

Doskotch v Pisocki
2019 NY Slip Op 30761(U)
March 13, 2019
Supreme Court, Sullivan County
Docket Number: 2139-2015
Judge: Mark M. Meddaugh
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At a term of the Supreme Court of the State of New York, held in and for the County of Sullivan, at Monticello, New York, on March 13, 2019

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN**

-----X

ANDREI DOSKOTCH,

Plaintiff,

-against-

JAROSLAVA PISOCKI,

Defendant

-----X

**Present: Hon. Mark M. Meddaugh,
Acting Justice, Supreme Court**

**Appearances: Law Office of Yuriy Prakhin, P.C.
Attn: Gil Zohar, Esq.
Attorneys for the Plaintiff
1883 86th Street, Second Floor
Brooklyn, NY 11214**

**Michael Frey, Esq.
Attorney for the Defendant
46 River Road
Barryville, NY 12719**

MEDDAUGH, J.:

The Defendant by their attorney, Michael Frey, Esq., has applied to this Court, by Order to Show Cause dated March 6, 2019, seeking an Order for leave to renew a prior motion for summary judgment, pursuant to CPLR §2221.

In support of the instant application, the Court received the Order to Show Cause, and the Affirmation of Michael Frey, Esq., dated March 5, 2019. The Order to Show Cause was made returnable on March 13, 2019, and the Order to Show Cause contained a direction thereon that "Counsel must appear on the return date of the motion."

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The Plaintiff's attorney appeared on the return date of the motion, and initially requested additional time to submit papers. This requested was denied, and the Plaintiff's counsel made an oral argument in opposition to motion on the record, to which Defendant's counsel orally argued in reply.

This is an action in which the Plaintiff seeks to recover damages for violations of Labor Law §§240(1), 241(6), and 200, arising out of the Plaintiff's fall from a ladder at property located at 422 High Road, Glen Spey, New York, on August 15, 2015. The Defendant in this case is the Plaintiff's mother.

In the Decision and Order denying Defendant's cross-motion for summary judgment to dismiss, dated December 27, 2017, the Court notes that:

The Plaintiff fell from a ladder allegedly owned, maintained and provided by the Defendant. The Defendant does not reside at the premises, but owns and maintains it as rental property.

The Court further noted that:

Since July 1, 2013, the Plaintiff has lived with his mother and stepfather in a home that they own, which is located at 432 High Road in Glen Spey, which is adjacent to the premises at which the accident occurred. 422 High Road has two residences located thereon and, in Plaintiff's deposition, he testified that he owned 422 High Road between 2007 and 2012.

The Court's prior Decision and Order was upheld on appeal by the Appellate Division, Third Department on November 15, 2018.

In the motion papers currently before this Court, the Defendant's counsel asserts that a foundational issue in the Court's prior Decision and Order was the ownership of the property where the accident occurred.

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The Defendant relies on language in the Findings of Fact and Conclusions of Law, and in the Judgment of Divorce issued in her son's matrimonial action on December 2, 2015, which found that the property, on which the Plaintiff's accident occurred, was marital property subject to equitable distribution.

In the Findings of Fact and Conclusions of Law, Judgment of Divorce, and Memorandum and Order on appeal in the matrimonial action (see, *Prokopov v. Doskotch*, 166 A.D.3d 1408, 1410, 89 N.Y.S.3d 400 [3 Dept., 2018]), it was established that the property was acquired, by the parties' mother in June of 2008, and was transferred into the son's name in August of 2008¹, during the parties' marriage. In September of 2012, shortly after the wife informed the husband that she had consulted with an attorney about a divorce, the son transferred the property back into the mother's name for no consideration. Then, less than five months later on February 7, 2013, the Plaintiff's wife commenced a matrimonial action in which the status of the property at 422 High Road in Glen Spey, New York, as marital or separate property was put at issue.²

The trial court in matrimonial action found that the son's explanation as to why the property was put back into his mother's name was not credible, and the trial court concluded that 422 High Street was a marital asset. It was noted that there was no consideration for the transfer of the property back to the husband's mother in 2012.

The trial court provided that the wife was entitled to a distributive award for her marital share of this property, which holding was upheld on appeal by the Appellate Division, Third

¹The Appellate Division noted that the trial court had erred in reciting the deed sequence. In the Findings of Fact and Conclusions of Law, the trial court found that the property was titled at the closing to the son, transferred to the mother in August of 2008, and then transferred back to the son in 2012.

²In the affirmation of Defendant's counsel in support of the instant application, it is asserted that there were no further transfer of title following the transfer in September of 2012.

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Department, in which it was found that “the record evidence supports the court’s determination to distribute the rental property as a marital asset.” The Appellate Division did not address the trial court’s finding that the husband was entitled to exclusive possession and sole ownership of the property. This Court notes however, that the wife did file a responding brief (see, Prokopov v. Doskotch, supra., n.1).

The Defendant’s attorney in the instant action argues the Appellate Division affirmed the trial court’s determination as a matter of law, that the transfer of the property by Andrei Doskotch to his mother “was a sham transaction, designed to hide assets in a pending divorce proceeding.” Therefore, it was argued that Andrei Doskotch, rather than his mother, was the owner of the property on the date of the accident, and that the Plaintiff’s Labor Law causes of action do not lie.

Defendant’s counsel further asserts that the Plaintiff herein is estopped from claiming that his mother remained as the titled owner of the property.

In opposition, the Plaintiff’s counsel argued that the Defendant is in title to the subject property, and that the standard applied in a matrimonial case is different from that applied in a Labor Law case.

An issue was also raised with regard to Defendant’s counsel copying papers from the matrimonial file, allegedly without permission, which argument was without merit as Defendant’s counsel had specifically sought permission to make copies of the Findings and Fact and Conclusions of Law, as well as the Judgment of Divorce.

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CONCLUSIONS OF LAW

Domestic Relations Law § 236 defines “marital property” as “all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, *regardless of the form in which title is held*” (Domestic Relations Law § 236[B][1][c] [emphasis supplied]). In *Fields v. Fields*, 15 N.Y.2d 158, 905 N.Y.S.2d 783 [2010], the Court of Appeals addressed the status of a townhouse on the Upper West Side of Manhattan, which was purchased during the marriage by the husband with his mother’s assistance. The mortgages thereon were held jointly by the husband and his mother, and he later conveyed a one-half interest in the building to his mother. The husband and his mother managed the townhouse as a formal partnership. The Court of Appeals found the townhouse was marital property.

In the case at bar, the fact that the property at 422 High Road is titled to the husband’s mother, Jaraslava Pisocki, does not prevent the Court in the matrimonial action from determining “any question as to title to the property arising *between the parties* [to the matrimonial action]”(DRL § 234[1][emphasis supplied]), but any such determination does not affect the rights of the title owner, who was not named as a party to the action, nor was she made a party to a separate plenary action which sought to adjudicate her rights to title (*Weichold v. Weichold*, 54 A.D.2d 1015, 388 N.Y.S.2d 171 [3 Dept., 1976]; *Deleno v. Deleno*, 61 A.D.2d 788, 401 N.Y.S.2d 851 [2 Dept., 1978]).

It is a fundamental legal principle that an individual may not be deprived of property without due process of law, which requires that one be accorded notice and an opportunity to be heard (*Friedman v. Friedman*, 125 A.D.2d 539, 509 N.Y.S.2d 617 [2 Dept., 1986]), and a

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provision of a Judgment of Divorce which determines the property rights of a person who has not been made a party, leaves that third party's rights unaffected by the Judgment of Divorce (*see*, 1426 46 St. LLC v. Klein, 60 A.D.3d 740, 876 N.Y.S.2d 425 [2 Dept., 2009]; Polish Natl. Alliance of Brooklyn v. White Eagle Hall Co., 98 A.D.2d at 406, 470 N.Y.S.2d 642 [2 Dept., 2009]).

Therefore, while the matrimonial court had the authority to direct a distributive award to compensate the wife for her marital share of the property (*see*, generally, DRL§236B[5][d][13]³, and Majauskas v. Majauskas, 61 N.Y.2d 481, 486, 474 N.Y.S.2d 699 [1984⁴]), it did not have the ability to direct that the husband was to have sole ownership of the property when the title owner of the property was not made a party to the action (Popack v. Popack, 179 A.D.2d 746, 578 N.Y.S.2d 650 [2 Dept., 1992]; Petrie v. Petrie, 126 A.D.2d 951, 511 N.Y.S.2d 722 [4 Dept., 1987]).

The Court also finds, based on the foregoing, that the Plaintiff is not estopped from claiming that his mother is the title owner of the property.

Labor Law §§ 240(1) and 241(6) impose a nondelegable duty on contractors and owners (*see*, Gordon v. Eastern Ry. Supply, 82 N.Y.2d 555, 606 N.Y.S.2d 127 [1993]), and the Labor Law's imposition of absolute liability on owners includes all owners in fee, unless there is an exception carved out by legislature (Costa v. State, 141 A.D.3d 43, 32 N.Y.S.3d 147 [1 Dept., 2016]). The Court finds, under the circumstances presented herein, that the Defendant, as the

³DRL §236[B][5][d][13] requires that the Court consider "any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration" in determining an equitable distribution of marital property

⁴Majauskas recognizes that a Court may order a distributive award in lieu of equitable distribution, if it there is a problem which makes equitable distribution impractical or burdensome

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owner in fee has failed to demonstrate that the Plaintiff is not entitled to protection provided to workers by the Labor Law (*Sanatass v. Consol. Investing Co.*, 10 N.Y.3d 333, 858 N.Y.S.2d 67 [2008]).

Accordingly, the Court shall deny the Defendant's motion for leave to renew the prior motion for summary judgment.

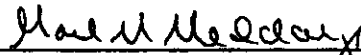
WHEREFORE, based upon the foregoing, it is

ORDERED that the Defendant's application is denied, and the trial shall proceed as scheduled on March 18, 2019.

This memorandum shall constitute the Decision and Order of this Court. The original Decision and Order, together with the motion papers have been forwarded to the Clerk's office for filing. The filing of this Order does not relieve counsel from the obligation to serve a copy of this order, together with notice of entry, pursuant to CPLR § 5513(a).

Dated: March 13, 2019
Monticello, New York

E N T E R:



HON. MARK M. MEDDAUGH
Acting Supreme Court Justice

Papers Considered:

1. Order to Show Cause, dated March 6, 2019
2. Affirmation in Support of Michael Frey, Esq., dated March 5, 2019