

Stevens v Chandler

2015 NY Slip Op 30418(U)

March 23, 2015

Supreme Court, Suffolk County

Docket Number: 12037/2007

Judge: Joseph Farneti

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M E M O R A N D U M

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

MABLE STEVENS,

Plaintiff,

-against-

GARNETTE SHAY CHANDLER
and RONALD ZANFINI,

Defendants.

TRIAL TERM – PART 37

**BY: HON. JOSEPH FARNETI
A.J.S.C.**

DATED: March 18, 2015

INDEX NO. 12037/2007

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This matter was submitted for this Court's consideration without a jury. The trial was conducted by the Court on September 16, 2014. This case sounds in equity wherein the plaintiff, Mable Stevens, seeks both declaratory and equitable relief concerning a parcel of real property located in the Village and Town of Southampton and commonly known as 109 David White's Lane (the "Premises").

The plaintiff sets forth three separate causes of action, to wit: for a declaratory judgment relative to a life estate; for a declaratory judgment to re-acquire fee free of a life estate and mortgage; and for specific performance of an oral contract for re-conveyance. In accordance with this Court's trial rules for the conduct of a non-jury trial, the undersigned entered an Order dated September 16, 2014, setting forth the issues to be tried as follows:

1. Is the deed out of plaintiff and into Terence Michael Chandler and Garnette-Shay Chandler, his wife dated September 13, 2002 a transfer of fee simple absolute or a transfer subject to a life estate in plaintiff?
2. Is an oral agreement alleged between plaintiff and defendant Chandler to recover the Premises valid and enforceable?
3. Was the relationship between plaintiff and Chandler confidential?
4. If the relationship was confidential, do the facts support a finding of either fraud or constructive trust to require the reconveyance of the [Premises]?
5. Does defendant Zanfini have a valid mortgage enforceable against Chandler's future remainder interest?

A trial was conducted on September 16, 2014, and the final submission of the matter was adjourned to February 16, 2015, to allow the submission of plaintiff's post-trial memorandum. Defendants' post-trial memoranda were received by the Court for defendants Chandler and Zanfini on November 19th and November 13th, respectively.

Very few facts are in dispute in this matter. The parties have stipulated upon the record that the plaintiff reserved unto herself a life estate in the Premises by execution of a deed dated September 13, 2002, and recorded on September 30, 2002 (Pltf. Exh. 3). The remainder interest beyond the life estate

was granted to defendant Chandler, one of the plaintiff's daughters, together with her then-husband Terence Michael Chandler.

In consideration for this transfer, the grantees undertook to pay certain existing financial obligations of the plaintiff. Wells Fargo Bank was paid \$14,184.66, and Mortgage Lenders Network USA was paid \$76,023.83 at the September 13, 2002 closing. The plaintiff received an additional \$112,791.51 in consideration of the transfer for a total consideration of \$203,000.

Unfortunately, for reasons which will become apparent herein below, the reservation of the life estate in the plaintiff grantor was accomplished by the following paragraph contained within Schedule A entitled "Description of Property for Deed":

RESERVING, however, to the party of the first part the exclusive possession and the use and enjoyment of the rents, issues and profits of the above-described premises for and during the natural lifetime of the party of the first part.

This placement of the generic, nameless "party of the first part" grant and reservation of the life estate although legally binding and effective has resulted in additional litigation and complications concerning subsequent transfers and mortgaging of the property.¹ Within the framework of this action, it appears that plaintiff Stevens is seeking a rescission of the subsequent transfers of the Premises as well as an extinguishment of the encumbrances subsequently imposed. The plaintiff's second cause of action specifically seeks at paragraph twenty-seven both a declaration of subordination as to the mortgage and a transfer of the Premises back to her free from the encumbrance in fee simple absolute.

Before these issues may be addressed, the subsequent transfers and genesis of the Zanfini mortgage must be explored further. By deed dated

¹ The second defendant herein, Ronald Zanfini, is the current first mortgagee of the Premises. There is litigation pending in the form of a foreclosure action entitled *Ronald Zanfini v. Garnette Shay Chandler, Mable Stevens, John Doe et al. and Stewart Title Insurance Company*, Suffolk County Supreme Court, Index No. 20464/2008.

August 1, 2003 and recorded on September 8, 2003, both Terence Michael Chandler and Garnette Shay Chandler transferred their joint interest in the Premises to Garnette Shay Chandler, individually. However, in a sterling example of the dangers of "cut and paste," the prior Schedule A "Description of Property for Deed," identical to the September 13, 2002 Schedule A other than the new date of August 1, 2003, was attached to the deed and referred to in the description of the Premises. The effect of which was the reservation of a life estate to Terence Michael Chandler and Garnette Shay Chandler. There was no mention in the August 1, 2003 deed of the pre-existing life estate of Mable Stevens. Again, the generic language and its placement in the schedule was ill-advised.

Apparently this second reservation of a life estate to the grantors of the August 1, 2003 deed went unnoticed for some time. By deed dated July 17, 2006 and recorded on August 22, 2006, Garnette Shay Chandler individually and Garnette Shay Chandler as life tenant and Terence Michael Chandler as life tenant only conveyed their interests in the Premises to Garnette Shay Chandler as grantee. This deed was not labeled a correction deed. This deed dated July 17, 2006 made no reference whatsoever to the retention of Mable Stevens' life estate as contained in the September 13, 2002 deed.

A mortgage was executed by Garnette Shay Chandler as mortgagor with Ronald Zanfini as mortgagee dated July 25, 2006 and recorded on August 22, 2006, at the exact time the deed dated July 17, 2006 was recorded.²

By stipulation, the parties have agreed that the September 13, 2002 deed was a transfer subject to a life estate in plaintiff Mable Stevens. The parties unanimously concur and agree that there has not been any diminution of the life estate by the subsequent actions of any of the parties herein. Both defendants have acknowledged and agreed through their respective counsel that Ms. Stevens' life tenancy remains viable and intact for the duration of her natural life unless otherwise conveyed, limited or disposed by her own agreement or actions. Therefore, issue number one set forth hereinabove must be answered that the September 13, 2002 deed was a transfer subject to a life estate in plaintiff Mable Stevens.

² The mortgage is in default and is the subject of foreclosure as set forth in footnote 1.

The second issue as to whether or not there was an oral agreement between plaintiff and either of the Chandler grantees to reconvey and return the Premises to her must be answered in the negative. There was no testimony, proof or any other indication that at any time prior to the execution of the deed and payment of the consideration to and on behalf of the plaintiff on September 13, 2002 that there was any mention whatsoever of the re-conveyance of the Premises. There certainly was no formation of the necessary terms of a contract irrespective of the necessity of a writing. It is well-settled that an oral agreement to convey an interest in real property is unenforceable under the Statute of Frauds (see General Obligations Law § 5-703; *Schmidt v Maiorino*, 209 AD2d 683 [1994]; *Tutak v Tutak*, 123 AD2d 758 [1986]). Neither a contract for conveyance nor a limitation of defendant Garnette Shay Chandler's or for that matter Terence Michael Chandler's right to alienate their remainder interests was ever formed either before or after the September 13, 2002 deed transfer.

The third issue as to whether or not the relationship between plaintiff and her daughter was a confidential one must be answered in the affirmative. The defendant together with her husband made all the arrangements for the September 13, 2002 transaction. The plaintiff, a woman who presented to the Court as someone very much in charge of her own decision making and clearly in possession of all her faculties, made an agreement with her daughter and son-in-law for which she received the bargained-for benefit.

The fourth issue, given the affirmative finding concerning the confidential nature of the relationship, must be answered in the negative in that there is no element of promise concerning an assertion of constructive trust or inducement for a finding of fraud. Imposition of a constructive trust requires proof of four elements, namely (1) a confidential or fiduciary relationship; (2) a promise; (3) a transfer in reliance on the promise; and (4) unjust enrichment (see *Sharp v Kosmalski*, 40 NY2d 119 [1976]). Generally, a constructive trust may be imposed when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, as when a plaintiff conveys property to a defendant on faith of the latter's promise to reconvey it (see *Sharp v Kosmalski*, 40 NY2d 119, *supra*; *Bontecou v Goldman*, 103 AD2d 732 [1984]). Regarding the allegations sounding in fraud, the essential elements of such a cause of action are: (1) a misrepresentation or a material omission of fact that was false and known to be false by the defendant; (2) made for the purpose of inducing the other party to rely upon it; (3) justifiable reliance of

the other party on the misrepresentation or material omission; and (4) injury (see *Deutsche Bank Natl. Trust Co. v Sinclair*, 68 AD3d 914 [2009]; *J.A.O. Acquisition Corp. v Stavitsky*, 18 AD3d 389 [2005]). Moreover, CPLR 3016 provides that “[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail” (CPLR 3016 [b]). Here, there were no conditions, caveats or other agreements entered into before or during the transfer. A familial and close relationship, even if confidential, does not substitute for the elements necessary to support either of these causes of action. Furthermore, there is no assertion of unjust enrichment, windfall or inadequate consideration supported by this record.

We turn now to the fifth issue concerning the whether defendant Zanfini has a valid mortgage enforceable against Chandler’s future remainder interest. This is a limited inquiry which only takes into consideration the status of certain deeds and the estates held by defendant Chandler and more particularly whether the existence of a life estate in any way limits a remainderman’s authority to encumber that which she possesses (see EPTL 6-4.2; 6-4.3; 6-4.7). As between defendants Zanfini and Chandler, there is no third-party practice in the form of cross-claims or other pleadings within this action.

The Court is, however, aware of the mortgage foreclosure action wherein defendant Chandler has asserted certain defenses upon which the Court today passes no judgment. That being said, the existence of a life tenancy in no way diminishes a remainderman’s right to encumber or alienate any interest in real property that may exist. EPTL 6-5.1 provides that “[f]uture estates are descendible, devisable and alienable, in the same manner as estates in possession,” and as such, they may be conveyed and mortgaged (EPTL 6-5.1; see *Brown v Robinson*, 224 NY 301 [1918]). Therefore, for the limited purpose of the issues presented in this action, the Zanfini mortgage is in no way undermined by the existence of a preexisting life estate. For the purpose of clarity and in an abundance of caution, this finding in no way addresses or rules upon any issue as contained within the foreclosure action pending in this Court as described in footnote 1.

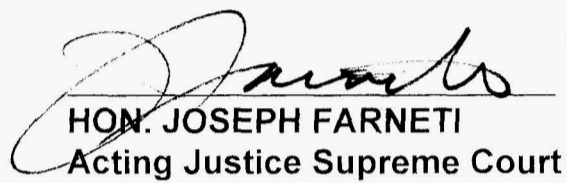
The Court having made these findings and having determined the issues set forth in the Order dated September 16, 2014, the plaintiff’s First,

Second and Third causes of action are dismissed, and the complaint is hereby dismissed in its entirety.

SUBMIT JUDGMENT ON NOTICE

The foregoing constitutes the decision and Order of the Court.

Dated: March 23, 2015


HON. JOSEPH FARNETI
Acting Justice Supreme Court

FINAL DISPOSITION

NON-FINAL DISPOSITION