who shall mark their records to

reflect this consolidation. This constitutes the decision and order of the court.

Dated: 2/28/14

PK

J.S.C.

CYNTHIA S. KERN
J.S.C.