

Hamilton v Hamilton
2019 NY Slip Op 32553(U)
August 19, 2019
Supreme Court, Kings County
Docket Number: 509988/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 509988/2017
Motion Date: 6/3/19
Motion Cal. No. 19-20

-----X
KEVIN HAMILTON,

Plaintiff

-against-

DECISION/ORDER

YVONNE HAMILTON,

Defendant
-----X

The following papers numbered 1 to 4 were read on this motion and cross-motion.

Papers:	Numbered:
Notice of Motion and Cross-Motion	
Affidavits/Affirmations/Exhibits.....	1-2
Answering Affidavits/Affirmations/Exhibits.....	3
Reply Affidavits/Affirmations/Exhibits.....	4

Upon the foregoing papers, the motions are decided as follows:

In this action alleging, *inter alia*, causes of action for breach of contract, unjust enrichment and adverse possession, the plaintiff, KEVIN HAMILTON, moves for summary judgment on his cause of action for adverse possession. He seeks judgment quieting title in his name to real property located at 904 Albany Avenue, Brooklyn, New York. The defendant, YVONNE HAMILTON, cross-moves for summary judgment dismissing plaintiff's complaint in its entirety. The two motions are consolidated for disposition

Background:

In support of his motion, plaintiff KEVIN HAMILTON, submitted, *inter alia*, his own affidavit dated September 27, 2018, wherein he averred that he has been in continuous possession of the subject property since 2002. He maintains that his father, Louis Hamilton, was the real owner of the property who placed title in defendant's name solely for purposes of

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obtaining financing the purchase of the property. The defendant is Louis Hamilton's sister and plaintiff's aunt.

Plaintiff averred that his father made all the mortgage payments on the property from October 23, 1988 to January 7, 2002 and that in 2002, he took over making the payments. According to the plaintiff, when the mortgage was satisfied, Mabel Hoffstead, the holder of the mortgage, sent the satisfaction to his father who in turn gave it to him.

He averred that from October of 1988 to January 7, 2002, his father collected all the rents, maintained the property, paid the taxes, utility bills, water charges and insurance. He averred that since 2002, after his father became ill, he assumed all of these tasks. He averred that he has been in "possession of the premises by actual, open, hostile continuous, and exclusive possession beginning on or about 2002" and that "Defendant and I, and out [sic] whole family, agreed and understood that upon the death of my father, the premises would revert to my name." Plaintiff also submitted a death certificate indicating that Louis Hamilton died on August 9, 2016. Plaintiff maintains to be the sole heir of his estate.

In opposition to the motion and in support of the cross-motion, the defendant, YVONNE HAMILTON, submitted, *inter alia*, two affidavits, one dated July 14, 2017 and the other dated July 5, 2017. In her July 14, 2017 affidavit, she averred that she took title to the property on December 29, 1987, at which time she executed a note in the amount of \$120,000 and a mortgage in favor of Mabel Hoffstead. She maintains that her brother, Louis Hamilton, agreed to manage the property and in consideration thereof, she agreed to give and he agreed to accept as compensation the rent that would be collected from the tenant in apartment 1R. She stated that when her brother became ill, plaintiff "continued to maintain the agreement." She denied ever agreeing to convey ownership of the property to the plaintiff or to his father. She maintains

that in 2016, when the plaintiff began withdrawing money from her account without her permission and collecting rents without depositing them in her account, she commenced a holdover proceeding against him to have him evicted. In her July 5, 2017 affidavit, she averred that the plaintiff was evicted from the premises on March 26, 2018.

Defendant also submitted an affidavit of Mr. Hamilton dated June 7, 2018, which he submitted in support of his prior motion for a preliminary injunction in this case. Therein, he stated that “I have for the last six (6) years completely maintained the Premises, paid all taxes, controlled all accounts, and lived there as if it was my own.”

Defendant also submitted plaintiff’s original complaint dated May 10, 2017, wherein he alleged that he has been living at the premises only since 2012.¹ In his affirmation in opposition to the cross-motion, plaintiff’s counsel averred that these statements and allegations referred to when plaintiff took over “sole” management of the building, when his father could no longer assist him at all.

Law:

It is well settled that the proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320,

¹In his amended complaint, plaintiff alleges that he has been residing at the premises since 2002.

324; *Zuckerman*, 49 N.Y.2d at 562). If the proponent fails to meet its initial burden, the Court must deny the motion regardless of the sufficiency of the opposition papers (*see Winegrad*, 64 N.Y.2d at 853; *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D.3d 547).

In order to establish a claim to property by adverse possession, a claimant must prove, *inter alia*, that possession of the property was: (1) hostile and under a claim of right; (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the required period (*see Walling v. Przybylo*, 7 N.Y.3d 228, 232, 818 N.Y.S.2d 816, 851 N.E.2d 1167; *Belotti v. Bickhardt*, 228 N.Y. 296, 302, 127 N.E. 239; *Bratone v. Conforti-Brown*, 79 A.D.3d 955, 957, 913 N.Y.S.2d 762; *Asher v. Borenstein*, 76 A.D.3d 984, 986, 908 N.Y.S.2d 90; *Gourdine v. Village of Ossining*, 72 A.D.3d 643, 897 N.Y.S.2d 647). Under longstanding decisional law applying these traditional common-law elements, a party seeking adverse possession could assert that he or she was acting under a “claim of right” regardless of whether he or she had actual knowledge of the true owner at the time of possession (*see Walling v. Przybylo*, 7 N.Y.3d at 232–233, 818 N.Y.S.2d 816, 851 N.E.2d 1167; *Asher v. Borenstein*, 76 A.D.3d at 986, 908 N.Y.S.2d 90; *Merget v. Westbury Props., LLC*, 65 A.D.3d 1102, 1105, 885 N.Y.S.2d 347). However, in 2008 the Legislature enacted changes to the adverse possession statutes contained in RPAPL article 5 (*see L. 2008, ch. 269*). These changes included rewriting RPAPL 501 to include, for the first time, a statutory definition of a the “claim of right” element necessary to acquire title by adverse possession. Pursuant to RPAPL 501(3), “[a] claim of right means a reasonable basis for the belief that the property belongs to the adverse possessor or property owner, as the case may be.” The 2008 amendments to RPAPL article 5 took effect on July 7, 2008, and apply to all claims filed on or after the effective date of the amendments (*see Hartman v. Goldman*, 84 A.D.3d 734, 924 N.Y.S.2d 97). This case is therefore governed by the 2008 amendments.

“Since adverse possession is disfavored as a means of gaining title to land, all elements of an adverse possession claim must be proved by clear and convincing evidence” (*Best & Co. Haircutters, Ltd. v. Semon*, 81 A.D.3d 766, 767; see *Ray v. Beacon Hudson Mtn. Corp.*, 88 N.Y.2d 154, 159).

Analysis:

Here, while plaintiff’s submissions sufficiently demonstrated his prima facie entitlement to summary judgment on his claim for adverse possession, defendant’s submissions raised triable issues of fact. Plaintiff’s June 7, 2018 affidavit wherein he averred that he was only lived at the premises for the six years prior thereto and his original complaint, wherein he alleged that he has been residing at the premises only since 2012, raise a triable issues of fact as to whether he was in continuous possession of the property for the statutory period. Moreover, defendant’s affidavit to the effect that plaintiff’s possession of the property was permissive until she commenced proceedings to evict him raises triable issue of fact as the existence of the element of hostility. It is well settled that permissive use of property “negates the element of hostility necessary to establish a claim of adverse possession” (*Chatsworth Realty 344 v. Hudson Waterfront Co. A*, 309 A.D.2d 567, 568, 765 N.Y.S.2d 39; see *Bratone v. Conforti-Brown*, 79 A.D.3d 955, 957–958, 913 N.Y.S.2d 762). For the above reasons, plaintiff’s motion for summary judgment on his adverse possession claim is **DENIED**.

Since the plaintiff made out a prima facie case of adverse possession and since his attorney offered an explanation for the statements made by plaintiff in his June 7, 2018 affidavit and his allegations in original complaint concerning how long he has been residing at the premises, defendant’s motion for summary judgment is also **DENIED**.

For all the reasons above, it is hereby

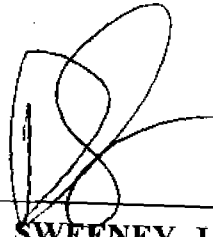
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ORDERED that the motion and cross-motion are **DENIED**.

This constitutes the decision and order of the Court.

Dated: August 19, 2019



PETER P. SWEENEY, J.S.C.

HON. PETER P. SWEENEY, J.S.C.

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