

**Drakes v Williams**

2018 NY Slip Op 32039(U)

August 15, 2018

Supreme Court, Kings County

Docket Number: 502587/2018

Judge: Lara J. Genovesi

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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 15<sup>th</sup> day of August 2018.

P R E S E N T:

HON. LARA J. GENOVESI,  
J.S.C.

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DONNA DRAKES,

Plaintiff,

Index No.: 502587/2018

DECISION & ORDER

-against-

JAMAL WILLIAMS,

Defendant.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	<u>1</u>
Opposing Affidavits (Affirmations) _____	<u>2</u>
Reply Affidavits (Affirmations) _____	<u>          </u>

***Introduction***

Plaintiff, Donna Drakes, moves by order to show cause, sequence number six, for an order (1) restraining defendant from proceeding with any related landlord tenant actions, specifically in New York City Civil Court, Kings County, Housing Part, index numbers K55323/2018 and K55326/2018, and restraining defendant from attempting to evict the plaintiff and any other occupants of the premises at 370 Lewis Avenue,

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Brooklyn, New York 11233; (2) staying the proceedings and execution of any judgment or warrant, specifically the judgment issued by Judge Marton on June 22, 2018 in New York City Civil Court, Kings County, Housing Part, index numbers K55323/2018 and K55326/2018; (3) establishing a constructive trust in favor of plaintiff to protect plaintiff's interest; (4) awarding sanctions against defendant for his willful and contemptuous conduct in violation of the so-ordered stipulation of this Court, wherein the parties agreed to "maintain the status quo"; and (5) such other and further relief as this Court deems just, proper and equitable.

Defendant Jamal Williams opposes this application.

### ***Background & Procedural History***

Plaintiff occupies the commercial unit on the first floor of the subject premises located at 370 Lewis Avenue, in Brooklyn, New York. She leased this unit from the previous owner in 2010, where she runs her business Lewis Avenue Fine Foods Inc., d/b/a Brooklyn Beso Restaurant & Bar. Plaintiff contends that she purchased the subject real property from the prior owner on January 27, 2012 (*see* Order to Show Cause [1], Exhibit M at ¶ 4). According to plaintiff, she and defendant, who are cousins<sup>1</sup>, agreed to place defendant's name on the deed to property "for convenience only as a straw buyer" (*id* at ¶ 6). "[D]ue to Plaintiff's bad credit, Plaintiff was not going to be able to obtain the necessary financing in order to fund the purchase of the Subject Property" (Order to

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<sup>1</sup> In defendant's loan application, he listed among his assets, \$10,000.00 as "gift-cousin" (*see* Notice of Motion [1], Attorney's Affirmation at ¶ 16; *see also id.*, Exhibit I, loan application). Apart from this reference, there is no further description of the parties' relationship in the papers.

Show Cause [1], Affirmation in Support at ¶ 10). Defendant did not contribute to the purchase price (*id* at ¶ 5). The parties agreed that defendant would transfer title to plaintiff two years after the purchase. On March 11, 2011, Plaintiff wired defendant \$25,000.00 to pay an initial deposit on the property (*see id* at ¶ 13; *see also* Exhibit F, Bank Statements). According to plaintiff, the parties' agreement was memorialized in a handwritten letter dated November 8, 2011, which provides

I Jamal Williams am a trustee on 370 Lewis Ave. I do not intend to occupy the presises [sic] or control it in any way. I am not responsible for collecting rents & making repairs or any debts that the property accur [sic] this will be the soul [sic] responsibilty [sic] of Donna Drakes.

Donna Drakes will be responsible for collecting rents, paying the mortgage making all repairs and all debts that accrurs [sic].

Donna drakes also agrees to remove the property from my name by way of refinancing two years after purchase date.

(*id.*, Exhibit G).

The same day, plaintiff transferred another \$10,000.00 to defendant (*see id.*, Attorney's Affirmation at ¶ 15; *see also id.*, Exhibit H). Plaintiff also purportedly paid defendant for other expenses related to the property (*see id.*, Exhibit L). These checks are from a "Ready to Close, LLC" to Jamal Williams. The defendant never transferred the deed to the plaintiff, as agreed upon. In 2018, defendant commenced housing court proceedings to evict plaintiff and her sister, Leann Joseph, who is another a tenant of the building.<sup>2</sup>

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<sup>2</sup> Defendant provided a text message sent from plaintiff after defendant served a letter of eviction. The message provides: "This is Donna you have blocked both me and edwin . [sic] I am not sure what you have done but I got a letter of eviction . [sic] We have spent over 300,000 to get this business where it is today. This is my husband and my source of income this is how we feed our family . [sic] Please call me so we can work this out" (Affirmation in Opposition [2], Exhibit 1).

Plaintiff commenced the instant action to quiet title by e-filing a summons and complaint on February 7, 2018 (*see* Order to Show Cause [1], Exhibit M; *see also* NYSCEF Document # 1). On May 30, 2018, the parties entered into a stipulation in the instant action, which was so-ordered by this Court. The parties agreed,

On consent, defendant's order to show cause signed on April 30, 2018 is hereby resolved as follows:

1. [Plaintiff]'s counsel represents that the vacant space within the building was rented out in early April. Counsel stated there is no lease for the space; this unit # 2 is rented month to month for \$1,800. Unit # 1 is rented month to month for \$2,000 and is residential.
2. [Plaintiff] to provide counsel for [defendant] with a copy of all the keys to the building which were recently changed, within 7 days, to be held in escrow by counsel for [defendant];
3. [Plaintiff] to provide [defendant] with an accounting of the rent collected by [plaintiff] for all of the units on or before the tenth of every month and [plaintiff] shall thereafter pay the current months mortgage by wire to the mortgage bank, with contemporaneous proof of said wire sent to [defendant], with said rent and shall provide a copy of proof of said payment to [plaintiff] reasonably thereafter.
4. If any of the payments are untimely, time being of the essence, this shall be a material default hereunder, and this agreement shall be null and void and [defendant] may seek emergency relief from the court thereafter;
5. The money not paid by [plaintiff] towards the mortgage for the last two months, believed to be roughly \$7,600, shall be held in escrow by counsel for [plaintiff].
6. The status quo shall otherwise be maintained.

7. The parties shall maintain and preserve all records, receipts, proofs, etc and shall produce same upon reasonable request/demand.
8. The temporary restraining order is vacated.

(Notice of Motion [1], Exhibit O).

Thereafter, defendant proceeded with the housing court actions. A trial was held before the Hon. Gary Marton in the holdover proceeding against Leann Joseph, index number 55326/2018. A judgment of possession was granted in favor of defendant on June 22, 2018 (*see* Order to Show Cause [1], Exhibit B, Decision dated June 22, 2018). The status of Williams v. Drakes, index number 55323/2018 is unknown.

***Plaintiff Contends***

Plaintiff contends that defendant failed to comply with the May 30, 2018 stipulation. Specifically, plaintiff argues that defendant failed to comply with that portion of the stipulation wherein the parties agreed to “maintain the status quo”, by moving forward in the housing court actions, proceeding with trial in the holdover proceeding against tenant Leann Joseph and obtaining a judgment of possession in favor of defendant. As a result of this action, plaintiff seeks a stay of the housing court actions and sanctions against defendant. “Such a flagrant violation of the Court’s Order cannot be excused and this Court should issue sanctions against Defendant as a result” (Order to Show Cause [1], Affirmation in Support at ¶ 63).

Plaintiff further contends that a constructive trust should be imposed to preserve the status quo. Defendant contends that the parties had a confidential agreement for

defendant to be a straw buyer and that defendant would transfer title of the property to plaintiff. In reliance on this agreement, plaintiff contributed the funds required to purchase the premises and paid all bills involving the property. Plaintiff maintains that “Defendant will be unjustly enriched should the eviction of Plaintiff and the other occupants from the subject premises be allowed to go forward, when Plaintiff [*sic*] has contributed nothing towards the purchase or maintenance of the Subject Property and holds no equitable title whatsoever” (*id.* at ¶ 52).

### ***Defendant Contends***

Defendant contends that plaintiff has no standing to seek a “stay/injunction” in the action Williams v. Joseph, housing court index number 55326/2018, because she is not a party to that action (Affirmation in Opposition [2] at ¶ 2). Defendant further maintains that “the Court should also deny injunctive relief as to this Plaintiff” (*id.*). Defendant argues that “[p]laintiff is clearly not to be afforded any credibility and is not likely to succeed on the merits” (*id.* at ¶ 16). Defendant avers that the purported letter from defendant acknowledging that plaintiff is the owner of the property and stating that defendant will transfer the deed to plaintiff was not exchanged prior to the instant order to show cause, nor was it produced in housing court at the trial. Defendant provided a text message from plaintiff where she asks to work the matter out and states the risk an eviction poses to her business which is the source of income for her family. Defendant maintains that this text message “would read something to the effect of ‘how dare you try and evict me from my building’ or ‘you can’t evict me because I own the building’... [s]omeone who believed that they owned the building would have a far different tone and

approach to someone removing them from their property” (Affirmation in Opposition [2] at ¶ 23).

Defendant argues that plaintiff failed to make a prima facie case or properly plead a cause of action for constructive trust. “Plaintiff does not allege what confidential or fiduciary relationship existed between the parties” (Affirmation in Opposition [2] at ¶ 19). Defendant further maintains that plaintiff failed to establish any transfer from plaintiff to defendant, and how defendant has been unjustly enriched. Additionally, defendant contends that plaintiff failed to meet her burden of establishing entitlement to an injunction.

### *Discussion*

#### *Preliminary Injunction*

Plaintiff moves herein for an order “restraining” defendant from proceeding with any landlord tenant actions and “staying the proceedings and execution of ... judgment” in housing court (Order to Show Cause [1]). “It is clear that a stay is effective solely within the parameters of the proceeding in which it was issued, whereas an injunction has a much broader effect” (1544-48 *Properties, L.L.C. v. Maitre*, 184 Misc. 2d 984, 712 N.Y.S.2d 303 [App. Term, 2000]; *see generally* CPLR § 2201). “At its widest latitude, we hear [stay] used as a simple synonym for an ‘injunction’” (CPLR § 2201, Practice Commentary C2201:1 *What is a “Stay?”*).<sup>3</sup> In the instant case, plaintiff seeks to “stay”

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<sup>3</sup> “We hear from time to time of a court staying an action pending in another court. That procedure should be understood and clarified because it is not the type of relief that CPLR 2201 authorizes. Rather, it is an injunction, which is an exercise of a highly specialized piece of equity jurisdiction that can issue only from a court having such jurisdiction. In New York, the supreme court possesses supreme jurisdiction, including full equity jurisdiction, although a number of other courts have incidental equitable

two housing court actions. Inasmuch as plaintiff seeks a “stay” outside the parameters of this proceeding, and therefore, outside of the latitude of CPLR § 2201, and defendant opposed plaintiff’s application as that of a preliminary injunction rather than a CPLR §2201 stay, this Court shall convert the motion into one for an injunction.

“On a motion for a preliminary injunction, the plaintiff must show, ‘by affidavit and such other evidence as may be submitted,’ that there is a cause of action, and that the action falls within one of the grounds for a preliminary injunction specified in CPLR 6301” (*Vanderbilt Brookland, LLC v. Vanderbilt Myrtle, Inc.*, 147 A.D.3d 1104, 48 N.Y.S.3d 251 [2 Dept., 2017], quoting CPLR 6312[a]). “To establish the right to a preliminary injunction, the plaintiff must demonstrate (1) the likelihood of ultimate success on the merits, (2) irreparable injury absent the grant of the injunction, and (3) a balance of the equities in the plaintiff’s favor” (*Braunstein v. Hodges*, 157 A.D.3d 850, 66 N.Y.S.3d 914 [2 Dept., 2018], citing CPLR § 6301).

“The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court” (*Gonzalez v. 231 Maujer St., HDFC*, 157 A.D.3d 869, 69 N.Y.S.3d 689 [2 Dept., 2018], quoting *Matter of Armanida Realty Corp. v. Town of Oyster Bay*, 126 A.D.3d 894, 3 N.Y.S.3d 612 [2 Dept., 2015]). “Absent unusual or compelling circumstances, appellate courts are reluctant to disturb that determination” (*Cong. Machon Chana v. Machon Chana Women's Inst., Inc.*, 162 A.D.3d

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powers. The injunction is governed by that whole body of principles associated with equity and is usually pursued in a regular plenary action seeking a final judgment of injunction. During such an action, preliminary injunctive relief, the provisional remedy supplied by CPLR Article 63, can be granted” (CPLR § 2201, Practice Commentary C2201:2 “*Stay*” of *Case Pending in Other Court?*).

635, -- N.Y.S.3d -- [2 Dept., 2018], citing *Masjid Usman, Inc. v. Beech 140, LLC*, 68 A.D.3d 942, 892 N.Y.S.2d 430 [2 Dept., 2009]). “A court evaluating a motion for a preliminary injunction must be mindful that the purpose of a preliminary injunction is to maintain the status quo and not to determine the ultimate rights of the parties” (*id.*). “Conclusive proof is not required, and a court may exercise its discretion in granting a preliminary injunction even where questions of fact exist” (*Vanderbilt Brookland, LLC v. Vanderbilt Myrtle, Inc.*, 147 A.D.3d 1104, *supra*).

Plaintiff’s order to show cause for a stay and to restrain defendant from proceeding in the landlord tenant actions is denied. As an initial matter, plaintiff’s motion to stay the housing court proceedings and execution of judgment in *Williams v. Joseph*, K55326/2018 is denied. Plaintiff is not a party to that action. Even assuming, *arguendo*, that plaintiff is the true owner of the property, plaintiff has not established that eviction of one tenant will cause her to suffer irreparable harm.

With respect to *Williams v. Drakes*, K55323/2018, plaintiff established a likelihood of success on the merits. She provided bank statements which show that payments in the amounts of \$25,000.00 and \$10,000.00 were made to a bank account ending in 9765. The first payment was made March 11, 2011, 10 months prior to the purchase date. The second payment was made on November 8, 2011, two months prior to the purchase date. Plaintiff further provided an affidavit wherein she stated that these payments were made from her to defendant for purchasing the premises. In addition, plaintiff provided a document dated November 8, 2011, which is purportedly signed by defendant, stating that plaintiff is responsible for the premises and will transfer title in the

future. Although this hand-written document is not notarized and has not been exchanged prior to the instant application, conclusive proof is not required at this stage. Questions of fact do not preclude a grant of preliminary injunction (*see Vanderbilt Brookland, LLC v. Vanderbilt Myrtle, Inc.*, 147 A.D.3d 1104, *supra*). This Court does not seek to determine the ultimate right of the parties herein, but rather, to maintain the status quo (*see Cong. Machon Chana v. Machon Chana Women's Inst., Inc.*, 162 A.D.3d 635, *supra*).

However, plaintiff failed to establish that she would suffer irreparable harm if the preliminary injunction is not granted. Although plaintiff operates her business from the premises and the destruction of her livelihood would meet the requirement of irreparable harm (*see Reuschenberg v. Town of Huntington*, 16 A.D.3d 568, 791 N.Y.S.2d 652 [2 Dept., 2005]), here there is an ongoing housing court action. Although plaintiff cannot obtain a judgment to quiet title in housing court, plaintiff can assert the affirmative defense of constructive trust there (*see generally, Suissa v. Baron*, 24 Misc.3d 1236(A), 901 N.Y.S.2d 903 [Dist. Ct. 2009], *citing Vita v. Dol-Fan, III, Inc.*, 18 Misc.3d 30 [App. Term, 2007] ["When the claim of a constructive trust is properly interposed by a respondent as an affirmative equitable defense to a summary proceeding, the District Court must entertain that defense"]). Given that plaintiff did not demonstrate that she will suffer irreparable harm, the balance of equities does not tip in her favor. In the event that housing court does not permit discovery as to the affirmative defense, this Court will entertain any applications for discovery and a stay of the housing court proceeding,

pending exchange of that discovery. Accordingly, the plaintiff's motion for a preliminary injunction, staying the housing court action Williams v. Drakes, K55323/2018 is denied.

### ***Constructive Trust***

Plaintiff moves herein for "[a]n order establishing a 'Constructive Trust' in favor of the Plaintiff to protect Plaintiff's interest in the subject premises" (Order to Show Cause [1]). Here, plaintiff's third cause of action is for constructive trust (*see id.*, Exhibit M, Summons and Complaint at ¶¶ 28-34). "Mandatory injunctive relief should not be granted pendente lite without a showing of extraordinary circumstances where the status quo would be disturbed and the plaintiff would be granted the ultimate relief in the action" (*Vill. of Westhampton Beach v. Cayea*, 38 A.D.3d 760, 835 N.Y.S.2d 582 [2 Dept., 2007]; *see also Zoller v. HSBC Mortg. Corp. (USA)*, 135 A.D.3d 933, 22 N.Y.S.3d 901 [2 Dept., 2016]). Here, plaintiff failed to establish extraordinary circumstances which would justify the ultimate relief be granted in order to maintain the status quo. Accordingly, plaintiff's motion for constructive trust is denied.

### ***Sanctions***

Pursuant to the Rules of the Chief Administrator of the Courts, a court, in its discretion, may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct. Frivolous conduct is statutorily defined as "(1) conduct that is completely without merit in law and cannot be supported by reasonable argument for an extension, modification, or reversal of existing law; (2) conduct undertaken primarily to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or (3) the assertion of material factual statements

that are false” (22 NYCRR 130-1.1(a). There is no evidence, at this time, of frivolous conduct by the defendant which would justify the imposition of sanctions (*see* 22 NYCRR 130-1.1[c][1]).

### ***Conclusion***

Accordingly, plaintiff’s order to show cause is denied, in its entirety. Plaintiff failed to establish entitlement to a preliminary injunction, or a “stay” of the housing court action, where the issue of constructive trust can be raised as an affirmative defense. Further, plaintiff failed to establish frivolous conduct which would justify the imposition of sanctions, or extraordinary circumstances which would entitle them to the ultimate relief of constructive trust, *pendente lite* in this action.

The foregoing constitutes the decision and order of this Court.

ENTER:



Hon. Lara J. Genovesi  
J.S.C.

Lara J. Genovesi  
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