

Marmara, Inc. v Pantoja
2018 NY Slip Op 30906(U)
May 11, 2018
Supreme Court, New York County
Docket Number: 152927/13
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

THE MARMARA , INC. and KISKA CONSTRUCTION CORP. U.S.A,

Plaintiffs,

-against-

RAFAEL PANTOJA, a/k/a RALPH M. PANOTJA,

Defendant.

INDEX NO. 152927/13
MOTION DATE 05-09-2018
MOTION SEQ. NO. 011
MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion for injunctive relief, to amend the complaint, and for sanctions:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
1 - 3	_____
4 - 5	_____

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that plaintiff's motion pursuant to CPLR §6311 for injunctive relief, pursuant to CPLR §3025 to amend the Complaint to assert a cause of action to nullify the deed filed by the defendant with the New York City Register on December 19, 2017, and pursuant to 22 NYCRR 130-1.1 for sanctions, is granted.

Plaintiffs brought this action to quiet title and nullify a deed recorded by the defendant on August 17, 2005, for Unit 26C, located in the Huntington Condominium, 301 East 94th Street, New York, NY 10128, Block 1557, Lot 1195 (hereinafter referred to as "the premises").

It is alleged that in 1994, Kiska Construction Corp. U.S.A. (hereinafter referred to as "Kiska") as owner in fee simple of the property attempted to enter into a contract of sale with the defendant for the premises. At the closing defendant is alleged to have tendered two fraudulently certified bank checks and attorney escrow checks drawn on insufficient funds. The title company insuring the sale, First American Title, refused to record the deed - dated August 29, 1994 - on the grounds there was no consideration given. The closing failed and the transfer of title to the property did not occur. The down payment was returned to the defendant. However the defendant, at the time an attorney admitted to the practice of law, recorded a copy of the deed. On September 8, 1994 Kiska commenced an action to quiet title against Rafael M. Pantoja, Esq. a/k/a Ralph M. Pantoja and GMAC Mortgage Corporation of PA, before the Hon. Alice Schlesinger, under index number 125848/1994, seeking to rescind the August 29, 1994 deed recorded by the defendant.

On December 6, 1994 defendant recorded with the New York City Register of Deeds: (hereinafter referred to as the "New York City Register") - under Reel 2160, Page 332 - a copy of a deed dated September 14, 1994 transferring title from Ralph M. Pantoja to Rafael Manuel Pantoja. Defendant transferred title to himself under one of his aliases. The deed for the property resulting from the failed closing with plaintiffs is dated August 29, 1994. Defendant also recorded the deed transferring title from plaintiffs to himself, after the failed closing, with the New York City Register on February 15, 1995 under Reel 2182 page 1674. Defendant re-filed a second copy of the same failed deed

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

from plaintiffs to himself with the New York City Register on February 24, 1995 under Reel 2185, Page 1306.

By Decision and Order dated March 23, 1995 the Hon. Alice Schlesinger - referring to the August 29, 1994 deed and its subsequent filings in 1995 - determined that the defendant had no defense and failed to "defeat Kiska's right to rescind the deed." Justice Schlesinger's Order rescinded and nullified the August 29, 1994 deed. She further determined that "the documentary evidence is overwhelming that Kiska did not receive any consideration for the transfer of the deed." On March 28, 1995, under Reel 2235, Page 1600, Kiska filed the Court Order rescinding the defendant's deeds with the New York City Register (Mot. Exh. 2).

Kiska subsequently transferred title to Marmara Inc. - a subsidiary corporation - in 1997, for use as part of an extended stay hotel. On August 15, 2005 defendant again recorded a copy of the August 29, 1994 deed for the property with the New York City Register under CRFN 2005000461361. Plaintiffs claim that in July of 2013, while seeking additional financing for the property, they discovered the defendant had re-filed with the New York City Register the rescinded deed that had been nullified by the Hon. Alice Schlesinger.

Plaintiffs allege that the defendant - a disbarred attorney in both New York and New Jersey, who has served prison time for real estate fraud committed in New York in 2008 and on federal charges in 2012 - has fraudulently amended the rescinded deed and re-filed it. The amended deed described by the defendant as a "correction deed," dated August 29, 1994 and filed on August 17, 2005, was prepared and filed by the defendant to obtain a new mortgage from Merrill Lynch Credit Corporation. Plaintiffs claim that defendant has not paid any money for the purchase of the property. The "correction deed" filed on August 17, 2005 with the New York City Register has a notation on an unsigned New York City Department of Finance letterhead that states "To whom it may concern: This document is placed in the record to correct the chain of title and index to reflect the correct and present owner of this property" (Mot. Exh. 5). Plaintiffs allege that the letter like the deed is entirely fraudulent.

Plaintiffs commenced this action on April 2, 2013 to quiet title on the "correction deed" filed on August 17, 2005. Plaintiffs amended the Summons and Verified Complaint on April 23, 2013 seeking a declaration and judgment that: "(a) The Marmara Inc. is the rightful owner in fee simple of the Premises; (b) any adverse claim of title to the Premises by Pantoja is thereby extinguished; (c) Pantoja shall be barred from all claim to an estate or interest in the Premises; and (d) Pantoja's fraudulent "correction deed" be rescinded and deemed stricken from the official records as a matter of law" (Mot. Exh. 1). At the time this action was commenced defendant was incarcerated in the Brooklyn Municipal Detention Center.

On December 11, 2014 Mr. Pantoja filed with the New York City Register, under File No. 201500002653, a "contract of sale" for the property to Abraham Tarshish of 914 Bedford Avenue, Brooklyn, New York (Mot. Exh. 6). Defendant listed the "presenter" as "Levantaglobal, at 375 Park Avenue, Suite 2607, New York, New York, and provided his e-mail address as belonging to the "presenter." The contract of sale lists as defendant's address 2098 8th Avenue, Apt. 4D, New York, New York (Mot. Exh. 6). A check for \$75,000.00 as the down payment on the property is made out to "Andrew Shlomovich, as attorney," and was filed with the "contract of sale" (Mot. Exh. 6). There is no deed filed with the New York City Register related to this "contract of sale."

On October 26, 2017 Mr. Pantoja filed with the New York City Register under File No. 2017000380517, a federal tax lien against the property in the amount of \$1,338,902.00 (Mot. Exh. 7). A federal tax lien was asserted against Mr. Pantoja as part of a restitution order related to his federal criminal conviction.

On December 19, 2017 Mr. Pantoja filed another deed for the property with the New York City Register under File No. 2017000463547, titled "Unit Confirmatory Deed" (Mot. Exh. 8). The "presenter" is once again "Levantaglobal" at 375 Park Avenue, New York, New York but there is a new e-mail "ATOMCORP.EXE@GMAIL.COM." The deed filed on December 19, 2017 identifies the "Grantor" as "Rafael Pantoja a/k/a Ralph M. Pantoja" with an address of "301 East 94th Street, New York, NY 10128," and the "Grantee" as "Rafael Manuel Pantoja a/k/a Rafael M. Pantoja c/o Levanta Global Inc." with an address at "375 Park Avenue, Suite 2607, New York, New York 10152" (Mot. Exh. 8). At oral argument Mr. Pantoja claimed the "Unit Confirmatory Deed" transferring the property to himself, was a "correction."

Defendant is listing the property that is the subject of this action as available for sale for \$2,300,000.00 on the website "StreetEasy" (Mot. Exh. 12). The webpage states that the listing was provided by "Rachel Pantoja" and "Levanta Brokerage Group Inc." (Mot. Exh. 12).

Plaintiffs' motion seeks an Order: (1) pursuant to CPLR §6311 for injunctive relief enjoining and restraining the defendant during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of the defendant or otherwise, any of the following acts: further transferring, conveying, assigning, encumbering, selling, converting, dissipating, gifting, or otherwise disposing of the property that is the subject of this action, specifically 301 East 94th Street, Unit 26C, New York, New York; (2) pursuant to CPLR §3025 amending the Complaint to assert a cause of action to nullify the deed filed by the defendant with the New York City Register on December 19, 2017, and (3) pursuant to 22 NYCRR 130-1.1 for the imposition of sanctions against the defendant for frivolous conduct intended to frustrate the judicial process.

The issuance of an injunction is within the discretion of the trial court. A movant seeking a stay or injunction, is required to show: "(1) the likelihood of ultimate success on the merits; (2) irreparable injury to him absent granting of the preliminary injunction; and (3) that a balancing of the equities favors his position" (Nobu Next Door, LLC v. Fine Arts Housing, Inc., 4 N.Y. 3d 839, 833 N.E. 2d 191, 800 N.Y.S. 2d 48 [2005]).

Conclusive proof is not needed to establish the likelihood of success on the merits; however the movant must establish a right to injunctive relief (1234 Broadway LLC v. West Side SRO Law Project, 86 A.D. 3d 18, 924 N.Y.S. 2d 35 [1st Dept., 2011]). Plaintiffs have shown that there is a likelihood of success on the merits. Justice Schlesinger previously determined, on similar facts, that the August 29, 1994 deed was a nullity and rescinded the deed. This action is to quiet title to property claimed by defendant after he re-filed a nullified and rescinded deed.

Irreparable injury requires that there is no other remedy at law, including monetary damages, that could adequately compensate the party seeking relief (Zodkevitch v. Feibush, 49 A.D. 3d 424, 854 N.Y.S. 2d 373 [1st Dept., 2008]). "Each parcel of real property is unique" (Concourse Rehabilitation and Nursing Center, Inc. v. Gracon Associates, 64 A.D. 3d 405, 881 N.Y.S. 2d 293 [1st Dept., 2009]). The plaintiffs' potential loss of the the property is an irreparable injury. The property is unique and money damages are not an adequate remedy. Plaintiffs have shown irreparable injury if the injunctive relief is not granted because the defendant may sell and attempt to transfer title to the property without a final determination in this action, forcing them to commence further proceedings.

The balancing of the equities requires the Court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief. Injunctive relief may be granted to maintain the status quo where denial of injunctive relief would result in an ineffectual final judgment (Barbes Restaurant Inc. v. ASRR Suzer, 140 A.D. 3d 430 [1st Dept., 2016] citing to Ma v. Lien, 198 A.D. 2d 186, 604 N.Y.S. 2d 84 [1st Dept.,

1993]). Plaintiffs have shown that a preliminary injunction is needed to maintain the status quo and avoid an ineffectual final judgment that would result from defendant's attempts to transfer title to himself or to sell the property.

Plaintiffs also seek an Order pursuant to CPLR §3025 amending the Amended Verified Complaint to assert causes of action addressing the defendant's December 19, 2017 deed, the recorded contract of sale, and the federal tax lien filed on the property for defendant's restitution debts, and to include a cause of action for a permanent injunction. Plaintiffs attach a copy of the proposed "Second Amended Verified Complaint" to the motion papers (Mot. Exh. 11). They argue that there is no prejudice to the defendant as no further discovery is needed.

Pursuant to CPLR §3025 leave to amend pleadings, "shall be freely granted upon such terms as may be just..." the decision to disallow the amendment is at the Court's discretion (McCaskey, Davies & Associates, Inc. v. New York City, 59 N.Y. 2d 755, 450 N.E. 2d 240, 463 N.Y.S. 2d 434 [1983]). Leave to amend should be granted as long as there is no surprise or prejudice to the opposing party. To establish prejudice there must be a showing of hindrance in preparation of the case or the prevention from taking measures in support of a party's position. (Kocourek v. Booz Allen Hamilton, Inc., 85 A.D. 3d 502, 925 N.Y.S. 2d 51 [1st Dept., 2011] and Cherebin v Empress Ambulance Serv. Inc., 43 A.D. 3d 364, 841 N.Y.S. 2d 277 [1st Dept. 2007]).

Plaintiffs have established that the defendant's recent filings with the New York City Register require amendment of the Verified Complaint to properly proceed in this action to quiet title and to prevent the need for future actions seeking the same relief. There is no surprise or prejudice to the defendant from the proposed amendment.

22 NYCRR §130-1.1 allows the Court in its discretion to impose costs and sanctions for frivolous conduct. "Frivolous conduct can be defined in any of three manners: [1] The conduct is without legal merit, or [2] is undertaken primarily to delay or prolong the litigation or to harass or maliciously injure another, [3] or asserts material factual statements that are false" (Levy v. Carol Mgt. Corp., 260 A.D.2d 27, 698 N.Y.S.2d 226 [1st Dept., 1999] and Grayson v. New York City Dept. of Parks and Recreation, 99 A.D.3 d 418, 952 N.Y.S. 2d 8 [1st Dept., 2012]). Frivolous conduct requires the court to consider "the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis for the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel" (Borstein v. Henneberry, 132 A.D. 3d 447, 17 N.Y.S. 3d 414 [1st Dept., 2015] and Johnson v. Law Office of Schwartz, 145 A.D. 3d 608, 46 N.Y.S. 3d 1 [1st Dept. 2016]).

Plaintiffs are entitled to sanctions pursuant to 22 NYCRR §130-1.1 for defendant's frivolous conduct. Defendant disregarded Justice Schlesinger's determination that the August 29, 1994 deed was a nullity and rescinded. This action to quiet title commenced after defendant re-filed the August 29, 1994 nullified and rescinded deed, and seeks the same relief that was granted by Justice Schlesinger. Defendant's subsequent re-filings of a deed that pursuant to the March 23, 1995 Decision and Order of Justice Schlesinger is a nullity and rescinded, does not make it valid. Defendant must not be allowed to ignore court orders with impunity and plaintiffs should not be compelled to bring multiple actions to quiet title as a result of the defendant's frivolous conduct, therefore sanctions are warranted (Grayson v. New York City Dept. of Parks and Recreation, 99 A.D.3d 418, 952 N.Y.S. 2d 8 [1st Dept., 2012]). Defendant's December 19, 2017 "Unit Confirmatory Deed" fraudulently transfers title to the property from the defendant to himself. His claim that this was a "correction" to make sure his name is properly reflected on the deed, his attachment of the federal tax lien and his attempts to sell the property without any determination that defendant has title, is fraudulent, in total disregard of this Court and the

pending action to quiet title brought by the plaintiffs, further warranting the imposition of sanctions (Weisburst v. Dreifus, 89 A.D. 3d 536, 932 N.Y.S. 2d 689 [1st Dept. 2011]).

Pursuant to 22 NYCRR 130-1.2 the maximum sanction should not exceed \$10,000.00. As a disbarred attorney, defendant is not an ill informed self-represented member of the general public. He is aware that the attempts to transfer title to himself, attach a federal tax lien on the property, and to sell the property, during a pending action to quiet title is inappropriate. This court finds that defendant's actions are completely without merit in the law and warrant sanctions in the amount of \$5,000.00 payable to the Lawyers Fund for Client Protection. The sanctions are appropriate in view of the defendant's frivolous conduct, the delay in resolution of this matter and waste of judicial resources (See Schwab v. Phillips, 78 A.D. 3d 1036, 912 N.Y.S. 2d 255 [2nd Dept., 2010] citing to Bernadette Panzella, P.C. v. De Santis, 36 A.D.3d 734, 830 N.Y.S. 2d 200 [2nd Dept. 2007], Friedman v. Yakov, 138 A.D. 3d 554, 30 N.Y.S. 3d 58 [1st Dept., 2016] and Cecora v. De La Hoya, 106 A.D. 3d 565, 965 A.D. 2d 464 [1st Dept., 2013] citing to Benefield v. New York City Hous. Auth., 260 A.D. 2d 167, 687 N.Y.S. 2d 370 [1st Dept., 1999]). Defendant's conduct and false assertion of possession of title in an attempt to circumvent the authority of this Court constitutes abusive tactics that warrant the award of sanctions in the form of reasonable attorneys fees and costs to plaintiffs' counsel for the making of this motion. Such costs and fees are to be determined at a hearing (Timoney v. Newmark & Co. Real Estate, 209 A.D. 2d 201, 750 N.Y.S. 2d 271 [1st Dept. 2002] lv. denied 99 N.Y. 2d 610, 787 N.E. 2d 1166, 757 N.Y.S. 2d 820 [2003] and Gottlieb v. Gottlieb, 137 A.D.3d 614, 28 N.Y.S. 3d 37 [1st Dept., 2016]).

Accordingly, it is ORDERED, that plaintiffs' motion pursuant to CPLR §6311 for injunctive relief, pursuant to CPLR §3025 to amend the Complaint to assert a cause of action to nullify the deed filed by the defendant with the New York City Register on December 19, 2017, and pursuant to 22 NYCRR 130.1 for sanctions, is granted, and it is further,

ORDERED and ADJUDGED that the defendant is enjoined and restrained during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of the defendant or otherwise, electronically including on internet websites, or in person, any of the following acts: further transferring, conveying, assigning, encumbering, selling, converting, dissipating, gifting, filing or recording any deed or otherwise disposing of the property that is the subject of this action, specifically, 301 East 94th Street, Unit 26C, New York, New York, and it is further,

ORDERED, that plaintiffs' undertaking is fixed in the sum of \$500.00, conditioned that the plaintiffs, if it is finally determined that they were not entitled to the relief being provided by this injunction will pay to the defendant all damages and costs which may be sustained by reason of this injunction, and it is further,

ORDERED, that plaintiffs within ten (10) days from the date of entry of this order, shall post a bond for the sum of \$500.00, as undertaking, and it is further,

ORDERED that the Verified Complaint is amended as stated in the proposed "Second Amended Verified Complaint" in the form annexed to the motion (Mot. Seq. 011, Exh. 11), and it is further,

ORDERED that a copy of this Order with Notice of Entry be served on the New York County Clerk's Office pursuant to e-filing protocol and a separate copy of this Order with Notice of Entry be served pursuant to e-filing protocol on the Trial Support Clerk located in the General Clerk's Office who are directed to mark their records accordingly, and it is further,

ORDERED that defendant is deemed served with the Amended Summons and Second Amended Verified Complaint upon service on the defendant by regular mail, at

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RECEIVED NYSCEF: 05/11/2018

the address on file with the Court for this defendant of a copy of this Order with Notice of Entry together with a copy of the Amended Summons and Second Amended Verified Complaint, and it is further,

ORDERED that the defendant is directed to serve and file an answer or otherwise respond to the Second Amended Verified Complaint within twenty (20) days from the date of service of a copy of this Order with Notice of Entry, and it is further,

ORDERED that the defendant RAFAEL PANTOJA a/k/a RALPH M. PANTOJA a/k/a RAFAEL M. PANTOJA a/k/a RAFAEL MANUEL PANTOJA shall pay sanctions in the amount of \$5,000.00 payable to the Lawyer's Fund for Client Protection, within twenty (20) days of service on defendant of a copy of this Order with Notice of Entry, and it is further,

ORDERED that a copy of this Order with Notice of Entry shall be served on the Special Referee Clerk located in the General Clerk's Office for placement at the earliest possible date upon the calendar of the Special Referees' Part, which in accordance with the Rules of that Part shall assign this matter to an available Special Referee for a determination of reasonable attorneys fees and costs associated with the making of this motion, and it is further,

ORDERED that the Special Referee shall hear and report pursuant to the accompanying Order of Reference, the amount of reasonable attorney fees and costs to be awarded plaintiffs' attorneys for the making of this motion.

ENTER: MANUEL J. MENDEZ
J.S.C.



MANUEL J. MENDEZ,
J.S.C.

Dated: May 11, 2018

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE