

**Salomon-Cox v Expert Bldrs. 26 Inc**

2015 NY Slip Op 32800(U)

January 16, 2015

Supreme Court, Bronx County

Docket Number: 24195/2014e

Judge: Lizbeth Gonzalez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 10e

-----X  
Nancy Salomon-Cox and Wayne Baumann,

Plaintiffs,

-against-

Expert Builders 26 Inc and Edison L. Sanchez,

Defendants.  
-----X

DECISION  
Index No. 24195/2014e

Recitation pursuant to CPLR § 2219(a) of the papers reviewed in the underlying motion to reargue:

Order to Show Cause, annexed Exhibits and Affidavits..... x  
Affirmation in Oppositions and annexed Exhibits..... x

For Plaintiff: Law Office of David A. Zelman by Andrew Rabin, Esq.  
For Defendants: Law Offices of Joseph A. Altman, P.C. by Joseph A. Altman, Esq.

By Stipulation so-ordered in Bronx Housing Court on 3/25/14, Nancy Salomon-Cox and Wayne Baumann agreed to vacate the subject premises located at 542 Bolton Avenue in Bronx County or obtain a stay of their eviction by 5/31/14. (*Expert Builders 26, Inc. v Wayne Baumann and Nancy Salomon-Cox*, Bronx Housing Court Index No.71785/13.) According to the Stipulation, the respondents “reserve their defenses as to the alleged ownership of the property.” By Order to Show Cause submitted to this Court, plaintiffs Nancy Salomon-Cox and Wayne Baumann seek a Temporary Restraining Order to stay their eviction.

The plaintiffs, a married couple, maintain that they own the property. During the course of oral argument, the plaintiffs stated that they keep cash only and have no bank accounts. They allege that plaintiff Nancy Salomon-Cox purchased the subject premises from defendant Edison Sanchez by tendering \$124,000 in cash and agreeing to assume the balance of his mortgage. To this end, they allege that Mr. Sanchez provided a power of attorney authorizing them to transact business with Chase Bank; execute and deliver checks to pay the mortgage for account number 1705166571; modify its terms; and receive bank statements and notices. The signed power of attorney, however, is a nullity since it is neither dated nor notarized. (See General Obligations Law § 5-1501.)

The plaintiffs’ deposit slips establish that they made a total of three mortgage payments to Chase Bank on 12/3/12 (\$2006.42 payment with an additional \$55.68 late charge); 1/23/13 (\$2041.42); and 2/20/13 (\$2100.00) for a total of \$6,203.52 during the

course of three consecutive months. This paucity of proof establishes the plaintiffs' noncompliance with their alleged oral agreement.

The plaintiffs and defendant Sanchez proffer original deeds each dated 7/1/12; defendant Sanchez is the seller and Ms. Salomon-Cox is the buyer in both deeds. The plaintiffs maintain that because consideration in the amount of \$124,000 is spelled out and written numerically on their deed, this proves that they tendered cash consideration to Mr. Sanchez.

Both deeds are unrecorded. The plaintiffs' deed has three signatures. Mr. Sanchez is the party of the first part, Ms. Salomon-Cox is the party of the second part, but her signature is crossed-out without explanation, and Mr. Baumann is the witness to the signing. The Sanchez signature was notarized on 7/1/12 by Moshe Armoza, a Brooklyn notary; the signatures of the plaintiffs are not notarized.

The plaintiffs retained Noah D. Cohen, Esq. subsequent to the alleged conveyance to assist them in recording the deed. The attorney's correspondence proffered by the plaintiffs consists of his letter dated 10/30/13, the plaintiffs' original deed, a blank smoke detector affidavit of compliance, an unsigned DEP customer registration form for water and sewer billing, an unsigned RP-5217 NYC real property transfer report and a 7/23/13 print-out that states that the property has two active liens and is facing foreclosure by Chase Bank.

By letter dated 10/30/13, Mr. Cohen returned several documents to Mr. Baumann, including the 1) "Original Executed and Notarized Deed", 2) "Original Executed RP 5217 NYC"; and 3) "Original Executed and Notarized Smoke Detector Affidavit."

Significantly, Mr. Cohen's letter states that the consideration for the conveyance, although requested, was never disclosed by the plaintiffs:

As I have explained to you at our first meeting, this deed could not be recorded inasmuch as you were missing the NYC Real Property Transfer Tax form and the NYS Transfer Tax form (TP 584), executed by both the seller and purchaser.

Additionally the ACRIS documents, which are now stale, require a purchase price/consideration which although requested was never supplied by you. The same holds for the parties (sic) social security numbers.

Pursuant to your instructions, I was holding onto the original documents until such times as the parties could be brought to me to supervise execution of the documents and notarization.

You have now told me there is no hope of having the seller cooperate in the execution of the additional documents. Therefore I am returning same to you.

In his affidavit of opposition, defendant Edison Sanchez maintains that the plaintiffs were his tenants; their three receipts merely establish that rent for three consecutive months was directly paid to Chase Bank to satisfy his mortgage obligations.

Defendant Sanchez claims that Mr. Baumann, who is related to prior tenants, initially indicated that the plaintiffs wanted to rent the subject premises. When the plaintiffs subsequently expressed their desire to purchase the subject premises, Mr. Sanchez signed pre-notarized papers brought to the Bronx property by Mr. Baumann. Mr. Sanchez maintains that he never signed the papers before a notary.

The Court notes that both deeds were notarized by Moshe Armoza, qualified as a Notary Public in Kings County; his license number is **01AR6230410**.

No party was represented by an attorney during the course of the transaction. According to Mr. Sanchez, Mr. Baumann contended that attorneys were unnecessary because he is a real estate broker. (The Court notes that Mr. Baumann's license number is **35BA1058582**.) Because Mr. Sanchez never received the financial consideration in question or a copy of the prepared documents, he demanded that the papers be returned. Upon receiving the documents several weeks later, Mr. Sanchez informed the plaintiffs that their deal was cancelled and the house would be short-sold to a different buyer.

Mr. Sanchez proffers a smoke detector affidavit signed by him as grantor and Ms. Salomon-Cox as grantee, bearing the 7/1/12 pre-notarization of Moshe Armoza. By contrast, a blank smoke detector affidavit is attached to Mr. Cohen's legal correspondence, although his letter references an original executed and notarized smoke detector affidavit.

Mr. Sanchez submits a RP-5217 NYC Real Property transfer report bearing the signature of Ms. Salomon-Cox and Mr. Sanchez that indicates 7/1/12 as the date of transfer. By contrast, an unsigned transfer report is attached to Mr. Cohen's legal correspondence, although his letter references an original executed report.

In comparing the two deeds in question, Mr. Sanchez highlights certain unexplained discrepancies to establish that the plaintiffs manufactured their "original" deed:

1. Ms. Salomon-Cox's signature is intact on the Sanchez deed; it is crossed-out on the plaintiffs' deed.
2. The full names of Mr. Sanchez, Ms. Salomon-Cox and Mr. Baumann are hand-printed beneath their respective signatures on the Sanchez deed; the corresponding spaces are blank beneath the signatures on the plaintiffs' deed.

3. There are two blank spaces for consideration on the Sanchez deed; consideration in the amount of \$124,000 is entered numerically and in writing on the plaintiffs' deed.
4. There is no cancelled check, bank slip, money order receipt, or proof that cash was withdrawn or deposited by the plaintiffs.
5. Mr. Sanchez maintains that he signed a partially executed deed pre-notarized by Moshe Armoza dated July 1, 2012; he never signed the plaintiffs' deed dated July 1<sup>st</sup>, 2012 and his signature on the plaintiffs' deed is a therefore a forgery.

As proof of their ability to consummate the transaction, the plaintiffs proffer a copy of three checks dated 8/23/04 payable to Mr. Baumann drawn on the attorney trust account of Michael M. Lease for a total amount of \$88,023.83. There is no proof that these checks were cashed or that the plaintiffs retained any available funds for a period of eight years.

In opposition to the plaintiffs' motion, Arash Refoua submits his affidavit as President of defendant Expert Builders 26 Inc., the current owner of the subject premises, to establish that defendant Expert Builders was a bona fide purchaser. He proffers a notarized Contract of Sale and a Bargain and Sale Deed to establish that the defendant purchased the subject premises from Mr. Sanchez for \$130,000 on 10/18/13. This deed was fully executed and recorded on 10/18/13.

The plaintiffs remain in possession at the premises, where the monthly mortgage is \$2,100 per month. Defendant Expert Builders accordingly seeks use and occupancy in the amount of \$2,100 per month from 10/18/13 to date.

#### DISCUSSION

Real Property Law § 291 requires the recording of every conveyance of real property in New York State. Every conveyance not so recorded is void as against any person who subsequently purchases the same real property from the same seller where such contract is made in good faith and is first duly recorded. New York's "race-notice" statute thus protects good faith purchasers who record first. (*2386 Creston Ave. Realty, LLC v. M-P-M Mgmt. Corp.*, 58 A.D.3d 158 [1<sup>st</sup> Dept 2008].) Here, defendant Expert Builder promptly recorded its fully executed deed, thus triggering the protection of the statute.

To establish fraud, there must be a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and resulting damages. (*Eurycleia Partners v Seward & Kissel, LLP*, 12 NY3d 553 [2009].) There is no proof that either defendant committed fraud.

A stipulation is a contract binding upon the parties once it is reduced to the form of an order and entered by the Court. (CPLR 2104.) It is well settled that stipulations of settlement are essential to the integrity of the litigation process and the efficient resolution of disputes, favored by the courts and not lightly set aside. (*Hallock v State*, 64 NY2d 224 [1984].) Strict enforcement of stipulations is thus required in the absence of cause "sufficient to invalidate a contract, such as fraud, collusion, mistake or accident." (*Hallock v State*, 64 NY2d 230). Here, the 3/25/14 so-ordered Housing Court Stipulation required the plaintiffs to "obtain a stay of this proceeding or vacate by 5/31/14." The plaintiffs untimely filed the instant Order to Show Cause on 10/1/14. There is no basis to stay the Housing Court's Order or grant a Temporary Restraining Order since the plaintiffs establish neither fraud, collusion, mistake nor accident.

### CONCLUSION

The plaintiffs claim that they are entitled to reside at the subject premises because they paid consideration and orally agreed to assume the plaintiffs' mortgage. Their skeletal proof establishes their nonperformance long before signing the Stipulation and months before filing the instant Order to Show Cause. (See *City of New York v 130/40 Essex St. Dev. Corp.*, 302 AD2d 292 [1<sup>st</sup> Dept 2003].) The plaintiffs have no proof to establish payment of consideration. There are no withdrawal slips, deposit slips or proof that the plaintiffs ever possessed cash in the amount of \$124,000.

After careful review and consideration, the Court denies the plaintiffs' untimely Order to Show Cause in its entirety and deems defendant Expert Builders 26 Inc. to be the bona fide purchaser and owner of the subject premises located at 542 Bolton Avenue in Bronx County.

Mr. Sanchez alleges that he signed legal documents pre-notarized by Moshe Armoza that were presented by Mr. Baumann, a real estate broker. The defendants are urged to submit a copy of this decision to the NYS Department of State and NYC Department of Consumer Affairs as appropriate.

It is undisputed that the mortgage for the subject premises is \$2100. Defendant Expert Builders' application for use and occupancy from 10/18/13 to the present is granted as follows:

October – December 2013	2 months x \$2100 = \$ 4,200
January – December 2014	12 months x \$2100 = \$25,200
January 2015	<u>1 month x \$2100 = \$ 2,100</u>
Total	15 months x \$2100 = \$31,500

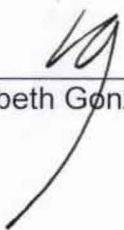
The Clerk of the Court is accordingly directed to enter a money judgment in the amount of \$31,500 against plaintiffs Wayne Baumann and Nancy Salomon-Cox payable to defendant Expert Builders 26 Inc.

The defendants shall serve a copy of this Order with Notice of Entry upon the plaintiffs within ten days.

All stays of the warrant of eviction are vacated forthwith. Service of the marshal's notice may be re-served by mail.

This is the Decision and Order of the Court.

Dated: 16 January 2015  
Bronx, New York

  
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Hon. Lizbeth González, JSC