

Lefferts Oil Term., Inc. v Sano Coll. PT LLC
2014 NY Slip Op 33540(U)
December 19, 2014
Supreme Court, Queens County
Docket Number: 21511/13
Judge: Allan B. Weiss
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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 2

HON. ALLAN B. WEISS

LEFFERTS OIL TERMINAL, INC.,

Index No: 21511/13

Plaintiff,

Motion Date: 10/8/14

-against-

Motion Seq. No.: 2

SANO COLLEGE PT LLC d/b/a
Sano 32-08 college Point LLC,

Defendant.

SANO COLLEGE PT LLC d/b/a
Sano 32-08 college Point LLC,

Third-party Plaintiff,

-against-

PHIL VALENZA CONTRACTING, INC., FIVE
BORO READY MIS CORP., OIL RECOVERY
SOLUTIONS, INC., GOSHEN MART, INC.,
SPEED KOREA TOWING CORP., ANG
DELIVERY INC., JOHN'S EXPRESS OF NEW
YORK, INC., GOLDEN TOUGH TRANSPORTATION
OF NY, INC., S.J. TRADING CORP., JJ YOUN,
GOLDEN FOOD MARKET, INC., "XYZ CORPORATIONS
1-10" whose identities are currently
unknown to Plaintiff at this time.

Third-Party Defendants.

Third party defendant Five Boro Ready Mix Corp. has moved for a
preliminary injunction, inter alia, prohibiting defendant/third party plaintiff Sano

College Pt., LLC from entering premises leased to the former by plaintiff Lefferts Oil Terminal, Inc. Defendant /third party plaintiff Sano College Pt. LLC has cross moved for a preliminary injunction, inter alia, prohibiting plaintiff Lefferts Oil and third party defendant Five Boro from engaging in any construction without a permit on premises known as Block 4401, Lot 16.

Plaintiff Lefferts Oil Terminal, Inc. operates an oil terminal facility along the Flushing River in Queens County, New York which has, inter alia, docking facilities for oil barges, pipe lines to storage tanks, and loading racks for oil trucks. Plaintiff Lefferts purchased the oil terminal facility from Coastal Oil New York on April 1, 1999. Defendant Sano College Pt., LLC purchased adjacent property which included Block 4401, partial Lot 16 in 2002. There is a triangular part of Block 4401, Lot 16 approximately 6,146 square feet (the triangle). Despite defendant Sano's title to the triangle, plaintiff Lefferts has had exclusive possession of the area since 1999. When plaintiff Lefferts acquired its property in 1999, the triangle could not be used because it was approximately four feet below the grade of College Point Causeway and subject to flooding from rain water and tide water. Allegedly acting on the belief that its property included the triangle, Lefferts Oil made substantial improvements to its property, including the triangle.

Third party defendant Five Boro Ready Mix Corporation, a concrete business, received a lease from plaintiff Lefferts in April, 1999 for an area which included the triangle. Defendant Five Boro has operated its business for the last fifteen years from its leasehold.

However, a dispute has now arisen between plaintiff Lefferts Oil and defendant Sano over ownership of the triangle, and the former began this action on or about November 22, 2013 for a judgment, inter alia, declaring that it acquired ownership of the triangle by adverse possession. In response, Sano asserted counterclaims and started a third party action for the purpose of, inter alia, ejecting the occupants of the triangle.

Third party defendant Five Boro brought the instant application for a preliminary injunction after Sano allegedly “invaded the Five Boro Leased Premises with a huge excavator machine equipped with an arm-claw bucket *** and destroyed a concrete block retaining wall surrounding said Leased Premises ***.” Five Boro further alleges : “Shockingly, this occurred after Sano first destroyed the Five Boro concrete block retaining wall back in September of 2013, after which the police ordered Sano and its principal, Mr. Vincent Oppisdano, to leave the Five Boro Leased Premises and remove the Sano Excavator.” Sano allegedly repeated its behavior despite the police involvement on the prior occasion, and, on August 27, 2014, its equipment struck a 275 gallon above ground oil tank causing an oil spill. Lefferts had to hire the Miller Environmental Group to remediate the premises. Moreover, according to Five Boro, one of its employees had to “run for his life to avoid the swinging clawed metal bucket of its excavator,” and the machine allegedly damaged an underground Con Edison utility panel.

In cross moving for a preliminary injunction, Sano alleges that Five Boro rebuilt the concrete wall without a permit, dug two dry wells without a permit, and has used

the premises for improper purposes which has resulted in the City's issuance of violations to Sano. According to Sano, it began to destroy the concrete block wall only after the City issued a notice of violation and hearing on August 13, 2014 because the wall was being built without a necessary permit. Sano left machinery in the area to prevent the reconstruction of the wall, and yet Lefferts and/or Five Boro still attempted to rebuild the wall. On August 27, 2014, Sano made further attempts to destroy the wall and, in the course of doing so, its equipment allegedly struck illegally stored oil drums.

Five Boro's first order to show cause for a temporary restraining order and a preliminary injunction (Motion Sequence No. 2) was signed on August 21, 2014, but the assigned judge refused to issue a temporary restraining order. On August 28, 2014, this court signed a second order to show cause for a temporary restraining order and a preliminary injunction brought by Five Boro (Motion Sequence No. 4), which was based on new facts, and this court did grant Five Boro a temporary restraining order essentially prohibiting Sano from entering the area leased to Five Boro and directing Sano to remove its excavator from the area.

This court has recently rendered a decision and order (one paper) denying summary judgment to both sides.

The motion by third party defendant Five Boro is denied as moot, because it was superceded by Five Boro's second motion for essentially the same relief.

Turning to the cross motion by defendant/third party plaintiff Sano, a party

moving for a preliminary injunction must demonstrate (1) a likelihood of ultimate success on the merits, (2) irreparable injury if provisional relief is withheld, and (3) a balance of the equities in its favor. (*See, Aetna Insurance Co. v. Capasso*, 75 NY2d 860; *McNeil v. Mohammed*, 32 AD3d 829). Sano successfully carried this burden to the extent that it seeks to prohibit Lefferts and Five Boro from engaging in further construction on the disputed parcel. In regard to the first requirement, Sano established a likelihood of ultimate success on the merits by making a prima facie showing that it can prove its counterclaims and third party claims. (*See, McNeil v. Mohammed, supra; Trimboli v. Irwin*, 18 AD3d 866; *Four Times Square Associates, L.L.C. v. Cigna Investments, Inc.*, 306 AD2d 4.) Although there may be issues of fact in this case, they do not preclude a finding of the likelihood of ultimate success on the merits. (*See, Ruiz v. Meloney, supra.*) In regard to the second requirement, Sano demonstrated that equitable relief is a more efficient remedy than monetary damages. (*See, People by Abrams v. Anderson*, 137 AD2d 259; *Poling Transp. Corp. v. A & P Tanker Corp.*, 84 AD2d 796.) In regard to the third requirement, the imposition of a preliminary injunction is necessary to prevent the disturbance of the status quo. (*See, Masjid Usman, Inc. v. Beech 140, LLC*, 68 AD3d 942.)

Accordingly, the cross motion by Sano for preliminary injunction is granted to the extent that Lefferts Oil and Five Boro are prohibited from engaging in any further construction in the disputed area. The cross motion is otherwise denied. The parties may

submit affidavits concerning the appropriate amount of the undertaking at the time of the settlement of the order to be entered hereon.

Settle order.

Dated: December 19, 2014

J.S.C.