Rhoe v Reid
2014 NY Slip Op 33998(U)
July 11, 2014
Supreme Court, Nassau County
Docket Number: 601531/14
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

SHERYL RHOE,

Plaintiff,

- against -

PATRICIA REID and HOME SAVERS CONSULTING CORP.,

Defendants.

TRIAL/IAS PART 34
NASSAU COUNTY

Index No.: 601531/14
Motion Seq. No.: 01
Motion Date: 04/22/14

The following papers have been read on this motion:

	Papers Numbered
Order to Show Cause, Affirmation and Exhibits	1
Affirmation in Opposition, Affidavit and Exhibits	2
Reply Affirmation	3

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves for an order staying, during the pendency of the instant action, the eviction proceedings sought against her from the premises known as 120 East Greenwich Avenue, Roosevelt, New York. Defendant Patricia Reid opposes the motion.

Counsel for plaintiff submits that "[p]laintiff SHERYL RHOE's application for a stay of all eviction proceedings in the District Court must be granted as defendant PATRICIA REID (the plaintiff in the Landlord-Tenant proceedings sought to be stayed) converted plaintiff SHERYL RHOE's property through fraud and deception with her accomplice convicted criminal enterprise

[* 2]

known as HOME SAVERS CONSULTING CORP.... It should be noted the principals of HOME SAVERS have plead (*sic*) guilty and are doing time in a federal penitentiary."

Counsel for plaintiff contends that "[p]laintiff/petitioner SHERYL RHOE purchased 120 East Greenwich Avenue, Roosevelt, New York in 1987.... She paid her mortgage payments on time up and until 2005 when she ran into some financial difficulties.... In 2005, she saw a billboard advertising the services of HOME SAVERS CONSULTING CORP. which claimed to specialize in refinancing and loan modifications.... Thereafter, she went to Home Savers and met a woman by the name of Marjorie Reyes.... After a brief interview, Ms. Reyes informed the plaintiff/petitioner that HOME SAVERS would be able to get her approved for refinancing by allowing Ms. Reid or the company to become a co-deed holder, and co-signer on the refinanced mortgage.... Ms. Rhoe was advised that the fee for their services would be $10,000.00 which would be taken out from the home's equity at the time of closing for the refinancing.... Ms. Rhoe agreed. Home Savers informed Ms. Rhoe that it had found an investigator willing to co-sign the loan on the property. She was informed that the investor would have to be added to the deed, and that the new mortgage payments would come in the name of the primary person responsible for the mortgage.... On the date of the closing of the refinancing, Ms. Rhoe signed a deed whereby she transferred a 50% interest to Ms. Reid. She was told that Ms. Reid had not yet arrived and that she was free to leave. Recently, Ms. Rhoe found out that Home Savers filed a deed whereby Ms. Reid was the actual purchaser of the home although Ms. Rhoe had been paying the mortgage, and upkeep of the home. In 2013, defendant/respondent REID sought to evict Ms. RHOE from the premises and sell same. It was then that Ms. RHOE discovered that Ms. REID had been deeded the full property without Ms. RHOE's knowledge. It was then that Ms. RHOE

discovered that all the equity in her home had been taken by HOME SAVERS, and that Ms. REID was paid $10,000.00 for her participation.... Ms. REID has obtained an eviction order against Ms. RHOE.... On or about February 25, 2014, Ms. RHOE was informed by the Landlord-Tenant Judge that she had to make an application for a stay in Supreme Court because Ms. REID was the titled owner of the premises, and he was without the jurisdiction to stay the proceedings." *See* Plaintiff's Affirmation in Support Exhibits 1, 2 and 4.

In support of the facts set forth above, plaintiff's offers her own Affidavit. *See* Plaintiff's Affirmation in Support Exhibit 7.

Counsel for plaintiff argues that "[i]n the instant matter, Ms. Rhoe has been wronged by both Patricia Reid and Home Savers. Her home has been stolen from under her. Upon information and belief, almost $100,000.00 of Ms. Rhoe's equity, in the form of cash (check), was stolen at the closing as well as the loss of other equity which was retained in the property that was stolen and defrauded from her.... The evidence presented thus far, while limited, establishes that Ms. RHOE has been deceived, and her home and equity stolen by fraud. Ms. Rhoe has maintained the premises and paid the mortgage on behalf of Ms. REID as instructed."

In opposition to the motion, counsel for defendant Reid argues that "[t]he plaintiff's cause of action is barred by the statute of limitations. The actions complained of occurred in the year 2005, almost ten years ago. Additionally, the plaintiff appeared in District Court last year, consented to that Court's jurisdiction and agreed to vacate the premises by December 31, 2013. (Mention of the stipulation was conspicuously absent from the moving papers.) Finally, the plaintiff has no evidence that the defendant, Patricia Reid, conspired to defraud the plaintiff. Alternatively, if there were a fraud, it was perpetrated on the lender, and the plaintiff was not

only a necessary part of such fraud, but was the primary beneficiary of same. As shown by the deed annexed to the moving papers as Exhibit '4', the plaintiff Sheryl Rhoe, executed a Bargain and Sale Deed in favor of the defendant, Patricia Reid, on August 31, 2005, almost nine years ago. All of the acts complained of presumably occurred in that time frame. That far exceeds the statue of limitations for fraud or any intentional act." *See* Plaintiff's Affirmation in Support Exhibit 4.

In support of the opposition, counsel for defendant Reid submits "a copy of settlement reached between these two parties in District Court. The stipulation provides in relevant part: The parties consent 1) To jurisdiction of Court; 2) Parties consent to decree of possession; money judgment of $0.00, warrant stayed to 12/31/13; The plaintiff was represented by counsel in the District Court proceeding. Based upon the parties' stipulation, a judgment of possession and warrant of eviction were issued.... These orders, it is submitted, constitute res judicata." *See* Defendant Reid's Affirmation in Opposition Exhibits A and B.

Counsel for defendant Reid adds that "plaintiff, while never paying rent or use and occupancy to the defendant, has not made a mortgage payment either, as far back as 2007. Arrears that have accumulated at the premises at the rate of between ten to twenty thousand per year, now total $155,599.76. At the District Court proceeding, the plaintiff stated to the court that as many as ten persons were residing in the home, none of who were paying rent to the defendant. The plaintiff, is either turning a huge profit herself, or using the subject dwelling as a free boarding house for the homeless. (One of these persons filed his own Order to Show Cause, claiming to have resided there for twelve years stating that he rents from plaintiff 'as do others'.... He agreed to vacate by May 3, 2014.... He paid no rent or usage charges to defendant in all that time.) Therefore, Ms. Rhoe, while claiming to be the victim, has played 'the system' very

well. Using the premises as she saw fit. While living rent free for years and years." *See* Defendant Reid's Affirmation in Opposition Exhibits C, D and E.

Defendant Reid also offers her own Affidavit in Opposition to the motion.

In reply to the opposition, counsel for plaintiff argues "[d]efendant REID went to landlord tenant Court to recover 'possession' of the property she defrauded plaintiff RHOE out of and that a Landlord/Tenant Judge is without the jurisdictional power to overturn the illegal sale of a property."

Counsel for plaintiff further contends that "[i]n the instant case, as noted above, defendant REID by way of affidavit states that she is an innocent purchaser of RHOE's property. Defendant REID further concedes that RHOE did not or may not have known about the unlawful 100% transfer, and that RHOE only demanded the property back in 2013 when REID instituted the landlord/tenant action bearing index LT-268313 in Nassau District Court. The institution of the landlord/tenant action acts as 'refusal' date from which the Statute of Limitations begins to run in both conversion and/or fraud. In this conversion action, the much ballyhooed stipulation is of no legal consequence as it dealt with possession of the property, not ownership.... Furthermore, as Mr. Reno [counsel for defendant Reid] is well aware, the Landlord tenant (*sic*) Court could only resolve the issue of possession based upon the document (the deed) REID recorded with the Nassau County Clerk. The Landlord Tenant Judge is **without the jurisdictional power** to resolve issues of ownership of real property as that is within the **EXCLUSIVE jurisdictional power of the Supreme Court**. Assuming arguendo that the conversion statue ran, which it did not as the demand for the return of the property and the refusal of same only occurred in 2013, the Fraud Statute of Limitations has likewise not run.... In the instant case, defendant REID readily admits that RHOE may not have known about the

fraud.... RHOE has stated that she was unaware of the fraud until 2013, and had signed a deed transferring a 50% interest to REID not a deed transferring a 100% interest to REID. Plaintiff RHOE has provided undisputed testimony in the form of her affidavit that she did not discover REID was 100% owner until defendant REID sought to evict her from the premises until 2013. Thus, the earliest the Statute of Limitations could have run is 2015. Therefore, plaintiff's action is timely."

Counsel for plaintiff adds, "REID seeks to profit from her fraud and wrong doing. In 2007, RHOE admittedly (like many other homeowners) ran into financial trouble and fell behind on her mortgage. Unbeknownst to plaintiff RHOE, Steven J. Baum filed suit against REID for foreclosure. **That action was discontinued, and the statute of limitations has now expired**. Thus, neither REID nor RHOE are responsible on (*sic*) mortgage that Mr. Reno makes so much fuss about. His client, REID, who was paid $10,000.00 and never paid a penny for the property, would get a windfall if the Court allowed her to take possession of the property, and evict the defendant RHOE during these proceedings. REID never informed RHOE about the foreclosure action. Her affidavit is simply silent on the issue. **REID admits she was PAID by HOME SAVERS to act as a purchaser**. If she was a purchaser - she would have paid money to RHOE. **RHOE never got a penny**. In addition, if REID was the owner of the property, she would have entered into a lease agreement with RHOE. But, REID did not issue a lease as that would have exposed the fraud being committed by her and HOME SAVERS. In addition, unbeknownst to the plaintiff, defendant HOME SAVERS with or without REID converted all of the equity in RHOE's home. **REID has failed to explain where the hundreds of thousands of dollars in equity (acquired by RHOE since 1987) went at the time of closing**. REID admits that she was at the closing with her attorneys. RHOE admits that she came and signed a deed transferring a

50% interest as security to REID, not a 100% interest.... Nevertheless, as noted above, there was no reason for RHOE to investigate the true nature of the deed prior to REID moving to evict RHOE from her house that she had owned since 1987.... REID never asserted any ownership right in the property until 2013 (after the statute of limitations on the foreclosure action ran)."

"To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction; and (3) a balancing of the equities in the movant's favor." *Greystone Staffing, Inc. v. Warner*, 106 A.D.3d 954, 965 N.Y.S.2d 599 (2d Dept. 2013) *quoting Yedlin v. Lieberman*, 102 A.D.3d 769, 961 N.Y.S.2d 186 (2d Dept. 2013). *See also* CPLR § 6301; *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 552 N.Y.S.2d 918 (1990).

"The remedy is considered a drastic one which should be used sparingly." *Town of Carmel v. Melchner*, 105 A.D.3d 82, 962 N.Y.S.2d 205 (2d Dept. 2013). A movant must satisfy each requirement with "clear and convincing evidence." *County of Suffolk v. Givens*, 106 A.D.3d 943, 967 N.Y.S.2d 387 (2d Dept. 2013). The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court. *See Butt v. Malik*, 106 A.D.3d 849, 965 N.Y.S.2d 540 (2d Dept. 2013); *1650 Realty Associates, LLC v. Golden Touch Management, Inc.*, 101 A.D.3d 1016, 956 N.Y.S.2d 178 (2d Dept. 2012).

"To sustain its burden of demonstrating a likelihood of success on the merits, the movant must demonstrate a clear right to relief which is plain form the undisputed facts." *Matter of Related Properties, Inc. v. Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587, 802 N.Y.S.2d 221 (2d Dept. 2005). *See also Abinanti v. Pascale*, 41 A.D.3d 395, 837 N.Y.S.2d 740 (2d Dept. 2007).

"While the existence of issue of fact alone will not justify denial of a motion for a

preliminary injunction, the motion should not be granted where there are issues that 'subvert the plaintiff's likelihood of success on the merits...to such a degree that it cannot be said that the plaintiff established a clear right to relief.'" *Matter of Advanced Digital Sec. Solutions, Inc. v. Samsung Techwin Co., Ltd.*, 53 A.D.3d 612, 862 N.Y.S.2d 551 (2d Dept. 2008) *quoting Milbrandt & Co. v. Griffin*, 1 A.D.3d 327, 766 N.Y.S.2d 588 (2d Dept. 2003). *See also* CPLR § 6312(c); *Lombard v. Station Square Inn Apartments Corp., supra.*

To sustain their burden of establishing irreparable harm, "the plaintiff is required to show that the irreparable injury to be sustained is more burdensome to him than the harm that would be caused by the defendant through the imposition of the injunction." *Lombard v. Station Square Inn Apartments Corp., supra. See also Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 A.D.2d 631, 588 N.Y.S.2d 424 (2d Dept. 1992).

Finally, plaintiff must demonstrate that the balancing of equities favors provisional relief. Plaintiff must show that "the absence of a preliminary injunction would cause it greater injury than the imposition of the injunction would inflict upon the defendant." *Copart of Connecticut, Inc. v. Long Island Auto Realty, LLC*, 42 A.D.3d 420, 839 N.Y.S.2d 791 (2d Dept. 2007); *Laro Maintenance Corp. v. Culkin*, 255 A.D.2d 560, 681 N.Y.S.2d 79 (2d Dept. 1998).

Initially, the Court finds that, with respect to plaintiff's claims of conversion and fraud, the Statute of Limitations has not yet run. Furthermore, the Court notes that the issue of ownership of the subject real property was not before the Landlord and Tenant Court in the prior proceeding between these parties and is properly before this Court.

In view of the foregoing, and based upon the papers and arguments before the Court as detailed above, plaintiff's motion for an order staying, during the pendency of the instant action, the eviction proceedings sought against plaintiff from the premises known as 120 East

Greenwich Avenue, Roosevelt, New York is hereby **GRANTED**.

It is further ordered that the parties shall appear for a Preliminary Conference on August 25, 2014, at 9:30 a.m., at the Preliminary Conference Desk in the lower level of 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this Order shall be served on all parties and on the DCM Case Coordinator. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

This constitutes the Decision and Order of this Court.

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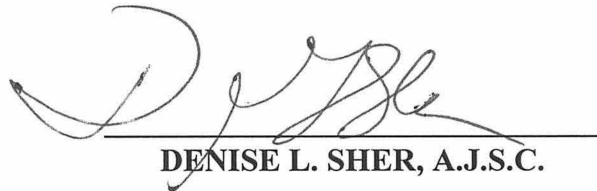

DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
July 11, 2014

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COUNTY CLERK'S OFFICE