

Coastal Land Servs., Inc. v Villavicencio
2019 NY Slip Op 31095(U)
April 23, 2019
Supreme Court, New York County
Docket Number: 154914/2018
Judge: Anthony Cannataro
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM

Justice

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COASTAL LAND SERVICES, INC.,

Plaintiff,

- v -

ZAIDA VILLAVICENCIO, HILARIO VILLAVICENCIO, EMPIRE
STATE EQUITIES DBA ARDEN REALTY CORP.

Defendant.

INDEX NO. 154914/2018

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for DISCHARGE.

Plaintiff Coastal Land Services, Inc. ("Coastal") moves for an order permitting it to deposit certain escrowed funds with the Court, discharging it from any liability to defendants Zaida Villavicencio, Hilario Villavicencio, and Empire State Equities d/b/a Arden Realty Corp. ("Arden"), and for an award of costs and attorneys' fees. Arden cross-moves to dismiss the complaint or, in the alternative, for summary judgment in its favor granting a judgment declaring that Arden is entitled to the return of the escrowed funds at issue in this litigation.

Arden entered into a contract on April 14, 2017 to purchase the property located at 3713 East Tremont Avenue, Bronx, New York ("the premises") from a non-party. On April 15, 2017, Arden assigned its rights under the contract to Zaida and Hilario Villavicencio. The Villavicencios formed a corporate entity, Tremont Investors, LLC

("Tremont"), and assigned their interest under the contract to Tremont on June 14, 2017. To obtain financing for its purchase, Tremont secured a loan backed by its interest in the subject premises in the Bronx and another property located at 788 West End Avenue in Manhattan. At the closing, Tremont (and/or the Villavicencios) was unable to provide proof of satisfaction of the mortgage on 788 West End Avenue. As a result, Tremont placed \$150,000 into escrow ("escrowed funds") with Coastal pending presentation of proof of satisfaction of the 788 West End Avenue mortgage. Because Tremont was unable to deliver the full purchase price for the premises at the closing, Arden took an assignment of the escrowed funds from Tremont and permitted Tremont to close on the property. The escrow assignment agreement was signed by Brian Danialian, a manager and 10% owner of Tremont, on behalf of Tremont. The mortgage on 788 West End Avenue was proved to be satisfied on June 30, 2017. Coastal now seeks to release the escrowed funds. Coastal commenced the instant action, in the nature of interpleader, as they are in doubt as to how to apportion the escrowed funds amongst the defendants.

Coastal asks that the escrowed funds be deposited with the Court, an act it asserts will cause no harm to any party and that will release Coastal from liability. Arden argues that the complaint should be dismissed based on the assignment of escrow funds agreement from Tremont to Arden, and that its cross-motion for summary judgment should be granted because no material issues of fact remain. The Villavicencios assert that Coastal's motion should be denied for failure to name a

necessary party, *i.e.*, Tremont. The Villavicencios further argue that Arden's cross-motion for summary judgment should be denied in its entirety, once again for failure to name a necessary party, and because the documentary evidence presented is inadequate and leaves unresolved material issues of facts. In response, Coastal argues that reliance on the assignment of escrow funds does not amount to documentary evidence warranting dismissal as its authenticity and/or enforceability is in dispute. Coastal further claims that since failure to name a necessary party was not properly raised as an affirmative defense, and Tremont has not intervened, no relief can properly be sought on behalf of Tremont here.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has met this showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Id.*).

Arden relies on the assignment of escrow funds to show that no material issues of fact remain. The assignment of escrow funds provides as follows:

“Upon release of the Escrow Funds by the title company [Coastal], Assignor [Tremont] shall execute an authorization to the title company to deliver the Escrow Funds to the Assignee [Arden], or as Assignee directs, representing the balance due to Assignee in connection with the closing of the Property.”

There is no dispute that the assignment of escrow funds was fully executed by and between Bijan Danialian on behalf of Tremont as assignor and Arden as assignee. While neither Danialian nor Tremont are named in this action, that is a not an impediment under the circumstances. The dispute at hand requires resolving dueling claims raised by the Villavicencios and Arden regarding entitlement to the escrowed funds held by Coastal. Neither Danialian nor Tremont have asserted a claim to the escrowed funds and they have not sought to intervene in the instant action despite being on notice. Further, the assignment of escrow funds clearly establishes that the funds are to be released to Arden. As such, Arden has tendered sufficient evidence to demonstrate the absence of any material issues of fact, and summary judgment is granted.

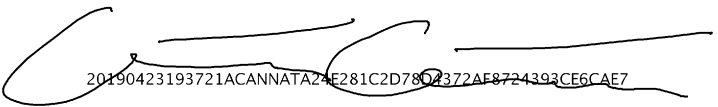
The resolution above renders Coastal’s motion for an order to deposit funds with the Court and Arden’s motion to dismiss moot. Accordingly, it is

ORDERED that Coastal Land Services, Inc.’s motion is denied in its entirety; and it is further

ORDERED that the branch of Empire State Equities d/b/a Arden Realty Corp.’s cross-motion that seeks to dismiss the complaint is denied; and it is further

ORDERED that the branch of Empire State Equities d/b/a Arden Realty Corp.'s motion that seeks summary judgment in its favor on its first counterclaim and a declaratory judgment with respect to entitlement of the escrowed funds which are the subject matter of this action is granted; and it is further

ADJUDGED and DECLARED that Empire State Equities d/b/a Arden Realty Corp. is entitled to the escrowed funds which are the subject matter of this action.

<p>4/23/19</p> <hr/> <p>DATE</p>	 <p>20190423193721ACANNATA24E281C2D7802372AF8724393CE6CAE7</p> <hr/> <p>ANTHONY CANNATARO, J.S.C.</p>																																
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