

Franklin v Marques

2019 NY Slip Op 32647(U)

July 26, 2019

Supreme Court, Kings County

Docket Number: 501437/2015

Judge: Richard Velasquez

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At an IAS Term, Part 66 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 26th day of JULY, 2019.

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

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MURIEL FRANKLIN, RICHARD MARQUES, DONNA MARQUES, CLAIRMONT MARQUES, ANTHONY MARQUES,

Plaintiff(s),

Index No.: 501437/2015

-against-

Decision and Order

MICHAEL MARQUES,

Defendant.

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FILED

This matter having been referred to this court for a bench trial and said bench trial having been commenced on September 26, 2018 and upon having heard testimony and upon review of all the evidence, testimony and exhibits from the trial conducted, the Court finds as follows:

Plaintiffs, MURIEL FRANKLIN, RICHARD MARQUES, DONNA MARQUES, CLAIRMONT MARQUES, ANTHONY MARQUEZ bring this suit seeking a (1) declaratory judgment that plaintiff, MURIEL FRANKLIN has a joint tenancy on the stock and lease of the coop with the defendant, MICHAEL MARQUES; and (2) a permanent injunction preventing the defendant, MICHAEL MARQUES from attempting to evict his mother the plaintiff, MURIEL FRANKLIN from the premises in question. The plaintiff's further seek claims for (3) unjust enrichment and (4) breach of fiduciary duty in the form of money

damages for violation of the agreement as well as costs and expenses incurred by the plaintiff in this action, as well as punitive damages.

BACKGROUND/PROCEDURAL HISTORY

This action concerns a co-op apartment in Kings County located at 10 East 43rd Street, Brooklyn. The plaintiff, MURIEL FRANKLIN, immigrated to this country in the 1970's and lived at 1410 Brooklyn Avenue, it is alleged that when it became clear it was too dangerous for a senior citizen to live at the previously mentioned premises all of the sibling, plaintiff's, RICHARD MARQUES, DONNA MARQUES, CLAIRMONT MARQUES, ANTHONY MARQUEZ and defendant MICHAEL MARQUES decided they needed to ensure their mothers safety. It is alleged that in the mid-90's the parties named in the caption met to discuss moving their mother plaintiff, MURIEL FRANKLIN, to a safer location to a building that had security and a doorman. It is alleged that thereafter the parties identified a coop at 10 East 43rd Street, Brooklyn, New York (hereinafter "premises") for their mother to move into.

It is further alleged that all siblings agreed that since the defendant was the only sibling living in New York that he would be an additional applicant for the coop. It is alleged the reasoning for this was the mother, plaintiff, MURIEL FRANKLIN's, income would not be qualified under coop guidelines because her only income was social security. It is alleged that the parties agreed the defendant would purchase the unit under his name and all the siblings would contribute toward the down payment and pitch in to help pay for the expenses on behalf of their mother for the purpose of the mother residing at that apartment for the rest of her life. It is undisputed that the defendant has substantial assets and would easily be approved for the coop. It is undisputed that there is no writing

reflecting the alleged agreement between the parties. It is also undisputed that the purpose of purchasing the coop was for the mother to reside there.

It is undisputed that the unit was purchased for \$32,000.00. It is undisputed that the defendant applied for and was approved for a mortgage for the balance of the purchase price in the amount of \$29,600.00 and said mortgage has since been paid in full. It is alleged that the plaintiff, MURIEL FRANKLIN, contributed \$5,000.00 for the down payment.¹ It is alleged that the other four (4) sibling plaintiff's, RICHARD MARQUES, DONNA MARQUES, CLAIRMONT MARQUES, ANTHONY MARQUEZ each contributed \$500.00 toward a down payment for a total of \$2,000.00.² It is undisputed that the defendant submitted an application to the coop board as the proposed purchaser and said application listed plaintiff, MURIEL FRANKLIN, as the occupant of the property. It is undisputed that the coop does not allow subletting, meaning the board does not approve purchase of a unit if the purpose of purchasing the unit is to rent the unit to others not on the application. It is alleged that plaintiff, MURIEL FRANKLIN, has made the maintenance payments as the occupant of the property. It is undisputed that the plaintiff, MURIEL FRANKLIN, has lived at the unit for 22 years.

ARGUMENTS

Plaintiffs contend that plaintiff, MURIEL FRANKLIN is not a tenant and the family intended MURIEL FRANKLIN to not only be the occupant of the property but to have a joint tenancy on the stock and lease, and it is in within the preview of the court to determine the rights of the plaintiff MURIEL FRANKLIN and the intent of the parties when

¹ There is no proof of this payment in the amount of \$5,000.00.

² The down payment made on the unit was in the amount of \$2,000.00 but said payment was made by check from the defendants bank account. There are no proofs Submitted in evidence regarding any payments made to defendant for the down payment.

the coop was purchased. Plaintiffs further contend defendant breached his fiduciary duty by attempting to evict the plaintiff MURIEL FRANKLIN, and he has been unjustly enriched.

Defendant contends it was never his intent to purchase the property for his mother plaintiff, MURIEL FRANKLIN. Defendant contends there was never any agreement between the siblings, the mother never attended any coop board meetings, there is no proof of any contribution toward the down payment, and the plaintiff MURIEL FRANKLIN was at all times renting the coop from defendant.

ANALYSIS

The evidence demonstrates that it was the intent of all parties that the plaintiff reside in the coop for the remainder of her life. To the extent that the issues turned on the credibility of the witnesses in regard to the down payment amounts and all other testimony, this court credits the testimony of the plaintiffs and the President of the Board of Managers of the coop board over the testimony of the defendant, (*see Watson v. Pascal*, 65 A.D.3d at 1334, 886 N.Y.S.2d 440). This court finds the testimony of the defendant not creditable. Specifically, defendant testified his mother was not present at the board meeting with the coop board, yet the coop board president testified the mother was at the meeting and the board understood the mother would be the occupant of the apartment. Additionally, the testimony of each and every witness contradicts the testimony of the defendant. It is clear, the board interviewed both the plaintiff, MURIEL FRANKLIN, and the defendant and approved defendant for the purchase of the property unit with the understanding that it was the intent of the defendant for the plaintiff, MURIEL FRANKLIN, to be an occupant of the property.

As to plaintiffs cause of action for a declaratory judgment the court is unable to grant such relief. This case presents interesting situation, a coop is unique in that it is not real property. The purchaser of a coop is purchasing shares in the coop not the property, and shares in a cooperative are treated as personal, rather than real property..." (*Matter of State Tax Commn. v. Shor*, 43 N.Y.2d 151, 158 [1977]; *Brief v. 120 Owners Corp.*, 157 A.D.2d 515, 515 [1st Dept 1990]); quoting *Anchev v. 335 W. 38th St. Co-op. Corp.*, 29 Misc. 3d 1223(A), 920 N.Y.S.2d 239 (Sup. Ct. 2010). There is documentary evidence, which establishes the defendant is the sole owner of the shares of the coop. This court cannot find any precedent that would allow it to declare the plaintiff, MURIEL FRANKLIN a joint tenancy ownership right to the coop shares with the defendant, as the shares are not real property but personal property. Additionally, although this court finds that there is no dispute that the intended benefit was for the plaintiff MUREIL FRANKLIN to reside in the coop for the rest of her life, there is no proof that it was intended to include the plaintiff MURIEL FRANKLIN an interest in the shares to the coop. As such, plaintiff cause of action for a declaratory judgment is denied.

As to plaintiff's cause of action for unjust enrichment, the court is unable to grant such relief. The elements of a cause of action to recover for unjust enrichment are "(1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Mobarak v. Mowad*, 117 A.D.3d 998, 1001, 986 N.Y.S.2d 539). "The essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Paramount Film Distrib. Corp. v. State of New York*, 30 N.Y.2d 415, 421, 334 N.Y.S.2d 388, 285 N.E.2d 695; see *Sperry v. Crompton Corp.*, 8 N.Y.3d 204, 215, 831 N.Y.S.2d 760, 863

N.E.2d 1012); quoting *GFRE, Inc. v. U.S. Bank, N.A.*, 130 A.D.3d 569, 570, 13 N.Y.S.3d 452, 454 (N.Y. App. Div. 2015). In the present case, plaintiff has failed to establish the defendant was enriched at their expense as there has been no proofs submitted of the alleged \$5000.00 for the down payment for the coop. Additionally, as the court notes above the proofs establish that the down payment for the coop was made in the amount of \$2,000.00 in the form of a personal check from the defendant's bank account. The maintenance payments made by the plaintiff in the amount of \$544.00 and on behalf of the plaintiff are payments for the benefit of living in the coop and said terms were agreed upon between the parties. As such, this court cannot find that the defendant has been unjustly enriched. Plaintiff's cause of action for unjust enrichment is denied.

As to plaintiff's cause of action for breach of fiduciary duty, this court cannot grant the same. The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct (*see Kurtzman v. Bergstol*, 40 A.D.3d 588, 590, 835 N.Y.S.2d 644); quoting *Rut v. Young Adult Inst., Inc.*, 74 A.D.3d 776, 777, 901 N.Y.S.2d 715, 717 (2010). The plaintiff did not allege any misconduct by the defendant that has caused her to sustain actual damages. The plaintiff fails to prove any actual damages. Therefore, a cause of action sounding in breach of fiduciary duty cannot be granted.

As to plaintiff's cause of action for a permanent injunction; "a permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction" (*Icy Splash Food & Beverage, Inc. v. Henckel*, 14 A.D.3d 595, 596, 789 N.Y.S.2d 505; *see Kane v. Walsh*, 295 N.Y. 198, 205-206, 66 N.E.2d 53; *Forest Close Assn., Inc. v. Richards*, 45 A.D.3d 527, 529, 845

N.Y.S.2d 418). Injunctive relief is "to be invoked only to give protection for the future ... [t]o prevent repeated violations, threatened or probable, of the [plaintiffs'] property rights" (*Exchange Bakery & Rest. v. Rifkin*, 245 N.Y. 260, 264–265, 157 N.E. 130); quoting *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 A.D.3d 403, 408, 873 N.Y.S.2d 148, 153 (2009).

Here, in the present case, the plaintiff MURIEL FRANKLIN is an 82-year-old woman who has lived in this coop since 1997. The testimony of all the sibling plaintiff's, RICHARD MARQUES, DONNA MARQUES, CLAIRMONT MARQUES, ANTHONY MARQUEZ, the plaintiff MAUREIL, the defendant, and the President of the Board of Managers of the coop board, as well as the documentary evidence, established the existence of an express agreement among the parties at the time the subject property was purchased so that the Plaintiff, MAUREIL FRANKLIN could reside there for the remainder of her years. The plaintiff MAUREIL, has paid the monthly maintenance fees in the amount of \$544.00 for the coop for the last twenty-two (22) years; with her making the payments directly to the coop for roughly the first fifteen (15) years. It has been established that the plaintiff has nowhere else to reside and does not have sufficient income or the means to reside elsewhere. As a result, the plaintiff has shown she will be irreparably harmed, absent the injunction preventing the defendant from removing her from the coop (see *Icy Splash Food & Beverage, Inc. v. Henckel*, 14 A.D.3d at 596, 789 N.Y.S.2d 505; cf. *Wiederspiel v. Bernholz*, 163 A.D.2d 774, 775, 558 N.Y.S.2d 739); *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 A.D.3d 403, 408, 873 N.Y.S.2d 148, 153 (2009).

It is the decision of this court that in the balancing of equities and the interest of justice and good conscience there should be a permanent injunction imposed granting the

plaintiff an occupancy for the remainder of her life at said coop and permanently restraining the defendant from attempting to evict the plaintiff from said premises for the remainder of her life as the plaintiff will suffer irreparable harm if said injunction is not imposed. Upon the plaintiff's death the coop will revert to the defendant, as he is the purchaser of the coop and paid the mortgage. The plaintiff shall continue to pay the maintenance for the coop in the amount of \$544.00 and continue to abide by all coop rules and regulations, so long as she remains there, which are the terms of the original agreement.

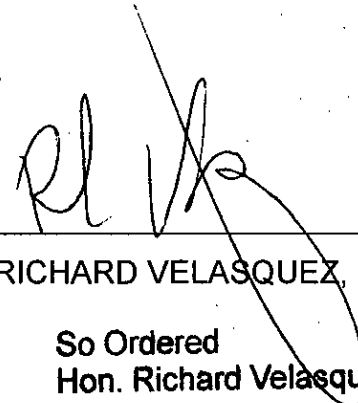
As to the plaintiff's claim for punitive damages, "punitive damages are not to compensate the injured party but rather to punish the tortfeasor and to deter this wrongdoer and others similarly situated from indulging in the same conduct in the future" (*Walker v. Sheldon*, 10 N.Y.2d 401, 404, 223 N.Y.S.2d 488, 179 N.E.2d 497 [1961]; see *Krohn v. New York City Police Dept.*, 2 N.Y.3d 329, 335, 778 N.Y.S.2d 746, 811 N.E.2d 8 [2004]; *Sharapata v. Town of Islip*, 56 N.Y.2d 332, 335, 452 N.Y.S.2d 347, 437 N.E.2d 1104 [1982]). "Subjecting a wrongdoer to punitive damages serves to deter future reprehensible conduct. Hence the term "exemplary damages" is a synonym for punitive damages. Punitive damages are permitted when the defendant's wrongdoing is not simply intentional but "evinced a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply a criminal indifference to civil obligations" (*Walker*, 10 N.Y.2d at 405, 223 N.Y.S.2d 488, 179 N.E.2d 497; see *Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 N.Y.2d 603, 613, 612 N.Y.S.2d 339, 634 N.E.2d 940 [1994]). In *Prozeralik v. Capital Cities Communications*, 82 N.Y.2d 466, 479, 605 N.Y.S.2d 218, 626 N.E.2d 34 (1993), the Court wrote that punitive damages may be sought when the wrongdoing was "deliberate and has the character of outrage frequently associated with

crime". "The misconduct must be exceptional, "as when the wrongdoer has acted maliciously, wantonly, or with a recklessness that betokens an improper motive or vindictiveness ... or has engaged in outrageous or oppressive intentional misconduct or with reckless or wanton disregard of safety or rights" (*Sharapata*, 56 N.Y.2d at 335, 452 N.Y.S.2d 347, 437 N.E.2d 1104; *see also Wilson v. City of New York*, 7 A.D.3d 266, 267, 775 N.Y.S.2d 527 [1st Dept.2004] [misconduct lacked "the character of spite, malice or evil motive"]); *quoting Ross v. Louise Wise Servs., Inc.*, 8 N.Y.3d 478, 489, 868 N.E.2d 189, 196 (2007). In the present case, although this court finds the actions of the defendant attempting to evict his 82-year-old mother from the home she has lived for the last 22 years deplorable this court cannot in good conscious find that the action of the defendant rises to a level of the character of "spite, malice or evil motive". Therefore, this court will not grant punitive damages.

Accordingly, the court finds that a permanent injunction be imposed granting the plaintiff MURIEL FRANKLIN occupancy for the rest of her life in the coop located at 10 East 43rd Street, Brooklyn. The plaintiff shall continue to pay the monthly maintenance in the amount of \$544.00 as she has for the past twenty-two (22) years. Plaintiffs cause of action for unjust enrichment is denied. Plaintiff's cause of action for breach of fiduciary duty is hereby denied. Plaintiff request for punitive damages and attorney's fees is hereby denied.

This constitutes the Decision/Order of the Court.

Date: July 26, 2019



 RICHARD VELASQUEZ, J.S.C.

So Ordered
 Hon. Richard Velasquez

JUL 26 2019

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 KING COUNTY CLERK