

Liburd v Alli
2019 NY Slip Op 31160(U)
March 6, 2019
Supreme Court, Queens County
Docket Number: 714081/2018
Judge: Laurence L. Love
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Laurence L. Love IAS PART 43
Justice

FILED
MAR 27 2019
COUNTY CLERK
QUEENS COUNTY

ALFRED LIBURD,

Plaintiff,

-against-

Index No.: 714081/2018
Motion Submitted: 2/21/2019
Seq. No.: 001
Cal. No.: 14

IMRAN ALLI, 720 LI HOLDINGS, LLC, DEUTSCHE
BANK TRUST COMPANY AMERICAS AS TRUSTEE
AND CUSTODIAN FOR HSBC BANK USA,

Defendants.

FILED
~~MAR 25 2019~~
COUNTY CLERK
QUEENS COUNTY

The following papers numbered EF 8-23 read on this motion by defendants Imran Alli and 720 LI Holdings, LLC, seeking an Order dismissing this action pursuant to CPLR §3211(a)(10) for plaintiff's alleged failure to join necessary parties, dismissing plaintiff's second cause of action for fraud and misrepresentation, and dismissing plaintiff's third and fourth causes of action for conspiracy and unconscionability and plaintiff's cross-motion, seeking a preliminary injunction, staying two pending landlord and tenant matters in the New York City Civil Court, Queens County;

Papers
Numbered

- Notice of Motion, Affirmation, Exhibits.....EF 8-12
- Affirmations in Opposition, Exhibits.....EF 13-15
- Affirmations in Reply, Exhibits.....EF 19
- Notice of Cross-Motion, Affirmation, Exhibits.....EF 16-18
- Affirmations in Opposition, Exhibits.....EF 20
- Affirmations in Reply, Exhibits.....EF 21-23

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

Plaintiff commenced this action by the filing of a summons and verified complaint, dated September 5, 2018, to compel determination of claims to real property known as 169-23 Linden Blvd., Queens NY 11434. According to plaintiff's complaint, on July 15, 2009, defendant, Imran Alli, sold the subject property to plaintiff via a Bargain and Sale Deed.. At said closing, a deed was executed and tendered, a mortgage was funded, a real estate commission was paid, and recording taxes and fees were collected. On January 9, 2017, Helene Stetch, an employee of the law firm of

3

Kenneth B. Schwartz, signed an affidavit of confession of judgment before the Hon. Evelyn Braun, JSC, in favor of Bank of America, admitting to the following facts: During the period of March 12, 2009 through January 31, 2010, Ms. Stetch handled the subject real estate transaction, representing Imran Alli, Alfred Liburd and Bank of America, who issued a mortgage loan to Mr. Liburd. The subject sale was a short sale, requiring the banks holding the mortgages in seller's name to agree to approve a sale for less than the amount of the outstanding mortgages. Ms. Stetch closed the sale without such approval. After the closing, Ms. Stetch continued the short sale negotiations with the seller's mortgage banks for approximately five months, as if said sale had not occurred. Said mortgages were never paid off. The proceeds of the sale were misappropriated by the law firm of Kenneth B. Schwartz.

Defendant, Imran Alli, continues to hold himself out as the owner of the subject property and is attempting to transfer ownership of the property to defendant, 720 LI Holdings, LLC by a contract of sale dated, December 20, 2017.

Defendant, Deutsche Bank Trust Company Americas as Trustee and Custodian for HSBC Bank, USA is the plaintiff in a related foreclosure action in the Supreme Court, Queens County, under Index No. 19438/2007. In that action the Court found on October 6, 2017 that on July 15, 2009 the subject property was purchased by Alfred Liburd and that he has occupied the property with Adrienne Freitas and his two children since the closing date. As such, they are necessary and indispensable parties to the action, who have never been added as party defendants.

Defendant's seek dismissal of this action pursuant to CPLR §3211(a)(10) for plaintiff's failure to name Helene Stetch and Kenneth B. Schwartz as defendants. As discussed in City of New York v. Long Island Airports Limousine Serv. Corp., 48 N.Y.2d 469, 475 (1979), "Necessary parties are defined as "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action" (CPLR 1001, subd [a])." Neither Ms. Stetch and/or Mr. Schwartz are necessary to afford complete relief to the parties herein nor can either be inequitably effected by a judgment in this action.

Defendants further seek dismissal of plaintiff's second cause of action, alleging fraud and misrepresentation pursuant to CPLR R. 3016, and CPLR §3211(a)(3), (5), and (7). Pursuant to CPLR R. 3016, Where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail. Plaintiff's complaint alleges that Imran Alli misrepresented his ownership of the subject property in the contract of sale to 720 LI Holdings, LLC, thereby causing damages to plaintiff. As such, plaintiff has sufficiently stated the circumstances in detail. "The elements of a cause of action to recover damages for fraud are (1) a misrepresentation or a material omission of fact which was false, (2) knowledge of its falsity, (3) an intent to induce reliance, (4) justifiable reliance by the plaintiff, and (5) damages, (Swartz v. Swartz, 145 A.D.3d 818, 823 [2d. Dept. 2016]) Plaintiff may not establish reliance element of fraud claim under New York law by showing that third party relied on defendant's false statements resulting in injury to plaintiff, (Pasternack v. Lab. Corp. of Am. Holdings, 27 N.Y.3d 817 [2016]). As plaintiff's cause of action is premised on 720 LI Holdings, LLC's reliance upon Mr. Alli's alleged fraud, plaintiff has failed to state a cause of

action for fraud.

Defendants seek dismissal of plaintiff's third and fourth causes of action pursuant to CPLR §3211(a)(7). Under New York law, "[i]n order to properly plead a cause of action to recover damages for civil conspiracy, the plaintiff must allege a cognizable tort, coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement" (Perez v. Lopez, 97 AD3d 558, 560 [2d. Dept. 2012]; McSpedon v. Levine, 158 A.D.3d 618, 621, 72 N.Y.S.3d 97 [2d. Dept. 2018]). As plaintiff's cause of action for fraud must be dismissed, plaintiff's cause of action for conspiracy and unconscionability based upon said fraud must be dismissed.


Plaintiff cross-moves for a preliminary injunction pursuant to CPLR §6301, staying two pending landlord and tenant matters commenced in the Civil Court, Queens County entitled Imran Alli v. B's 24-Hour Childcare Center, Inc., "XYZ Corp," "John Doe" and/or "Jane Doe," Index No. LT-74434-18 and Imran Alli v. "John Doe" and/or "Jane Doe," Index No. LT-60950-18, both of which are holdover petitions which seek to evict tenants from the property at issue in this case. Plaintiff further seeks an Order restraining defendants from taking any steps to sell, transfer, encumber or grant any interest in the subject premises, restraining defendants from taking possession or exerting control over any part of the subject property pending resolution of this action and restraining defendants from taking any steps to foreclose on the subject property pending resolution of this action. Pursuant to CPLR §6301, A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. To demonstrate entitlement to a preliminary injunction, the movant must demonstrate a likelihood of success on the merits, danger of irreparable harm in the absence of an injunction, and a balance of the equities in favor of granting the injunction. (CPLR § 6301; Merrill Lynch Realty Associates, Inc. v. Burr, 140 AD2d 589 [2nd Dept. 1988]).

Plaintiff has demonstrated a likelihood of success on the merits as there has already been a judicial determination that the subject property was sold by defendant, Alli, to Alfred Liburd and that Mr. Liburd has occupied the property since the closing date. Plaintiff has further demonstrated that he will be irreparably harmed if he, his family and his tenants are evicted or defendants are permitted to sell or otherwise affect the subject property. While neither of the holdover petitions specifically mention plaintiff by name, both seek to evict "John Does" which would include plaintiff. As title to the property was transferred to the plaintiff by delivery of the deed to him, the balance of equities is clearly in plaintiff's favor. As discussed in James v. Lewis, 135 A.D.2d 785, 785-86 (2d. Dept. 1987), defendant failed to effectively rebut the presumption that delivery of the deed conveying the property to plaintiff took place (cf., Real Property Law § 244). That the deed was not acknowledged or recorded does not affect the validity of the conveyance.

Defendant's motion to dismiss is hereby granted to the extent that plaintiff's second, third and fourth causes of action are dismissed.

Plaintiff's application for a preliminary injunction is granted in its entirety. Defendants are enjoined from selling, transferring, assigning title to the premises, taking possession or exerting control over any part of the subject property, and taking any steps to foreclose on the subject property pending resolution of this action. Furthermore, the holdover actions in the Civil Court of the City of New York, Queens County under Index Nos. LT-74434-18 and Index No. LT-60950-18 are stayed pending the resolution of this action. Plaintiff is directed to post an undertaking in the amount of ten thousand dollars (\$10,000.00) within thirty (30) days from the date of this order with notice of entry. (See, Schwartz v. Gruber, 261 AD2d 526 [2d. Dept. 1999]).

Dated: March 6, 2019



Laurence L. Love, J.S.C.

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