

Seerattan v Seerattan
2014 NY Slip Op 32206(U)
July 15, 2014
Sup Ct, Queens County
Docket Number: 702654/2012
Judge: Robert J. McDonald
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.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

----- x

ISERDAI SEERATTAN,

Index No.: 702654/2012

Plaintiff,

Motion Date: 05/15/14

- against -

Motion No.: 142

LAKERANEE SEERATTAN,

Motion Seq.: 3

Defendants.

----- x

FILED
3 JUL 23 2014
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 10 were read on the motion by defendant, LAKERANEE SEERATTAN, for an order pursuant to CPLR 3211(a)(1)(7) dismissing the plaintiff's complaint for failure to state a cause of action:

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Affidavits.....	1 - 4
Affirmation in Opposition.....	5 - 7
Reply Affirmation.....	8 - 10

This is an action commenced by plaintiff, Iserdai Seerattan, to impose a constructive trust upon the interest of defendant and directing defendant Lakeranee Seerattan, plaintiff's daughter, to transfer her share of the premises located at 103-12 116th Street Richmond Hill, Queens County, to the plaintiff on the grounds that the defendant was holding title in trust for the plaintiff.

The above action was commenced by the plaintiff in February 2013. Plaintiff alleges that in 1998 when the subject property was purchased, she and her two adult children entered into an oral agreement whereby plaintiff would provide the downpayment and make the mortgage payments but the title and the mortgage would be in the names of the children, defendant herein, and her son Tullaram Seerattan. Plaintiff alleges that it was orally agreed that the plaintiff was the beneficial owner and the children would

eventually deed the property back to the plaintiff. Plaintiff alleges that she repaid the entire mortgage balance. In March 2011, plaintiff's son, Tullaram, transferred his interest to the plaintiff and to Tullaram as joint tenants with right of survivorship. Plaintiff commenced the instant action because her daughter Lakeranee has refused to transfer her interest. Issue was joined by service of defendant's verified answer dated August 1, 2013. A preliminary conference was held on November 13, 2012 and a compliance conference was held on February 19, 2014. The plaintiff filed a note of issue on March 5, 2014.

Defendant now moves to dismiss the plaintiff's complaint based on documentary evidence, the statute of frauds, and failure to state a cause of action to impose a constructive trust. Counsel claims that when the property was originally purchased in 1998, title was taken in the name of the defendant and her brother who purchased the premises as tenants in common. Defendant claims that her mother, the plaintiff herein, was not identified on the deed until 13 years later when her brother Tullaram transferred $\frac{1}{2}$ of his 50% ownership interest in the premises to plaintiff, Iserdai Seerattan. Counsel moves to dismiss the plaintiff's cause of action for a constructive trust on the ground of the statute of frauds, GOL § 5-703(2), as there is no writing in existence which contains the alleged promise that the defendant would transfer her 50% interest in the property to her mother. Counsel also contends that the plaintiff cannot assert a cause of action for a constructive trust because the plaintiff did not transfer her interest in the property to the defendant in reliance on a promise.

In opposition, plaintiff contends that the gravamen of the complaint is that the defendant holds real property in a constructive trust for the benefit of the plaintiff. Counsel asserts that the elements of a cause of action to impose a constructive trust are (1) the existence of a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment (see Sharp v Kosmalski, 40 NY2d at 119 [1976]; Quadrozzi v Estate of Quadrozzi, 99 AD3d 688[2d Dept. 2012]; Rowe v Kingston, 94 AD3d at 853[2d Dept. 2012]; Poupis v Brown, 90 AD3d 881[2d Dept. 2011]). Counsel states that the complaint alleges that there was a fiduciary relationship (mother and daughter) between the parties; that the defendant promised to take title to one-half interest in the property as nominee holding the property in trust for the plaintiff; that the property was purchased and transferred to the defendant and her brother using the plaintiff's own monies for the downpayment, closing costs and payment of the mortgage. Lastly, counsel asserts that the complaint alleges that the defendant has been unjustly

enriched by refusing to transfer her share of the property to her mother pursuant to the agreement.

The plaintiff submits an affidavit in opposition to the motion stating that when the property was purchased she did not wish to place the property in her own name for a variety of reasons both financial and personal. She therefore suggested to her children that she would purchase the property and place the title in their names even though she would be the real owner of the premises. Plaintiff states that the children agreed to take title in their names and also agreed to transfer title back to their mother when the time was right. She states that she paid the mortgage so that at the present time there is no mortgage balance remaining on the property. In 2011, when she requested that her daughter transfer her interest back to her, her daughter refused and the plaintiff commenced the instant action to impose a constructive trust and for an order compelling the defendant to transfer her title to the plaintiff.

It is well settled that in considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211[a][7]), the pleadings must be liberally construed. The sole criterion is whether, from the complaint's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law (Leon v Martinez, 84 NY2d 83 [1994]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Rochdale Vil. v Zimmerman, 2 AD3d 827 [2d Dept. 2003]). The facts pleaded are to be presumed to be true and are to be accorded every favorable inference, although bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration (see Morone v Morone, 50 NY2d 481 [1980]; Gertler v Goodgold, 107 AD2d 481 [1st Dept. 1985], affirmed 66 NY2d 946 [1985]). The Court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (see EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11[2005]; Guggenheimer v Ginzburg, 43 NY2d 268 [1977]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]). When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (Guggenheimer v Ginzburg, supra at 275).

Here, this court finds that the complaint sufficiently sets forth a cause of action for a constructive trust. There is no dispute that the parties as mother and daughter are in a confidential familial relationship (see Rowe v Kingston, 94 AD3d 852 [2d Dept. 2012]). Further, the plaintiff has alleged a promise associated with her agreement to purchase the premises, to make

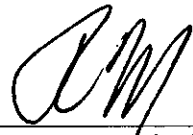
the downpayment and closing costs, to pay the mortgage all in return for the defendant holding title in her name and then transferring title back to the plaintiff when requested to do so. In addition, the plaintiff alleged a purchase of the premises based upon the promise of the children that the mother would be the actual owner of the property and they would hold title in name only. Plaintiff also contends that the defendant is being unjustly enriched by the failure to transfer the property to her.

Accordingly, viewing the factual allegations of the complaint as true, this Court finds that the allegations contained in the complaint are sufficient to state a cause of action to impose a constructive trust (see Plumitallo v Hudson Atl. Land Co., 74 AD3d 1038 [2d Dept. 2010]; Panish v Panish, 24 AD3d 642 [2d Dept. 2005]).

Further, the statute of frauds does not bar a court from imposing a constructive trust (see Panetta v Kelly, 17 AD3d 163 [1st Dept. 2005]). A party's partial performance of an alleged oral contract for conveyance of property will be deemed sufficient to take such contract out of the statute of frauds when the acts constituting partial performance are unequivocally referable to said contract (see Sivos v Eppich, 78 AD3d 1360 [3rd Dept. 2010]). The plaintiff alleges part performance of the oral agreement stating that she made the payments toward the purchase of the house and paid the mortgage as allegedly agreed upon in the oral agreement (see Pinkava v Yurkiw, 64 AD3d 690 [2d Dept. 2009]).

Therefore, for all of the above stated reasons, the defendant's motion to dismiss the complaint is denied.

Dated: July 15, 2014
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.