

<b>Christopulos v Christopulos</b>
2018 NY Slip Op 34425(U)
October 25, 2018
Supreme Court, Queens County
Docket Number: Index No. 705015 2014
Judge: Frederick D.R. Sampson
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE FREDERICK D.R. SAMPSON IA Part 31  
Justice

GREGORY CHRISTOPULOS, x

Index  
Number 705015 2014

Plaintiff,

Motion  
Date June 14, 2018

-against-

KATHERINE CHRISTOPULOS, INDIVIDUALLY AND AS TRUSTEE OF THE JULIA CHRISTOPULOS IRREVOCABLE TRUST, BROWNSTONE RESTORATION, INC., and NICHOLAS SPYREAS, Motion Seq. No. 10

Defendants. x

FILED  
NOV 16 2018  
COUNTY CLERK  
QUEENS COUNTY

The following numbered papers read on this motion by plaintiff for an order cancelling the first mechanic's lien filed by defendant Nicholas Spyreas (Spyreas) as president of defendant Brownstone Restoration, Inc. (Brownstone) on the property located at 155-28 Cherry Avenue, Flushing, New York 11355 on the grounds that Spyreas has disavowed association with Brownstone and stated that the mechanic's lien was filed in error, directing defendant Katherine Christopulos to list the property for immediate sale as required by the Julia Christopulos Irrevocable Trust, directing the termination of the Julia Christopulos Irrevocable Trust and compelling defendant Katherine Christopulos as trustee to render an accounting, cancelling the second and third mechanic's liens filed by Spyreas on the grounds that they have been fraudulently filed, and enjoining Spyreas from filing any mechanic's liens on the property pending a further order of the court.

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits ..... EF 116 - 120  
 Answering Affidavits - Exhibits ..... EF 126  
 EF 130 - 133  
 Reply Affidavits ..... EF 127 - 129

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action seeking, among other things, to dissolve a trust consisting of certain real property known as 155-28 Cherry Avenue, Flushing, New York 11355, for an accounting, for specific performance of the trust agreement, and to vacate three mechanic’s liens filed against the property. On February 17, 2011, Julia Christopulos established the Julia Christopulos Irrevocable Trust, into which she deeded the aforementioned real property. Defendant Katherine Christopulos is the trustee of the trust. On June 18, 2013, Julia Christopulos died. On April 18, 2014, Spyreas filed a mechanic’s lien against the subject property claiming that Brownstone and Spyreas, the owner of Brownstone, furnished labor and materials used in the improvement of the property between June 21, 2013 and March 6, 2014 in the amount of \$523,000.00. On August 14, 2014, plaintiff commenced the within action. On October 30, 2015, Spyreas filed a second mechanic’s lien against the property for labor and materials furnished by Brownstone in connection with improvements made on the property between June 25, 2013 and October 29, 2015 in the amount of \$525,000.00. On April 19, 2017, Spyreas filed a third mechanic’s lien against the property for labor and materials furnished by Brownstone in connection with the property between June 25, 2013 and March 10, 2017 in the amount of \$525,000.00.

Those branches of plaintiff’s motion seeking to cancel the first, second, and third mechanic’s liens filed against the subject property are denied. A court has no inherent power to vacate or discharge a notice of lien except as authorized by Lien Law § 19(6) (*see Matter of Luckyland [N.Y.], LLC v Core Cont. Constr., LLC*, 83 AD3d 1073 [2d Dept 2011]; *Matter of Gold Dev. & Mgt., LLC v P.J. Contr. Corp.*, 74 AD3d 1340 [2d Dept 2010]; *Matter of Retek v City of New York*, 14 AD3d 708 [2005]; *Matter of Lowe*, 4 AD3d 476 [2d Dept 2004]). “Lien Law § 19 provides the grounds for the discharge of a mechanic’s lien for private improvement” (*Coppola Gen. Contr. Corp. v Noble House Constr. of N.Y.*, 224 AD2d 856, 857 [3d Dept 1996]). Lien Law § 19(6) provides, in pertinent part, that a court may summarily discharge a lien for private improvement,

“[w]here it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for

which a lien is claimed, or where for any other reason the notice of lien is invalid by reason of failure to comply with the provisions of section nine of this article, or where it appears from the public records that such notice has not been filed in accordance with the provisions of section ten of this article . . .”

Here, plaintiff argues that the first lien must be discharged because Brownstone is a dissolved corporation, with which Spyreas stated he has no association. Plaintiff also seeks to discharge the second and third liens, which Spyreas asserts are merely renewals of the first lien, on the grounds that they were filed fraudulently because they contain allegedly false statements that an oral contract was made between Julia Christopulos and Spyreas for the performance of certain improvements on the subject property. Since there are no defects upon the face of the notice of these liens, “any dispute regarding the validity of the lien must await trial thereof by foreclosure” (*Matter of Northside Tower Realty, LLC v Klin Constr. Group, Inc.*, 73 AD3d 1072 [2d Dept 2010]; see *Rivera v Department of Hous. Preserv. & Dev. of City of New York*, 130 AD3d 802 [2d Dept 2015]; *Lane Constr. Co., Inc. v Chayat*, 117 AD3d 992 [2d Dept 2014]).

That branch of plaintiff’s motion seeking to enjoin Spyreas from filing further mechanic’s liens against the subject property is also denied. To obtain the drastic remedy of a preliminary injunction, the movant must demonstrate (1) a likelihood of success on the merits, (2) irreparable harm if the injunction is denied, and (3) a balance of the equities in favor of granting the injunction (CPLR 6301; see *EdCia Corp. v McCormack*, 44 AD3d 991 [2d Dept 2007]; *City of Long Beach v Sterling Am. Capital, LLC*, 40 AD3d 902 [2d Dept 2007]; *Evans-Freke v Showcase Contr. Corp.*, 3 AD3d 549 [2d Dept 2004]; *Merscorp, Inc. v Romaine*, 295 AD2d 431 [2d Dept 2002]). The determination whether to grant a preliminary injunction is a matter ordinarily committed to the sound discretion of the court (see *Doe v Axelrod*, 73 NY2d 748 [1988]; *Masjid Usman, Inc. v Beech 140, LLC*, 68 AD3d 942 [2d Dept 2009]). Here, plaintiff failed to establish a clear right to relief under the foregoing standard. As discussed above, the validity of the mechanic’s liens filed against the property remains in dispute. In addition, the record before the court does not adequately demonstrate that plaintiff will suffer irreparable harm if the preliminary injunction is not granted or that the equities balance in favor of plaintiff.

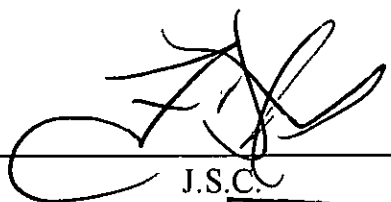
Next, the court will address that branch of plaintiff’s motion which is, in effect, for summary judgment on the cause of action for specific performance of the terms of the trust relative to the disposition of the real property held by the trust. Paragraph 3.5 of the trust agreement states, “this Trust shall not continue beyond the death of the Settlor. Upon the death of the Settlor, or as soon as practical thereafter, the Trustee shall distribute the remaining Corpus in accordance with the provisions for distribution set forth herein.” Paragraph 4.2 of the trust agreement further provides, “the Remainder Beneficiaries entitled

to distribution of all remaining trust property upon the death of the Settlor are **KATHERINE CHRISTOPULOS and GREGORY F. CHRISTOPULOS**, per stirpes, and in nearly equal shares as practicable.” By the plain and unambiguous terms of the trust instrument, which are uncontroverted, the trust terminated upon the death of Julia Christopulos and title to the property held by the trust immediately vested in the beneficiaries (*see Matter of Jones*, 306 NY 197 [1954]). Thus, as of that date, plaintiff and defendant Katherine Christopulos became owners of the trust property as tenants in common. It is further undisputed that five years after the death of Julia Christopulos have elapsed without the distribution of the property in accordance with the terms of the trust. In view of the foregoing, that branch of plaintiff’s motion for summary judgment on the cause of action for specific performance is granted. While the express terms of the trust do not require the sale of the property, plaintiff and defendant Katherine Christopulos are in agreement that the subject property should be sold. As such, defendant Katherine Christopulos, as trustee, is directed to list the property for sale within 60 days of the date of this order.

That branch of plaintiff’s motion which is, in effect, for summary judgment on the cause of action for an accounting is denied. Paragraph 5.5 of the trust states, “[t]he Trustee shall render an account of the administration of the Trust to the Settlor, within 30 days of a request therefor, which accounting shall be made as soon as practicable after the close of the Trust’s taxable year.” However, plaintiff failed to offer any proof demonstrating that he previously made a demand for an accounting.

Accordingly, that branch of plaintiff’s motion which is, in effect, for summary judgment on the cause of action for specific performance is granted. Defendant Katherine Christopulos is directed to list the subject property for sale within 60 days of the date of this order. In all other respects, plaintiff’s motion is denied.

Dated: October 25, 2018

  
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 J.S.C.

FILED  
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 COUNTY CLERK  
 QUEENS COUNTY