

Inland Mtge. Capital Corp. v Aslansan

2018 NY Slip Op 33844(U)

May 14, 2018

Supreme Court, Saratoga County

Docket Number: 20152131

Judge: Thomas D. Nolan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

INLAND MORTGAGE CAPITAL CORPORATION,

Plaintiff,

-against-

KAAN ASLANSAN and AYSEL ASLANSAN,

Defendants.

DECISION AND ORDER
RJI No. 45-1-2017-0255
Index No. 20152131

PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

APPEARANCES: CULLEN AND DYKMAN LLP
Attorneys for Plaintiff
Garden City Center
100 Quentin Roosevelt Boulevard
Garden City, New York 11530

INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP
Attorneys for Defendants
250 Park Avenue
New York, New York 10177

SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY
2018 MAY 15 PM 3:37

FILED

Defendants move pursuant to CPLR 2221 (d) for leave to reargue that portion of the motion underlying the court's decision, order, and judgment dated November 22, 2017 which granted summary judgment to plaintiff on its fourth cause of action. The fourth cause of action is based on Debtor and Creditor Law § 276-a, and as the result of the relief the court granted to plaintiff, plaintiff was deemed entitled to recover from defendants its reasonable attorneys' fees.

Defendants contend that the court misinterpreted the law or misapplied it to the facts and that reargument thus lies and that upon reargument, plaintiff asks that the court reconsider the facts and the law and deny summary judgment to the plaintiff on the complaint's fourth cause of

action.

Plaintiff opposes and cross-moves for an order fixing the amount of attorneys' fees to be recovered from defendants on its fourth cause of action.

The principal rationale for defendants' motion is their contention that to grant relief under § 276-a, the court must determine that defendant Kaan Aslansan, the transferee of the property, had the actual intent to hinder, delay, or defraud the plaintiff and to thus impair collection of the money judgment plaintiff has against defendant Aysel Aslansan and the Estate of Esat Aslansan, a former defendant,¹ and that the evidence presented by the parties on the motion does not support the finding of actual intent.

A motion for leave to reargue is addressed to the court's discretion and should be granted if the court overlooked significant facts or misapplied the law or otherwise mistakenly arrived at its decision. Cascade Bldrs. Corp. v Rugar, 154 AD3d 1152 (3rd Dept 2017); Loris v S&W Realty Corp., 16 AD3d 729 (3rd Dept 2005).

Here, relevant precedent demonstrates that reargument is appropriate and that the court thus reconsiders its determination that plaintiff was entitled to summary judgment on the complaint's fourth cause of action.

Debtor and Creditor Law § 276-a provides, in relevant part, in order for attorneys' fees to be awarded that both the judgment debtor that effected the conveyance and the transferee that acquired the property be determined to have had "actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud" the plaintiff, a judgment creditor. Key Bank of

¹After commencement of this action, Esat Aslansan died, and the action against him was discontinued by stipulation.

New York v Diamond, 203 AD2d 896 (4th Dept 1994). Actual intent must be proved by the judgment creditor by clear and convincing evidence and insofar as § 276-a is concerned against both the transferee and the transferor. Marine Midland Bank v Murkoff, 120 AD2d 122 (2nd Dept 1986); Carey v Crescenz, 923 F2d 18 (2nd Cir 1991); Matter of Xiang Yong Gao, 560 B.R. 50, 65-66 (U.S. Bankruptcy Ct, ED New York 2016); Matter of Singh, 434 B.R. 298 (U.S. Bankruptcy Ct, ED New York 2010).

Applying this principle to the facts here leads the court to conclude that while plaintiff's proof, clearly and convincingly support the court's finding of actual fraud on the part of the deceased transferor, Esat Aslansan, that proof falls short of demonstrating as a matter of law that Aysel Aslansan and Kaan Aslansan acted with actual fraudulent intent when the facts are viewed, as the court must, in the light most favorable to them. Upon reconsideration of the record and in particular the affidavits of Kaan Aslansan and Aysel Aslansan and in light of the controlling relevant precedents, triable issues of fact exist whether these defendants acted with actual intent to hinder, delay, or defraud the plaintiff.

Defendants' motion for reargument is granted, without costs, and upon reargument that portion of the court's decision, order and judgment dated November 22, 2018 which granted summary judgment to plaintiff on its fourth cause of action is vacated and plaintiff's motion for summary judgment on its fourth cause of action is denied, without costs.

Plaintiff's cross motion is thus moot and it is denied, without costs.

This constitutes the decision and order of the court. The original decision and order is returned to counsel for defendants. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for defendants is not relieved from the applicable

provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

DATED: May 14, 2018
Saratoga Springs, New York



HON. THOMAS D. NOLAN, JR.
Supreme Court Justice

COPY