

150A 30 St. Trust v Estate of Michel

2018 NY Slip Op 34486(U)

August 15, 2018

Supreme Court, Kings County

Docket Number: Index No. 524667/2017

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of August, 2018.

PRESENT:
HON. CARL J. LANDICINO,

Justice.

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150A 30 STREET TRUST, ISRAEL GROSSMAN,
TRUSTEE, and 150A 30 STREET TRUST, RAPHAEL
GROSSMAN, TRUSTEE,

Plaintiff,

Index No.: 524667/2017

DECISION AND ORDER

- against -

ESTATE OF WILFRID MICHEL, a/k/a, WILFRID
JEAN MICHEL, JEAN E. MICHEL, ADMINISTRATOR,
and BARCA DEVELOPMENT, LLC,

Defendant.

Motions Sequence #1

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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 and	
Affidavits (Affirmations) Annexed.....	<u>1/2,</u>
Opposing Affidavits (Affirmations).....	<u>3</u>
Reply Affidavits (Affirmations).....	<u>4,</u>
Memorandum of Law	<u>5, 6</u>

Upon the foregoing papers, and after oral argument, the Court finds as follows:

Plaintiffs 150A 30 Street Trust by Israel Grossman, Trustee and 150A 30 Street by Raphael Grossman, Trustee (“the Plaintiffs”) have commenced this action by the filing of a summons and verified complaint on December 21, 2017. An Amended Complaint was filed as of right on April 2, 2018. As per the Amended Complaint, the Plaintiffs’ action is based upon both a cause of action for a determination of a claim to real property pursuant to Real Property Actions and Proceedings Law (“RPAPL”) §15 and a cause of action to recover damages resulting from the purported misconduct committed by a notary public. The Plaintiffs allege that they properly acquired title to a property located at 150A 30th Street, Brooklyn, New York (“the Property”) by

deed dated February 14, 2004¹ and that any purported subsequent deed was a product of fraud or misrepresentation and should be deemed *void ab initio*.

Defendant Barca Development, LLC (“Defendant Barca”) hereby moves (motion sequence #1) for the following relief: 1) dismissal of the complaint pursuant to CPLR §3211(a)(1) based upon documentary evidence, 2) dismissal of the Complaint pursuant to CPLR §3211(a)(7) for failure to state a cause of action, and upon dismissal of the complaint as against Defendant Barca for 3) vacatur of the notice of pendency filed by the Plaintiffs against the Property.

Defendant Barca contends that the instant proceeding should be dismissed as against it, and that the notice of pendency be vacated because Defendant Barca contends that it purchased the property in 2015 as a *bona fide* purchaser for value and as such the transfer is protected by Real Property Law (“RPL”) §291. Specifically, Defendant Barca argues that on July 7, 2006, Defendant Wilfrid J. Michel (“Defendant Michel”) sold and thereby conveyed the Property to non-party Myung Son (“Son”), without knowledge of the Grossman Deed, and that the Grossman Deed had not at that time been recorded. The Grossman Deed purportedly conveyed the Property from Plaintiff 150A 30 Street Trust, Israel Grossman, Trustee to Plaintiff 150A 30 Street Trust, Raphael Grossman, Trustee and was purportedly dated February 14, 2004 (see footnote 1). However, the Grossman Deed was not recorded until November 16, 2006, approximately more than 33 months after the date of the deed and more than four months after the purported transfer of the Property from Defendant Michel to non-party Son. Defendant Barca argues that the transfer and sale of the Property from non-party Son to Defendant Barca, which purportedly occurred on December 17, 2015, (deed recorded on January 7, 2016), should not be disturbed.

¹ Although the moving papers allege and the alleged recording cover page reflects a document dated February 14, 2004, the deed itself reflects the date of February 12, 2004 (the “Grossman Deed”).

The Plaintiffs oppose the motion and argue that it should be denied in its entirety. The Plaintiffs allege in the Amended Complaint, that a conveyance of the Property by bargain and sale deed dated September 20, 2004 and recorded on October 29, 2004² was void *ab initio*, and that as a result all subsequent transfers following this transfer were also void *ab initio*. Specifically, the Plaintiffs allege in the Amended Complaint that this transfer of the Property was executed by Fritz Guillaume (“Guillaume”) after he resigned his position as Trustee. The Plaintiffs contend that Guillaume was replaced by Israel Grossman as Trustee of Plaintiff 150A 30 Street Trust pursuant to an alleged written substitution. Plaintiffs also allege that the substitution was acknowledged by Defendant Michel, as a notary public. Accordingly, Plaintiffs conclude that any subsequent conveyance that was a product of the Guillaume conveyance was also void *ab initio*.

“Pursuant to Real Property Law § 266, a *bona fide* purchaser or encumbrancer for value is protected in his or her title unless he or she had previous notice of the alleged prior fraud by the immediate seller.” *LaSalle Bank Nat. Ass'n v. Ally*, 39 A.D.3d 597, 599–600, 835 N.Y.S.2d 264, 266 [2nd Dept, 2007]. “However, a person cannot be a *bona fide* purchaser or encumbrancer for value through a forged deed, as such a deed is void and conveys no title.” *Karan v. Hoskins*, 22 A.D.3d 638, 803 N.Y.S.2d 666, 667 [2nd Dept, 2005]. What is more, a party may not be a *bona fide* purchaser “where, despite being aware of facts that would lead a reasonable, prudent [purchaser] to make inquiries of the circumstances of the transaction at issue, it fails to make such inquiries.” *334 Corp. v. Jericho Plaza, LLC*, 128 A.D.3d 679, 680, 10 N.Y.S.3d 111, 113 [2nd Dept, 2015]. However, “the law is clear that [purchasers] do not have a duty of care to ascertain the validity of the documentation presented by an individual who claims to have the

² This being the transfer from 150A 30 Street Trust, Fritz Guillaume, Trustee to Defendant Michel (the “Guillaume Conveyance”).

authority to act on behalf of a borrower corporation or entity.” *LZG Realty, LLC v. H.D.W.2005 Forest, LLC*, 87 A.D.3d 727, 729, 929 N.Y.S.2d 595, 598 [2nd Dept, 2011].

Turning to the merits of Defendant Barca’s application to dismiss the instant complaint as against it, the court finds that Defendant Barca has not shown that the Plaintiffs have failed to properly plead a cause of action pursuant to Article 15 of the RPAPL. In order to prevail on a motion to dismiss pursuant to CPLR § 3211(a)(7), “the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action.” *Sokol v. Leader*, 74 A.D.3d 1180, 904 N.Y.S.2d 153, 155 [2nd Dept, 2010]; *see Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17 [1997]; *Foley v. D’Agostino*, 21 A.D.2d 60, 64–65, 248 N.Y.S.2d 121 [1st Dept, 1960]. Moreover, a Court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” *Nonnon v. City of New York*, 9 N.Y.3d 825, 827, 842 N.Y.S.2d 756, 874 N.E.2d 720 [2007], quoting *Leon v. Martinez*, 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511 [1994]. In the instant proceeding, while the parties may have factual disputes regarding the Property at issue, the Plaintiffs have properly pled a claim pursuant to Article 15 of the RPAPL.

The Court also finds that Defendant Barca has not resolved all factual issues regarding the parties’ dispute over the Property. A motion to dismiss pursuant to CPLR §3211(a)(1) will be granted only if the “documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim.” *Fontanetta v. Doe*, 73 A.D.3d 78, 83–84, 898 N.Y.S.2d 569, 573 [2nd Dept, 2010], quoting *Fortis Fin. Servs., LLC v. Fimat Futures USA, Inc.*, 290 A.D.2d 383, 737 N.Y.S.2d 40 [2nd Dept, 2002]. “Although documents such as deeds, which reflect out-of-court transactions and are essentially unassailable, qualify as “documentary

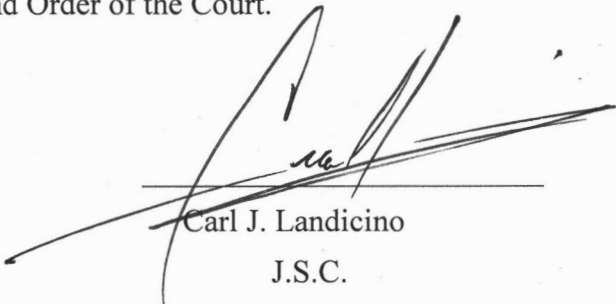
evidence” within the intended scope of CPLR §3211(a)(1), affidavits and deposition testimony do not.” *Suchmacher v. Grocery*, 73 A.D.3d 1017, 1017, 900 N.Y.S.2d 686 [2nd Dept, 2010]. In the instant proceeding, the documents alone do not resolve as a matter of law the issues raised in relation to the alleged fraud and the notice thereof sufficient to grant Defendant Barca’s application made pursuant to CPLR 3211(a)(1).

Based on the foregoing, it is hereby ORDERED as follows:

The Defendant Barca’s motion (Motion Sequence #1) is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino
J.S.C.

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KINGS COUNTY CLERK
FILED

