

Holder v Folsom PL Realty Inc.
2018 NY Slip Op 33122(U)
December 4, 2018
Supreme Court, Kings County
Docket Number: 524936/2017
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Part 91

KATRINA HOLDER AND EUDEAN HOLDER,

Plaintiff,

against

FOLSOM PL REALTY INC.,

Defendant.

Index Number 524936/2017

SEQ#001

AMENDED

DECISION/ORDER

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed...	<u>2</u>
Answering Affidavits.....	<u>3</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>3</u>
Other	<u>3</u>

Upon review of the foregoing papers, plaintiffs' motion for summary judgment and to strike a certain deed is decided as follows¹:

Plaintiffs bring this action against defendant to recover ownership of the property located at 18 Folsom Place, Brooklyn, New York. Plaintiffs allege that defendant misrepresented that it would assist them in short selling the property in order to relieve them from a mortgage in default. Instead, plaintiffs alleged that defendant tricked them into transferring their property to defendant. Plaintiffs assert claims for deed reversion, quiet title, unjust enrichment, an accounting, and fraud in the inducement.

The moving party on a motion for summary judgment bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

¹ This amended decision and order, issued *nunc pro tunc*, corrects the prior decision, dated September 13, 2018, to correct a typo in the Lot number for the subject property.

In support of their motion, plaintiffs state in their affidavits that defendant approached them for the purpose of conducting a short sale of their property, which was encumbered by mortgage in default, or to assist plaintiffs during a foreclosure sale of the property. They state that defendant did not tell them they were transferring ownership of the property to defendant, and that they received no money from defendant for this transfer. Plaintiffs submit documents relating to the transfer, including a certified deed and attachments. The deed, recorded on May 6, 2014, between Katrina Holder and Folsom PL Realty Inc., for the property located at Block 3956, Lot 14, in Brooklyn, New York, states that the property was sold for "ten (\$10) dollars and other valuable consideration". A real property transfer report, which is attached to the deed, states that the property was sold for \$415,000.

In opposition, defendant submits the affidavit of Sanford Solny, a principal of defendant, who states that defendant paid plaintiffs \$6,000. Plaintiffs deny this in their affidavits, and defendant provides no evidence of this payment other than Mr. Solny's statement. Mr. Solny claims that the payment of \$6,000 was fair because the property was under water in the amount of approximately \$433,00, but defendant also provides no proof of the fair market value of the property, the amount outstanding on the mortgage, or the additional amounts in taxes and other fees that defendant claims plaintiffs owe. Finally, Mr. Solny states that defendant spent \$49,000 to repair the property and hire brokers in order to rent the property, but defendant provides no documentary evidence of these payments either.

To establish a prima facie case for fraud in the inducement, a plaintiff must establish "a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Spector v Wendy*, 63

AD3d 820, 821 [2d Dept 2009]).

Here, plaintiffs state in their affidavits that defendant deceived them into transferring their property under the guise of performing a short sale. Defendant claims that plaintiffs knew or should have known that they were selling the property because they signed documents effectuating the transfer. However, parties are not bound to terms of an agreement if there is a showing of fraud (*Renee Knitwear Corp. v ADT Security Systems*, 277 AD2d 215, 215 [2d Dept 2000]).

Plaintiffs argue that the transaction is patently fraudulent because, according to defendant, they were paid only \$6,000 for property that defendant agrees is worth at least \$300,000. Plaintiffs further contend that the amount of debt from the mortgage could not reduce the fair value of the property because they are still responsible for the mortgage. While defendant claims that the value of the property must also be reduced by the amount owed from taxes, as well as water and sewer charges, defendant provides no evidence of such amounts. Moreover, the documents defendant filed memorializing this transfer provide conflicting information about the sale price. Specifically, while defendant contends it paid plaintiffs \$6,000 for the property, the deed states that the property was sold for \$10 and/or \$415,000.

In sum, the evidence shows that defendant convinced plaintiffs to transfer property, worth at least \$300,000, for only \$6,000, and there is no evidence to support such a drastically reduced value. Accordingly, the evidence shows that defendant misrepresented the transaction to plaintiffs to induce them to transfer the property, that plaintiffs justifiably relied on defendant, and that plaintiffs have been injured as a result.

Likewise, plaintiffs prove their claim for unjust enrichment, which requires them to establish that (1) defendant was enriched, (2) at plaintiffs' expense, and (3) that it is against

equity and good conscience to permit the defendant to retain the property (*Main Omni Realty Corp. v Matus*, 124 AD3d 604, 605 [2d Dept 2015]). As shown above, defendant received property, by its own reckoning, worth \$300,000, for payment of \$6,000. It is against equity and good conscience for defendant to retain the property under these circumstances.

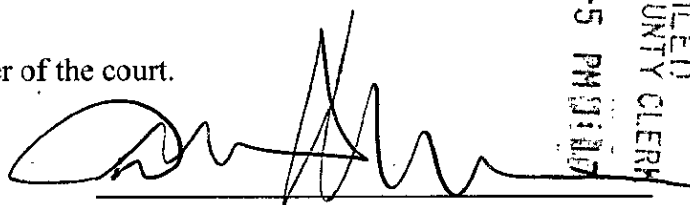
Plaintiffs are also entitled to quiet title. "To maintain an equitable quiet title claim, a plaintiff must allege actual or constructive possession of the property and the existence of a removable cloud on the property...such as a deed...that is actually invalid or inoperative" (*Acocella v Wells Fargo Bank, NA*, 139 AD3d 647, 649 [2d Dept 2016]). Plaintiffs' proof of fraudulent inducement entitles plaintiffs to recover ownership of the property.

As to plaintiffs' cause of action for an accounting, there is no evidence that defendant received income from the property during its ownership. Lastly, there is no such claim as "deed reversion". That said, plaintiffs' are entitled to recover ownership of their property, as explained above.

Based on the foregoing, plaintiff's motion for summary judgment as to its claims for fraudulent inducement, unjust enrichment and quiet title is granted. The deed, recorded on May 6, 2014, between Katrina Holder and Folsom PL Realty Inc., for the property located at Block 3956, Lot 14, in Brooklyn, New York, is void and of no effect. The City Register is directed, upon presentation of a certified copy of this order, to strike this deed from the record. The remainder of plaintiff's motion is denied.

This constitutes the decision and order of the court.

December 4, 2018
DATE


DEVIN P. COHEN
Acting Justice, Supreme Court

FILED
KINGS COUNTY CLERK
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