

Piller v Tribeca Dev. Group LLC
2016 NY Slip Op 32902(U)
January 26, 2016
Supreme Court, Sullivan County
Docket Number: 0071-2016
Judge: Frank J. LaBuda
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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ABRAHAM PILLER, individually and derivatively
on behalf of THE NEW PINES VILLAS, INC.,

Plaintiff,

-against-

DECISION and ORDER
Index No. 0071-2016

TRIBECA DEVELOPMENT GROUP LLC, ELI
BREZEL individually, YITZCHOK BREZEL individually,
TRIBECA SULLIVAN LLC, THE MANAGEMENT
COMMITTEE OF TRIBECA SULLIVAN LLC; ISAAC
BLUMENKRANTZ individually, SAM SHERMAN
individually, STEPHEN WERDIGER individually, ZEVY
BRODT individually, MICHAEL SCHAFFER individually,
SOL MERMELSTEIN individually, BENJAMIN KAHAN
individually, TRIBECA UPSTATE LLC, YISROEL
LESHKOVITZ, ABRAHAM EISNER individually and
John and Jane Does 1-10,

OSC-TRO
Preliminary Injunction

Defendants.

-----X
LaBuda, J.:

This matter comes before the Court on Plaintiff's Order to Show Cause requesting that this Court issue a preliminary injunction enjoining the above-named defendants from (a) conveying or encumbering any interest in the subject Property or New Pines to any other individual or entity; (b) interfering with Plaintiff's exclusive right to use and enjoyment of the Property; (c) trespassing on the Property; (d) creating a private nuisance on the Property; and (e) performing any construction or development activities on the Property including any actions that would encumber or otherwise affect any of Plaintiff's interests in New Pines or the Property.

The Court heard oral argument and testimony on January 26, 2015.

Factual Background

The record before the Court indicates the following: Plaintiff, Abraham Piller (hereinafter, "Piller"), and Defendant Abraham Eisner (hereinafter, "Eisner"), were acquainted for many years. Eisner was, and is, in the mortgage business; Piller owns real estate in the Fallsburg (Sullivan County, New York) area and wished to obtain mortgage financing on said property. Piller and Eisner discussed the matter. Eisner indicated he could obtain the financing,

but Piller could not be named as the record owner of the subject property due to a pending legal matter; Piller's credit was inadequate and Piller's father, David, had a "criminal situation" in the past. Therefore, the parties agreed that the subject property would be transferred to a new LLC, in which Eisner would be reflected as the only member. Plaintiff maintains that regardless of the LLC documents and the fact that a deed as conveyance to Eisner as an LLC was exchanged and recorded, Abraham Piller was always the true owner of the property. Plaintiff asserts that ancillary documents and agreements indicate that Eisner was and is merely the sole nominee and trustee for Piller. The ancillary agreements further provided that as compensation to Eisner for his acquisition of the financing and for serving as the nominee for Piller, he was to receive 10 percent of any profit ultimately realized on the subject property.¹

Eisner was able to secure mortgage financing on the subject property. Subsequent thereto, several disputes arose between Eisner and Piller, resulting in a lawsuit filed in Kings County Supreme Court, Index No. 4587-2012. In that matter, the Court treated the arrangement between Eisner and Piller as one of mortgagee (Eisner) and mortgagor (Piller), and therefore referred the case from Kings County to Sullivan County, the location of the subject property.

Subsequently, on or about March 22, 2013, Eisner and Piller entered into a settlement agreement in which they agreed they Piller would discontinue the action against Eisner and the matter would be submitted for arbitration.² Based on that agreement, the Sullivan County action was discontinued and Eisner and Piller went to arbitration on several occasions before Brunner. According to the testimony of Eisner, although Eisner, Piller and Brunner had numerous discussions regarding the sale of the subject property, the arbitrator never made a final decision regarding the ultimate disposition of the subject property.

On or about October 26, 2015, in the presence of the arbitrator, Eisner indicated he made a deal with Defendant Yitzchok Brezel (hereinafter, "Brezel") to sell the property to Brezel. The arbitrator indicated he had not authorized sale of the subject property and Piller objected to any sale because he claimed to be the rightful owner of the subject property and had to agree to any sale. In fact, the deed transferring the subject property from Eisner to Brezel was dated October 26, 2015, the date he informed the arbitrator and Piller of the sale, but was not recorded until approximately one month later. Plaintiff asserts that not only did Eisner deliver a deed and sell the property to Brezel, but that Brezel, prior to the actual sale in October, entered onto the subject property in August of 2015 and began clearing the property and began constructing foundations.

Procedural Background

The instant, underlying action seeks a declaratory judgment (1) declaring Piller is the

¹Apparently in other documents, Piller encumbered other real property in Williamsburg, Brooklyn, to secure Eisner's interests.

²The chosen arbitrator was Joseph Brunner, who knew both parties in their community and was unconditionally trusted by both.

rightful owner of the subject property, (2) that Eisner had no authority to transfer or sell the subject property, (3) enjoining all of the defendants from performing further construction on the subject property without the express consent of Piller, (4) finding that the defendants have committed a tort trespass on the subject property, (5) declaring that the defendants' actions constitute a private nuisance, (6) enjoining the defendants from further conveying or encumbering the subject property, and (7) and order directing the defendants to stop trespassing and to stop construction.

The within OSC for a preliminary injunction requests a temporary restraining order, immediately, to halt all construction and work on the property until the parties litigate this matter, or at least until there is a decision on the defendants' cross-motions to dismiss the underlying action.

The defendants oppose the instant OSC and argue that when Piller signed the aforementioned settlement agreement, he agreed to have all issues connected to this case decided through arbitration. Plaintiff argues that even if the defendants are correct—that the matter must be handled by an arbitrator—CPLR 7502(c) provides that a court may issue a preliminary injunction in a case that is in arbitration or will be in arbitration where the lack of a preliminary injunction would render an arbitrator's award ineffectual. Plaintiff takes the position that if this Court does not issue a TRO and the parties go to arbitration, construction and trespass to the property will continue, so any arbitration award in favor of Plaintiff would be ineffectual.

Discussion

Granting of an injunction is within the sound discretion of the Court. *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 AD3d 1072 [2nd Dept. 2008]. An injunction should only be issued in extraordinary situations. *Chicago Research and Trading v. New York Futures Exchange*, 84 AD2d 413 [1st Dept. 1982]. A movant for a preliminary injunction or TRO must show a clear likelihood of ultimate success on the merits and the burden of proof rests on the movant. *Orange County v. Lockey*, 111 Ad2d 235 [2nd Dept. 1985]. Injunctive relief is available only in situations where a plaintiff has no adequate remedy at law and relief is necessary to avert irreparable injury. *Chicago Research and Trading v. New York Futures Exchange, supra*.

Because an application for an injunction or TRO is equitable, a court must apply principles of equity and consider the probabilities of hardship to each of the parties. *Finger Lakes Health Systems Agency v. St. Joseph's Hospital*, 81 AD2d 403 [3rd Dept. 1981].

Analysis

After a complete review of the record before the Court, as so far provided by the parties, and consideration of the oral arguments and testimony had on January 26, 2016, this Court denies Plaintiff's application for a preliminary injunction and TRO. Plaintiff has not shown that he has a

clear likelihood of ultimately prevailing on the underlying action. *Orange County v. Lockey, supra*. After reviewing the submissions, it is unclear that Plaintiff will succeed at arbitration or in court on the merits. Moreover, the settlement agreement Piller signed, agreed to dismiss a near identical action and indicated that all matters involving the subject property be handled in arbitration; the agreement indicated there would be no action at law.

Defendants correctly argue that there will be no irreparable injury to Piller if the Court does not issue a preliminary injunction. The defendants point out that the subject property will be worth approximately \$14,800,000.00 when finished. Defendants argue that if Piller ultimately prevails at arbitration, he will wind up with a property worth many millions of dollars more than was the undeveloped, vacant property without water and sewer. Defendant have also pointed out that Piller additionally seeks damages in this action, and therefore an injunction is unwarranted because he may ultimately receive a money judgment if successful on the merits, either at arbitration or in court. *See Riessen v. Kaye, 4 Misc2d 371*.


In considering the hardships to the parties, this Court agrees with the defendants that because Piller has other possible remedies, including a money judgment in arbitration or in his action against Eisner, he has a viable remedy at law and therefore a preliminary injunction is not warranted. Furthermore, this Court finds that the settlement agreement between Eisner and Piller expressly indicates that the Kings County action was dismissed with prejudice and replaced by the settlement agreement, that the settlement agreement requires that the parties resolve any and all disputes involving the subject property by arbitration, that Eisner and Piller waived their rights to bring an action in Supreme Court regarding the subject property, and that the settlement agreement binds Eisner's and Piller's successors and assigns.

Based on the above, it is therefore

ORDERED that Plaintiff's Order to Show Cause seeking a preliminary injunction and temporary restraining order is denied in its entirety.

This shall constitute the Decision and Order of this Court.

DATED: January 26, 2016
Monticello, New York


Hon. Frank L. LaBuda
Acting Justice Supreme Court