

**Pierre v Jones**

2020 NY Slip Op 30763(U)

February 24, 2020

Supreme Court, Kings County

Docket Number: 523083/2019

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 24<sup>th</sup> day of FEBRUARY, 2020.

PRESENT:  
HON. RICHARD VELASQUEZ  
Justice.

-----X  
WAYNE PIERRE,

Plaintiff,

Index No.: 523083/2019  
Decision and Order

-against-

TRICIA JONES, THE ESTATE OF JOAN PIERRE,  
ANDY PIERRE,

Defendants.

-----X

The following papers numbered 1 to 3 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	2-10
Opposing Affidavits (Affirmations) _____	12-20

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KINGS COUNTY CLERK  
FILED

After oral argument and a review of the submissions herein, the Court finds as Follows:

Plaintiff, WAYNE PIERRRE, move this court by Order to Show Cause granting the plaintiff injunctive relief pursuant to CPLR 6301 to stay the Kings County Housing Court Action bearing index number 79672/2019. Defendants oppose the same.

**FACTS**

The undisputed facts are as follows. On January 21, 2003, Joan Pierre, mother of plaintiff and the defendants, transferred partial interests of 10 Monaco Place, Brooklyn

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NY to herself and her four children Andy Pierre, Dave Pierre, Wayne Pierre and Tricia Jones as joint tenants with the right of survivorship. It is undisputed that plaintiff has lived in the basement of said premises for over a decade and does not pay any rent. It is also undisputed that plaintiff does not contribute to any bill, or taxes for said premises. Dave Pierre deceased as of 2006. In August of 2017 Joan Pierre sought to take her name and the plaintiff's name off of the deed and sought to add the plaintiff's son on the deed. Joan Pierre contacted an attorney, Thaddeus J. McGuire, to aid with said transfer. Mr. McGuire went to plaintiff's home with the necessary deed transfer documents and a new deed was executed with all parties present in the room, namely Joan Pierre, Tricia Jones, Andy Pierre, Wayne Pierre and DeJean Pierre, and Keisha Brown DeJean Pierre's mother. Said deed transferred all interest in the property to Andy Pierre, Tricia Jones and DeJean Pierre. All parties from the first deed signed said conveyance, in the presence of an attorney. Said deed was recorded August 19, 2017. It is also undisputed that in January of 2019 DeJean Pierre, requested that he be bought out of his interest in the property. In August of 2019 DeJean Pierre received \$399,851.33 as his net share of the sale of his 1/3 interest in the property. On October 9, 2019 the plaintiff was served with a holdover petition. Thereafter, the plaintiff commenced this proceeding to stay the housing court proceeding.

### ARGUMENTS

Plaintiff contends he was fraudulently induced to transfer his part interest in the subject premises to his son, he was unaware of the documents he was signing, received no consideration and was not represented by an attorney. Plaintiff alleges that after the plaintiff's mother died the defendant ANDY PIERRE purchased/bought out the plaintiff's sons' interest in the property for four hundred thousand (\$400,000.00) dollars in an

unrecorded transaction. Thereafter the plaintiff was served with eviction proceeding papers. Plaintiff further contends that he can satisfy all of the requirements for injunctive relief.

Defendants contend the plaintiff's affidavit is false. All deeds were recorded. They also allege the plaintiff was present at the time of the deed and signed the transfer deed and was aware of what was happening at all times. Defendants further submit an affidavit of the lawyer who helped to execute the deed transfer. Defendants further contend that the plaintiff is unable to meet the elements required for a preliminary injunction.

### ANALYSIS

The purpose of a **preliminary injunction** is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual (*cf. Rattner & Assoc. v. Sears, Roebuck & Co.*, 294 AD2d 346, 741 NYS2d 894). To be entitled to a **preliminary injunction**, the movant must establish (1) the 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 (*see Hightower v. Reid*, 5 AD3d 440, 772 NYS2d 575; *Evans-Freke v. Showcase Contr. Corp.*, 3 AD3d 549, 770 NYS2d 640; CPLR 6301; *Doe v. Axelrod*, 73 NY2d 748, 750, 536 NYS2d 44, 532 NE2d 1272; *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, 438 NYS2d 761, 420 NE2d 953). The decision to grant or deny a **preliminary injunction** rests in the sound discretion of the Supreme Court (*see Matter of Merscorp, Inc., v. Romaine*, 295 AD2d 431, 432, 743 NYS2d 562). "Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient" (*Matter of Walsh v. Design Concepts*, 221 AD2d 454, 455, 633 NYS2d 579; *see McLaughlin, Piven, Vogel v. Nolan & Co.*, 114 AD2d 165, 174, 498 NYS2d 146). Conversely, "[e]conomic loss, which is compensable by money damages, does not

constitute irreparable harm” (*EdCia Corp. v. McCormack*, 44 AD3d 991, 994, 845 NYS2d 104; see *Neos v. Lacey*, 291 AD2d 434, 435, 737 NYS2d 394).

Contrary to the plaintiffs, contentions, they fail to make the requisite showing of a likelihood of success on the merits. In the present case, it has been established and is undisputed that pursuant to a recorded deed which transfers all interest in the subject property to Andy Pierre, Tricia Jones and DeJean Pierre (the plaintiff's son), was willingly signed in the presence of a lawyer by all parties including the plaintiff. The undisputed documentary evidence of a validly recorded deed fails to establish a likelihood of success on the merits. Additionally, the only proofs submitted establish a recorded transfer deed was willingly signed by the plaintiff during a meeting at the plaintiffs home in which a lawyer was present. Like any other contract, a recorded deed can only be invalidated on such grounds as fraud, collusion, mistake, accident or overreaching. See: *Sontag v. Sontag*, 114 AD2d 892, 495 NYS2d 65 (2nd Dept.1985); *Cunha v. Shapiro*, 42 AD3d 95, 837 NYS2d 160 (2nd Dept.2007); *Shuler v. Dupree*, 14 AD3d 548, 789 NYS2d 197 (2nd Dept.2005); *MELRO Elec. Devices, Inc. v. C.M.C Collision Inc.*, 18 Misc 3d 1138(A), 859 NYS2d 896 (Dist. Ct. 2008). Additionally, the record demonstrates that the plaintiff for over the last decade reaped meaningful benefits, i.e. did not pay rent or contribute to the upkeep and taxes of the property, as well as plaintiff's only son receiving a 1/3 interest in said property (see *Lazar v. Lazar*, 88 AD3d 852, 931 NYS2d 517; *Cioffi-Petrakis v. Petrakis*, 72 AD3d 868, 869, 898 NYS2d 861; *Etzion v. Etzion*, 62 AD3d at 654, 880 NYS2d 79; *Schultz v. Schultz*, 58 AD3d 616, 617, 871 NYS2d 636). As such, the plaintiff failed to submit any proof to overcome the documentary evidence of a recorded deed to

establish there was any fraud, collusion, mistake, accident, or overreaching. Therefore, the plaintiff has failed to demonstrate a likelihood of success on the merits.

Second, the plaintiff fails to allege damages of a noneconomic nature and, thus, failed to demonstrate irreparable harm in the absence of a preliminary injunction (see *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073, 857 NYS2d 648; *Dana Distribs. v. Crown Imports, LLC*, 48 AD3d 613, 853 NYS2d 111; cf. *Winzelberg v. 1319 50th Realty Corp.*, 52 AD3d 700, 860 NYS2d 185; *Stockley v. Gorelik*, 24 AD3d 535, 808 NYS2d 282), quoting *DiFabio v. Omnipoint Commc'ns, Inc.*, 66 AD3d 635, 636–37, 887 NYS2d 168, 169–70 (2009). In the present case, plaintiff fails to proffer any evidence that it will suffer irreparable harm in the form of non-economic damages in the absence of a preliminary injunction. The plaintiff's allegations if taken as true would be compensable through economic means. Moreover, no deed or interest pursuant to any deed that was ever recorded gave the plaintiff a right to a lease at said premises, or a life estate.

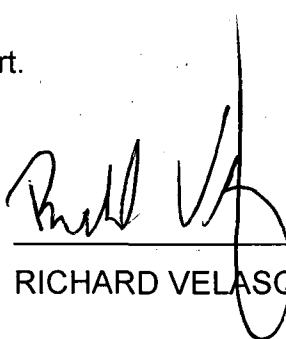
Third, a court must balance the equities. "It must be shown that the irreparable injury to be sustained is more burdensome to the plaintiff than the harm caused to the defendant through the imposition of the injunction." *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 AD2d 631, 633, 588 NYS2d 424, 426 (1992). In the present case, it is clear that upon balancing the equities this court cannot say that the alleged injury is more burdensome to the plaintiff than the harm caused to the defendant through imposition of this injunction. Therefore, the plaintiff has failed to adequately demonstrate a likelihood of success on the merits, and a balancing of equities in the movants favor, as such

plaintiffs request for a preliminary injunction to stay the housing court action is hereby denied.

Finally, this court emphasizes, on the subject of procedure, that, "customarily, a question of the right to possession of leased premises is to be decided in a summary proceeding in Civil Court. The summary proceeding, while not without attendant delay, is far more expeditious and generally would not be expected to take possible years to come to trial" quoting, *Hughes v. Lenox Hill Hosp.*, 226 AD2d 4, 13, 651 NYS2d 418 (1996). Furthermore, it is well settled that "the extraordinary remedies ... of injunctive and declaratory relief .... are available 'only where resort to ordinary actions or proceedings would not afford adequate relief" (*Gaynor v. Rockefeller*, 15 NY2d 120, 132, 256 NYS2d 584, 204 NE2d 627, quoting *Rockland Light & Power Co. v. City of New York*, 289 NY 45, 51, 43 NE2d 803). "As the Court of Appeals has stated, "Civil Court has jurisdiction of landlord tenant disputes (see CCA 204) and when it can decide the dispute, as in the present case, it is desirable that it do so" (*Post v. 120 East End Ave. Corp.*, 62 NY2d 19, 28, 475 NYS2d 821, 464 NE2d 125; quoting *Cox v. J.D. Realty Assocs.*, 217 AD2d 179, 181, 637 NYS2d 27, 29 (1995).

Accordingly, plaintiff's order to show cause is hereby denied, for the reasons stated above.

This constitutes the Decision/Order of the Court.  
Date: February 24, 2020



RICHARD VELASQUEZ, J.S.C.

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SO ORDERED

Hon. Richard Velasquez