Bannister v Agard
2014 NY Slip Op 33500(U)
June 3, 2014
Supreme Court, Kings County
Docket Number: 11564/13
Judge: Leon Ruchelsman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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GARNER BANNISTER,

Plaintiff, Index No. 11564/13

- against -

PATRICIA AGARD, K&DZ CORP. and BUCKINGHAM DEVELOPMENT CORP.,

June 3, 2014

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The defendants K&DZ Corp., and Buckingham Development Corp., move pursuant to CPLR §2221 seeking to reargue a portion of a decision dated January 14, 2014. The plaintiff opposes the motion. Papers have been submitted by the parties and arguments have been held. After reviewing the arguments of all parties, this court now makes the following determination.

Background

As recorded in prior decisions this lawsuit concerns premises located at 18 Buckingham Road, Brooklyn, New York 11226. The property was originally owned by defendant Patricia Agard. On or about September 7, 2010 plaintiff entered into a Sale of Agreement to purchase the premises for a price of five hundred thousand dollars ($500,000). At a later date the defendants K&DZ & Buckingham purchased the premises from defendant Agard for five hundred and ninety thousand dollars ($590,000) and recorded a

deed as the owners of the premises. They began a holdover proceeding against Bannister and denied two requests to stay the proceeding finding that Bannister could not demonstrate a success on the merits. The plaintiff amended the complaint alleging specific fraud against K&DZ Corp. and Buckingham Development Corp. and filed a mechanic's lien and a notice of pendency. The court dismissed those causes of action but concluded the plaintiff was entitled to quantum meruit for any work performed from October 18, 2012 until December 12, 2012 the date Bannister acknowledged the defendants were the true owners of the property. The defendants have now moved seeking to reargue that portion of the decision. They seek either dismissal of the quantum meruit claims or a smaller window of time in which the plaintiff may pursue those claims.

Conclusions of Law

A motion to reargue which is not based upon new proof or evidence may be granted upon the showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision (Delcrete Corp. v. Kling, 67 AD2d 1099, 415 NYS2d 148 [4th Dept., 1979]). Thus, the party must demonstrate that the judge must have overlooked some point of law or fact and consequently made a decision in

error. Its purpose is designed to afford an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law. The motion cannot be made after the time for appealing the prior order has expired (Millson v. Arnot Reality Corp., 266 AD2d 918, 697 NYS2d 435 [4th Dept., 1999]).

Thus, where a party fails to demonstrate that the Court misapprehended any of the relevant facts or misapplied any controlling principle of law, a motion to reargue must be denied Matter of Mattie M. v. Administration for Children's Services, 48 AD3d 392, 851 NYS2d 236 [2d Dept., 2008], McNamara v. Rockland County Patrolmen's Benevolent Association, Inc., 302 AD2d 435, 754 NYS2d 900 [2d Dept., 2003]).

There is no merit to the argument that the plaintiff had a written contract with Agard which forecloses claims of quantum meruit. First, there is no evidence of a written contract at all. Even if an oral contract existed, the corporate defendants who were surely in privity with Agard cannot reasonably argue they did not benefit from Bannister's activities. The case cited Metro Electric Manufacturing Company v. Herbert Construction Company Inc., 183 AD2d 758, 583 NYS2d 498 [2d Dept., 1992] held that a party without any privity to one performing under a contract with another could not be expected to pay in quantum

meruit. As noted, the facts in this case whereby the corporate defendants were in privity with Agard render it distinguishable.

Further, the court held the window wherein the plaintiff could be entitled to quantum meruit ended on December 12, 2012 the day "the plaintiff unconditionally was aware Agard was the owner of the property" (see, prior decision). The corporate defendants now argue the date should be curtailed to November 15, 2012 when the corporate defendants served Bannister with a thirty day notice. However, that notice does not establish the plaintiff was aware the corporate defendants were now the owners of the property although it certainly raised that possibility. In any event, the notice did not foreclose the belief the plaintiff would be compensated for any work performed until actual removal from the premises. Therefore, the motion seeking to reargue the prior determination is denied.

The motion seeking summary judgement concerning unjust enrichment claims is denied at this time without prejudice. There are questions of fact concerning the contract plaintiff maintained with Agard, the reasonable expectations that contract afforded plaintiff and whether the corporate defendants' pursuit of the claims are proper. Further discovery will inform the parties and the court concerning these issues and at that time either party may make any appropriate motion.

At this juncture, as noted, the motion seeking summary judgement is denied.

So ordered.

ENTER:

DATED: June 3, 2014
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC