

Wright v Smith
2019 NY Slip Op 33808(U)
December 23, 2019
Supreme Court, Kings County
Docket Number: 523544/2019
Judge: Carolyn E. Wade
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At Part 84 of the Supreme Court of
the State of New York, held in and
for the County of Kings, at the
Courthouse, located at Civic Center,
Brooklyn, New York on
the 23 day of December 2019

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
DELROY WRIGHT,

Plaintiff,

Index No. 523544/2019

-against-

Seg 1
DECISION and ORDER

LESLIE SMITH, A/K/A JOSEPHINE SMITH
AMELDA HAZLE, A/K/A AMELDA SMITH
DURYEA PL LLC,

Defendants.
-----X

KINGS COUNTY CLERK
FILED
2020 JAN -3 AM 8:00

**Recitation, as required by CPLR § 2219(a), of the papers considered in the review of
plaintiff DELROY WRIGHT's order to show cause:**

Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1</u>
Cross-Motion and Affidavits/Affirmations.....	<u>2</u>
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memorandum of Law.....	_____

Upon the foregoing cited papers and after oral argument, plaintiff DELROY WRIGHT moves, by an order to show cause, for an Order staying a Landlord/Tenant eviction proceeding in Kings County Civil Court, brought by DURYEA PL LLC against him and others.

Relevant Facts

The underlying action sounding in constructive trust, *inter alia*, was brought to compel the determination of claims with respect to real property located at 14 Duryea Place, Brooklyn, New York (the "Property"). Plaintiff DELROY WRIGHT ("Plaintiff"), defendant AMELDA SMITH ("Amelda") and defendant LESLIE SMITH ("Leslie") are relatives. Plaintiff's wife, Pavelle Hurd-Wright ("Pavelle"), is the former owner of the Property. The Property consists of a residential and a commercial unit. Plaintiff and Pavelle lived on the second floor and operated a café on the first floor. Pavelle lost the Property as the result of a foreclosure proceeding. On April 27, 2015, Defendant DURYEA PL LLC (the "LLC") (collectively with Amelda and Leslie, "Defendants") purchased the Property by way of a Referee's Deed. Leslie signed the Real Property Transfer Report as the Managing Member of the LLC. On May 3, 2015, the LLC, as landlord, entered into a commercial lease agreement with Plaintiff and Pavelle, as tenants.

In April 2019, a holdover proceeding was commenced by the LLC to recover possession of the residential unit on the Property that was occupied by Plaintiff. By a decision dated September 19, 2019, the Hon. Michael Weisberg, JHC found, *inter alia*, that Plaintiff failed to meet the elements of constructive trust, granted the LLC a final judgment of possession, and issued a warrant of eviction against him (Defendants' opposition, exhibit "B").

Thereafter, a separate commercial landlord/tenant proceeding was brought in June 2019 by the LLC against Plaintiff and Pavelle for nonpayment of their commercial rent. By a decision dated

November 14, 2019, the Hon. Ira R. Greenberg granted the LLC \$126,829.84 in rent arrears, and a judgment of possession for the commercial unit (*id.*, exhibit “C”).

Arguments

In support of his application to stay the eviction, Plaintiff alleges that Amelda and his other family members agreed to form the LLC, in which he would be 100% owner, so that they could bid on the Property at the foreclosure (aff of Delroy Wright, ¶ 7)¹. He claims that his family agreed to lend him money (aff of Leila Rose-Gordon, aff, ¶ 15), and that Leslie would be the managing partner of the LLC (aff of Delroy Wright, ¶ 7). Plaintiff alleges that once he paid off the loan, he would “take over” the LLC (*id.*). He further avers that he gave Amelda approximately \$18,000.00 before the closing, \$130,000.00 in the first year after the closing, and that he has been paying the mortgage on the Property (*id.*, ¶ 8-10). He argues that the conveyance of the Property to him is warranted on the ground of constructive trust, and that “only a temporary restraining order and a preliminary injunction can afford the protection to the Plaintiff to which he is entitled” (aff of Leila Rose-Gordon, aff, ¶ 2).

In opposition, Defendants submitted an affidavit from Leslie, who asserts that Plaintiff does not currently reside at the Property; thus, he will not be irreparably harmed by the eviction (aff of Leslie Smith, ¶ 3). Leslie also claims that she and her sister are the only members of the LLC, and, as the owners of the Property, they have been paying the mortgage, water, taxes and other expenses (*id.*, ¶ 4). She avers that Plaintiff has no involvement in the LLC (*id.*, ¶ 39), and that Amelda denied his request for a loan due to Plaintiff’s history of poor money management (*id.*, ¶ 8). Leslie also submitted Plaintiff’s affidavit and his attorney Leila Rose-Gordon, Esq.’s affirmation in the underlying Housing Court matter, which provided inconsistent percentages of Plaintiff’s ownership in the LLC (*id.*, exhibits “G” and “I”).

¹ As aforementioned, the LLC purchased the Property by way of a Referee’s Deed on April 27, 2015.

Analysis

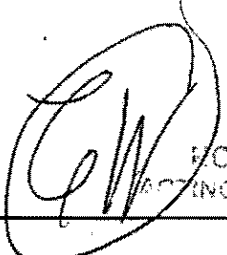
To be entitled to a preliminary injunction, the movant must establish (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor (*Ruiz v Meloney*, 26 AD3d 485, 485-86 [2d Dept 2006]; *W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (see *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Ying Fung Moy v Hoho Umeki*, 10 AD3d 604, 604 [2d Dept 2004]).

A meticulous examination of the submissions reveals that Plaintiff has not addressed, much less established, his likelihood of success on the merits, irreparable injury or balancing of equities, to support his request for a preliminary injunction. Notably, Plaintiff's claims regarding his ownership of the LLC and his alleged payments of the mortgage are unsubstantiated, and this finding is consistent with the September 19, 2019 decision by Hon. Michael Weisberg that Plaintiff had not demonstrated the elements of a constructive trust.

Accordingly, based upon the above, it is

ORDERED that plaintiff DELROY WRIGHT's order to show cause for an Order staying the Landlord/Tenant proceeding in Kings County Civil Court brought by DURYEA PL LLC against him and others is **DENIED**.

This constitutes the Decision and Order of the court.


HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

KINGS COUNTY CLERK
FILED
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