

Charles v Kazi Realty, Ltd.

2015 NY Slip Op 30219(U)

January 13, 2015

Supreme Court, Queens County

Docket Number: 708501/14

Judge: Robert J. McDonald

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ORIGINAL

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

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

IAS PART 34

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BEVERLY AND ALLISTER CHARLES,

Index No.: 708501/14

Plaintiff,

Motion Date: 1/5/15

- against -

Motion No.: 246

KAZI REALTY, LTD.,

Motion Seq.: 1

Defendant.

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The following papers numbered 1 to 4 on this motion:

Papers
Numbered

Plaintiffs' Order to Show Cause-Affirmation-
Exhibit(s)-Service

1-4

FILED
FEB -2 2015
COUNTY CLERK
QUEENS COUNTY

Plaintiffs, by order to show cause, seeks an order of the Court, permanently restraining the defendant from exercising control over a garage located at 107-32 171st Street, Jamaica, N.Y. and awarding title to the plaintiff on the grounds of adverse possession.

Defendant has failed to submit opposition.

In support of the motion, plaintiffs submit the affirmation of Lillane Mair, Esq.; the affidavit of plaintiff Allister Charles; the affidavit of the Charles' neighbor, Glen Burnett, Esq.;, a deed conveying the property from the Estate of Elizabeth Francis to Archie Chatman, Sr. and Kathryn Griffin Chatman and a deed for the garage purchased separately as Block 10245, Lot 163; a deed conveying the property from Archie Chatman to Badri Seepersaud; Recording and Endorsement cover page for a deed from Badri Seepersaud to Beverly Charles recorded on July 9, 2004, CRFN 2004000355701 and property description by Fidelity National Insurance Co. of N.Y.; referee's deed from Craig Zim, Esq. to Kazi Realty, Ltd, recorded under DRFN 20013000197806 on May 14,

2013.

In January of 1991, Archie and Kathryn Chatman purchased the property and garage known as 107-32 171st Street, Jamaica, NY from the Estate of Elizabeth Francis. Both the property (Block 10245, Lot 164) and the garage (Block 10245, Lot 163) were deeded separately although purchased simultaneously. The Chatmans subsequently sold the property to Badri Seepersuad who then deeded the property to the Charles on January 27, 2004, recorded on July 9, 2004, CRFN 2004000355701.

Plaintiffs were under the assumption that the garage was included in the purchase of the property. Plaintiffs and their children have resided at 107-32 171st Street for 11 years and have continually used the garage open, notoriously and exclusively. Plaintiff maintains that thousands of dollars were spent to restore and maintain the garage and submits the affidavit of Glen Burnett, Esq., plaintiffs' neighbor, who has lived in the property next door to plaintiffs for 62 years. Mr. Burnett states that two years after purchasing their home, plaintiff Allister Charles rebuilt the garage which had fallen into disrepair by the Chatmans.

After plaintiffs purchased the property, the City of New York successfully placed a tax lien upon the property under Index No. 27865/10. Pursuant to a Judgment of Foreclosure and Sale signed on August 10, 2012 and entered on August 15, 2012, the garage known as Block 10245, Lot 163 was successfully sold to defendant. At the time of sale to the defendant, plaintiffs had resided at the premises and utilized the garage for 9 years and 3 months.

In October of 2013, the defendant commenced a landlord-tenant proceeding in Queens County Civil Court, Housing Part, claiming that Charles should be locked out of the garage because Charles owed the defendant rent. Plaintiffs maintain that the Housing Court rejected the defendant's petition because there was no landlord/tenant relationship. Defendant ultimately obtained a judgment of ouster, resulting in plaintiffs' ouster from the garage in June 2014.

Plaintiff maintains the City Marshall placed a lock on the garage door preventing him from having access from its contents.

In order to demonstrate entitlement to a preliminary injunction, the movant must establish (1) a probability of success on the merits, (2) the danger of irreparable harm in the absence of injunctive relief, and (3) a balance of the equities

in favor of the movant (see Matter of Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd., 53 AD3d 612[2d Dept. 2008]; Montauk-Star Is. Realty Group v Deep Sea Yacht & Racquet Club, 111 AD2d 909[2d Dept. 1985]). "A court evaluating a motion for a preliminary injunction must be mindful that the purpose of a preliminary injunction is to maintain the status quo, not to determine the ultimate rights of the parties (Masjid Usman, Inc. v Beech 140, LLC, 68 AD3d 942 [2d Dept. 2009]; also see Matter of Wheaton/TMW Fourth Ave., LP v New York City Dept. of Bldgs., 65 AD3d 1051 [2d dept. 2009]; Coinmach Corp. v Alley Pond Owners Corp., 25 AD3d 642 [2d Dept. 2006]").

A balance of the equities likewise favors the granting of preliminary injunctive relief to maintain the status quo pending the resolution of the action (see Masjid Usman, Inc. v Beech 140, LLC, 68 AD3d 942 [2d Dept. 2009]; S.P.Q.R. Co., Inc. v United Rockland Stairs, Inc., 57 AD3d 642 [2d Dept. 2008]; Jiggetts v Perales, 202 AD2d 341[1st Dept. 1994]).

An adverse possessor is entitled to a preliminary injunction in an action to compel a determination of a claim to real property by demonstrating that there is a likelihood that it will be proven by clear and convincing evidence that he or she actually possessed the disputed parcel and that the possession was open and notorious, exclusive, continuous, hostile and under claim of right, threat of destruction of the adverse possessor's property constituting irreparable harm and that balance of the equities weighs in favor of the adverse possessor. CPLR § 6301; Randisi v. Mira Gardens, Inc., 272 AD2d 387 (2d Dept. 2000).

Here plaintiffs have demonstrated all the requisites for a preliminary injunction pending the trial of this matter.

Accordingly, plaintiffs' motion is granted to the extent that it is hereby

ORDERED, that the lock placed on garage of the premises 107-32 171st Street, NY, Block 10245, Lot 163, by the Marshall of the City of New York shall be removed by the Marshall of the City of New York, within five (5) days of the date of this order with notice of entry upon defendant; and, it is further

ORDERED, plaintiffs shall have a preliminary injunction against the defendant to the extent that KAZI REALTY, INC. is enjoined and restrained from exercising control over plaintiffs use and possession of the garage located at 107-32 171st Street, Jamaica, NY, known as Block 10245, Lot 163 pending the resolution of this action; and, it is further

ORDERED, that the remaining branch of plaintiffs' motion awarding them title of the garage is denied pending the trial of this action.

Dated: Long Island City, NY
January 13, 2015



ROBERT J. McDONALD
J.S.C.