

**Mollica v Ruzza**

2017 NY Slip Op 31653(U)

February 16, 2017

Supreme Court, Dutchess County

Docket Number: 50759/2014

Judge: James D. Pagonis

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS  
-----X

CHERYL M. MOLLICA,  
  
Plaintiff,

-against-

DECISION AND ORDER

WILLIAM A. RUZZA, JR., CHRISTOPHER C. MOLLICA, SYNERGIX FUNDING GROUP, LLC, RAYMOND STURINO, IVY HILL COMMODITIES CORP., CAPITAL ONE BANK (USA), N.A. OLD DOCK ROAD PROPERTIES LLC,

Index No. 50759/2014

Defendants.  
-----X

**PAGONES, J D., A.J.S.C.**

Defendant Synergix Funding Group, LLC moves for an order, pursuant to CPLR §4101 *et seq.*, striking the plaintiff's jury demand.

The following papers were read:

Notice of Motion-Affirmation-Memorandum of Law	1-3
Affirmation in Opposition	4
Affirmation-Memorandum of Law	5-6

Upon the foregoing papers, the motion is decided as follows:

Plaintiff's complaint seeks the following relief:

- "A. A Judgment determining that Plaintiff is the 75% owner of the Premises;
- B. A Judgment barring all of the defendants from all claim to an estate or interest in the Premises, except Defendant Christopher C. Mollica and every person claiming an estate or interest derived from him;
- C. A Judgment awarding possession of the Premises to Plaintiff, subject to the rights of any person in possession who derives their title or estate from or

- through Plaintiff or Defendant Christopher C. Mollica;
- D. An Order directing any person in possession of the Premises to attorn to Plaintiff and any other person the Court determines to have an ownership interest in the Premises;
  - E. An Order declaring that Fraudulent Deed No. 1 is fraudulent;
  - F. An Order vacating and setting aside Fraudulent Deed No. 1;
  - G. An Order declaring that Fraudulent Deed No. 2 is fraudulent;
  - H. An Order vacating and setting aside Fraudulent Deed No. 2;
  - I. An Order directing Defendant William A. Ruzza, Jr. and Defendant Christopher C. Mollica to account for all sums collected from the rents collected from the Premises;
  - J. A Judgment against Defendant William A. Ruzza, Jr. and Defendant Christopher C. Mollica for an amount to be determined by this Court for any sums due and owing to Plaintiff for rents collected by said defendants from the Premises, together with interest, costs and expenses, disbursements, and reasonable attorneys' fees..."

The deliberate joinder of claims for legal and equitable relief arising out of the same transaction amounts to a waiver of the right to demand a jury trial (*see* CPLR §4102(a); *Zutrau v. ICE Sys., Inc.*, 128 AD3d 1058 [2<sup>nd</sup> Dept 2015] *leave to appeal denied* by 26 NY3d 907; *Anesthesia Assoc. of Mount Kisco, LLP v. Northern Westchester Hosp. Ctr.*, 59 AD3d 481 [2<sup>nd</sup> Dept 2009]; *Hebranko v. Bioline Labs.*, 149 AD2d 567 [2<sup>nd</sup> Dept 1989]).

Here, the plaintiff's complaint seeks to determine title to real property and includes allegations setting forth an equitable cause of action for an accounting by defendants William A. Ruzza, Jr. and Christopher C. Mollica. By doing so, the plaintiff has waived her right to a jury trial (*see Whipple v. Trail Props.*,

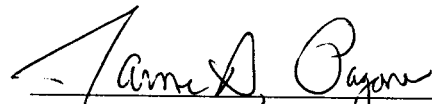
261 AD2d 470 [2<sup>nd</sup> Dept 1999]; *Noto v. Headley*, 21 AD2d 686 [2<sup>nd</sup> Dept 1964]).

Accordingly, the defendant's motion is granted. Counsel are directed to appear for a pretrial conference on March 24, 2017 at 10:30 a.m. Adjournments are only granted with leave of the Court.

The foregoing constitutes the decision and order of this Court. This decision and order has been electronically filed.

Dated: February 16, 2017  
Poughkeepsie, New York

ENTER

  
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