

Goff v Parker

2020 NY Slip Op 30396(U)

February 10, 2020

Supreme Court, Suffolk County

Docket Number: 13-25886

Judge: Martha L. Luft

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SHORT FORM ORDER

INDEX No. 13-25886
CAL. No. 18-00273OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

Handwritten initials

PRESENT:

Hon. MARTHA L. LUFT
Acting Justice Supreme Court

MOTION DATE 9-30-18
ADJ. DATE 3-5-19
Mot. Seq. # 002 - MG; CASEDISP

-----X
HELEN MYRA NELSON GOFF,

Plaintiff,

- against -

JOHN D. PARKER,

Defendant.
-----X

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Upon the following papers numbered 1 to 29 read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers 1 - 19; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 20 - 27; Replying Affidavits and supporting papers 28 - 29; Other ; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion by defendant for summary judgment dismissing the complaint against him is granted.

In 2010, the plaintiff Helen Myra Nelson Goff owned various parcels of land, including 134 Old Quogue Road, 76 Old Quogue Road, and 70 Old Private Road in the County of Suffolk. According to the complaint, the plaintiff was introduced to the defendant John Parker, who suggested that they enter into a joint venture to develop the parcels into Section 8 housing. It alleges that the defendant represented to the plaintiff that he would contribute to the joint venture money sufficient to pay 100% of any and all outstanding tax liabilities, as well as any forth coming tax liabilities related to the parcels until the Section 8 housing was built and occupied. It alleges that after the defendant represented to the plaintiff that such outstanding tax liabilities were paid, he presented to her what he represented to be promissory notes, which the plaintiff needed to sign to ensure she would pay back half of the sum the

defendant paid towards the tax liabilities. The complaint alleges that the defendant intentionally misrepresented to the plaintiff that she would be signing promissory notes; instead, the documents conveyed the parcels of land to the defendant.

The defendant now moves for summary judgment dismissing the complaint, arguing that the plaintiff had full knowledge of what she was doing and signed over title to the subject parcels. In support of his motion, the defendant submits, among other things, copies of the pleadings, his own affidavit, an affidavit of John Adago, transcripts of the deposition testimony of the plaintiff, the defendant, and nonparty Ivan Young, notes and mortgages, and deeds for the subject properties.

The plaintiff opposes the motion, arguing that a triable issue of fact exists as to whether she was aware that the documents she signed conveyed her interest in those properties to the defendant. In opposition, the plaintiff submits, among other things, copies of the pleadings, notes and mortgages, and deeds for certain properties.

At his examination before trial, Ivan Young testified that he is an attorney and that in 2008 he met the plaintiff, who needed advice relating to entering into a deal with a developer, Joseph Adago, for properties she owned. He testified that the plaintiff wanted to retain ownership of the properties and that she wanted to get out of the deal she made with Adago. He testified that he introduced the plaintiff to the defendant, who was his friend and worked in the construction business. When asked about a deed which transferred property located at 76 Old Quogue Road from the plaintiff to the defendant, he testified that he notarized the plaintiff's signing of the document. He testified that the defendant needed certain properties transferred into his name for the purpose of obtaining financing for the project. He further testified that the parties agreed not to record the deed as the plaintiff was "very vocal about always retaining ownership of the property." He testified that at some point there was an issue between the parties as the defendant paid for back taxes and the plaintiff defaulted on making mortgage payments to him.

The defendant states in his affidavit that he was introduced to the plaintiff by her attorney, Ivan Young, in 2007. He states that he had been friends with Young for many years, and that Young contacted him, as the plaintiff owned several distressed properties located in Southampton, New York. He states that Young initially asked him to review an agreement between the plaintiff and Joseph Adago relating to the properties, but that agreement fell through. He states that the properties were in disrepair and taxes were not paid on any of the plaintiff's parcels, and that the parcels were eventually condemned by the Town of Southampton in October 2011.

The defendant states that after meeting with the plaintiff at Young's office, he agreed to pay the delinquent taxes on all five of the plaintiff's properties if the plaintiff agreed to sign a note and mortgage against the properties at issue. He states that on June 26, 2008, the plaintiff signed a note and mortgage in the amount of \$10,000 in his favor covering premises known as 76 Old Quogue Road, and that on July 10, 2008, the plaintiff executed a power of attorney with him as agent for all real estate matters. He states that on January 27, 2010, the plaintiff signed a note and mortgage in the amount of \$10,000 in his favor covering premises known as 70 Private Road, and that the plaintiff failed to make a single payment towards the indebtedness. The defendant states that on January 27, 2010, the plaintiff signed a deed to

Goff v Parker

Index No. 13-25668

Page 3

him for premises known as 134 Old Quogue Road in appreciation for his assistance in trying to resolve her problems with the properties. He states that on September 23, 2011, the plaintiff signed a deed in lieu of foreclosure over to him for premises known as 76 Old Quogue Road and 70 Private Road. He states that in October 2010¹, the Town of Southampton conducted a raid at premises known as 48 Old Quogue Road, issuing over 100 citations for violations of Town Code and condemned the building. The defendant further states that he loaned money out of his pocket and from his credit line so that the plaintiff could keep the properties from being taken by tax deed. He states that he has spent over \$90,000 to assist the plaintiff, and that she has not made any payment to him.

At his examination before trial, the defendant testified that Young was a friend of his, who asked him for advice relating to the plaintiff's distressed properties and the plans of Adago to develop the properties. He testified that he first met the plaintiff at Young's office, and that there were discussions of creating a limited liability corporation to develop the properties. He testified that he paid back taxes and overdue heating bills for some of the properties. The defendant testified that at some point, the plaintiff agreed to sell the property located at 48 Quogue Road, but the deal never went through because the plaintiff rejected the terms and conditions. He testified that the plaintiff agreed to transfer property located on 134 Old Quogue Road to him as he had already given her loans and paid her back taxes. He testified that his relationship with the plaintiff was "informal" and that most of their conversations were over the phone. When asked about a document the defendant sent to the plaintiff's attorney, the defendant testified that the plaintiff wanted her attorney to handle everything, and that he would inform the plaintiff's attorney what transpired during the meeting. He explained that the plaintiff refused to take the documents and asked that they be sent to her attorney.

At her examination before trial, the plaintiff testified that she was involved in a business venture with Adago to rehabilitate certain properties she owned. She testified that Adago paid a year of back taxes for the properties, but that when no work was done on the properties, their agreement was terminated. The plaintiff testified that she met with an attorney, Young, who helped her cancel the agreement and introduced her to the defendant to develop the properties. She testified that the defendant "always shoved pages at [her]" and never gave her a chance to let her attorney see them. She further testified that the defendant always asked her to sign documents, and that she trusted him and did not read the documents she was signing. She testified that the defendant went to her place of work to have a document signed, that she wanted Young to review it, but as he was on vacation at that time, she signed it without his review. She testified that at one point, the defendant asked that she sign a document which needed to be notarized, so they went to her credit union to do so. She explained that the defendant told her it was a promissory note, but, it was actually deeds putting the properties into his name.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant meets this burden, the burden shifts to the opposing

¹The court notes that this date appears to be a typographical error, and that the year was intended to be noted as "2011." This surmise is based upon the fact that the prior paragraph, ¶16 refers to a date in September of 2011 and the next paragraph, containing the reference at issue, begins with the word, "Thereafter." In addition, the Young correspondence of November 15, 2011 identifies the date of the Town's raid as being "October 5, 2011."

party to demonstrate that there are material issues of fact, however, mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]). The court's function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *O'Neill v Town of Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

The acknowledgment of a signature on a deed is prima facie evidence that it was executed by the person who purported to do so, and creates a rebuttable presumption that the signature is valid (*see CPLR 4538; Countrywide Home Loans, Inc. v Gomez*, 138 AD3d 670, 29 NYS3d 64 [2d Dept 2016]; *Valenzano v Valenzano*, 98 AD3d 661, 950 NYS2d 150 [2d Dept 2012]). This presumption of due execution may be overcome only with proof "so clear and convincing as to amount to a moral certainty" (*see Albany County Sav. Bank v McCarty*, 149 NY 71, 80, 43 NE 427 [1896]; *Stein v Doukas*, 98 AD3d 1026, 950 NYS2d 773 [2d Dept 2012]; *Beshara v Beshara*, 51 AD3d 837, 838, 858 NYS2d 351 [2d Dept 2008]).

To establish a *prima facie* case for fraud, a plaintiff must submit proof that: (1) the defendant made a representation as to a material fact; (2) such representation was false; (3) defendant intended to deceive plaintiff; (4) plaintiff believed and justifiably relied upon the statement and was induced by it to engage in a certain course of conduct; and (5) as a result of such reliance plaintiff sustained pecuniary loss (*see Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 488, 836 NYS2d 509 [2007]). "Forgery is defined by the common law to be the fraudulent making of a writing to the prejudice of another's rights, or the making *malo animo* of any written instrument for the purpose of fraud and deceit. Forgery may [also] be committed by fraudulently procuring the signature of another to an instrument which he has no intention of signing" (*Marden v Dorthy*, 160 NY 39, 53, 54 NE 726 [1899]). "It is clear from these definitions that "forgery" is but one species of "fraud" (*Piedra v Vanover*, 174 AD2d 191, 194, 579 NYS2d 675 [2d Dept 1992]). However, a party who signs a document without any valid excuse for not having read it is conclusively bound by its terms (*see Gillman v Chase Manhattan Bank*, 73 NY2d 1, 11, 537 NYS2d 787 [1988]; *Ferrarella v Godt*, 131 AD3d 563, 567-568, 15 NYS3d 180 [2d Dept 2015]), and prevents such a party from establishing justifiable reliance, an essential element of fraud (*see Stortini v Pollis*, 138 AD3d 977, 31 NYS3d 90 [2d Dept 2016]).

At the outset, the Court notes that, although the parties reference a copy of a deed to the 70 Old Private Road property purportedly attached as an exhibit, this document was not attached to the moving papers, the opposing papers, nor the reply papers. Nevertheless, the Court finds that this deed is not necessary to render its determination.

Here, the defendant's submissions, demonstrate, *prima facie*, that the plaintiff's transfer of ownership of the subject properties was not fraudulent (*see Ross v Louise Wise Services, Inc.*, *supra*). First, the plaintiff admits to signing the deeds that conveyed her interest to the defendant, and as such, there are no issues as to whether the deed was duly executed (*see CPLR 4538; Countrywide Home Loans, Inc. v Gomez*, *supra*; *Albany County Sav. Bank v McCarty*, *supra*). As the plaintiff admits that

Goff v Parker
Index No. 13-25668
Page 5

she failed to read the documents before signing them, she cannot establish justifiable reliance on any of the defendant's statements which led her to do so (see *Gillman v Chase Manhattan Bank, supra*; *Stortini v Pollis, supra*; *Ferrarella v Godt, supra*). Although the plaintiff testified that she did not read these documents because she trusted the defendant, this testimony does not provide a valid excuse for failing to do so before signing them (see *Prompt Mortg. Providers of North America, LLC v Zarour, 155 AD3d 912, 914, 64 NYS3d 106 [2d Dept 2017]*; *Ferrarella v Godt, supra*). Further, the defendant's submissions establish that, despite the plaintiff's contentions that the defendant misrepresented what the documents were, she is precluded from asserting that her signature thereupon was fraudulently procured, as she did not read them (see *Marden v Dorthy, supra*; *Piedra v Vanover, supra*).

The defendant having met his initial burden on the motion, the burden shifted to the plaintiff to tender evidence in admissible form raising an issue of fact requiring a trial (see *Zuckerman v City of New York, supra*). The plaintiff's submissions fail to do so, as she merely argues that there is a triable issue of fact as to whether she knew that the documents she signed were in fact deeds conveying her interest in the subject properties to the defendant. As the Court finds that the plaintiff cannot establish an essential element of her fraud claims, as she could not have justifiably relied upon any statements by the defendant, she fails to raise any issues of fact requiring a trial for resolution (see *Zuckerman v City of New York, supra*; see *Prompt Mortg. Providers of North America, LLC v Zarour, supra*; *Stortini v Pollis, supra*).

As the Court is dismissing all of the plaintiff's claims, the remaining portion of the complaint seeking punitive damages is also dismissed, as such a demand or request possesses no viability absent any underlying substantive causes of action, and New York does not recognize an independent cause of action for this relief (see *Rocanova v Equitable Life Assur. Socy. of U.S., 83 NY2d 603, 616-617, 612 NYS2d 339 [1994]*; *Dixon v William Floyd Union Free School Dist., 136 AD3d 972, 973, 25 NYS3d 363 [2d Dept 2016]*).

Accordingly, the defendant's motion is granted.

Dated: 2/10/20

Martha L. Left
A.J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION