

**Clarke v Antione**

2020 NY Slip Op 31620(U)

April 14, 2020

Supreme Court, Kings County

Docket Number: 501481/2020

Judge: Loren Baily-Schiffman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 14 day of April 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN  
JUSTICE

MAYLEEN CLARKE,

Plaintiff,

- against -

ANGELA ANTIONE,

Defendant.

Index No.: 501481/2020

Motion Seq. # 1

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
OSC, Affidavits, Affirmation and Exhibits	1
Affirmation in Opposition to OSC	2

Upon the foregoing papers Plaintiff, Mayleen Clarke ("Plaintiff"), moves this Court for an Order (1) pursuant to CPLR § 6301 preliminarily enjoining defendant, Angela Antoine ("Defendant") her agents, employees and representatives from taking any adverse action regarding 682 Alabama Ave., Brooklyn, NY 11207, Section 3, Block 4295, Lot 30 ("the premises") including but not limited to eviction of the plaintiff and selling the premises to a third party pending a determination of the instant application; (2) voiding the deed dated November 8, 2006, transferring the plaintiff's interest in the subject premises to the defendant pending a determination of the instant application and/or hearing on the merits in this Court; and (3) compelling the defendant to provide copies of all documents relative to the November 8, 2006

closing of title of the subject premises including a list of checks disbursed at the closing and the settlement charges.

### Background

It is undisputed that Plaintiff was the previous owner of the premises, where she currently resides. Plaintiff alleges that in December 2004, she was injured in an automobile accident and as a result was forced to retire from her job as a nurse and suffered a drastic loss of income. Furthermore, Plaintiff represents that she suffered a concussion in the accident which left her with memory loss. Plaintiff allegedly had trouble making mortgage payments on the premises and sought the guidance of her then clergyman, Pastor Clarence Weeks, of the now-defunct St. Frances Church in Brooklyn. On November 8, 2006, Weeks arranged a meeting between Plaintiff and Defendant, supposedly to help Plaintiff pay her mortgage. Plaintiff was allegedly told she should not be represented by an attorney at this meeting. Plaintiff contends that the November 8, 2006 meeting was actually a closing of title and she unwittingly sold her entire interest in the premises to Defendant, for \$585,000. However, Plaintiff maintains she never received any money from this meeting. Plaintiff contends that, unbeknownst to her, she then repurchased the premises for the total mortgage due on the premises and contracted to pay the transfer taxes and carry the costs of the mortgage, approximately, \$4,000 per month.

Defendant alleges that she contracted to purchase the premises from Plaintiff and pay off Plaintiff's original mortgage. Plaintiff would pay the new mortgage and all carrying costs of the premises until the Plaintiff was able to build up her credit to repurchase the premises. Defendant maintains that Plaintiff never made the agreed upon payments, and after modifying the mortgage, Defendant commenced an eviction proceeding against Plaintiff in 2019.

Plaintiff contends that she had no contact with Defendant or Weeks since the meeting when she closed title on the premises. After she received a settlement for her car accident claim, she attempted to make payments for the premises, to no avail. In September 2019, she was served with eviction papers. She consulted a new clergyman, who reviewed her documents. Then, she allegedly first discovered the nature of the November 8, 2006 transaction.

### Discussion

In her Verified Complaint, Plaintiff pleads five causes of action: conversion, unjust enrichment, intentional infliction of emotional distress, and two causes of action sounding in fraud. Defendant opposes the motion for a preliminary injunction on the grounds that there is no likelihood of success and the balancing of equities do not favor Plaintiff. Specifically, Defendant contends that each of the causes of action are barred by their respective statutes of limitation. Defendant argues that the cause of action for conversion fails, because conversion only applies to personal property and the property subject to this litigation is real property. Defendant also asserts that the cause of action for intentional infliction of emotional distress fails because the conduct Plaintiff alleges is not outrageous. Finally, Defendant argues that the balancing of equities does not favor granting the preliminary injunction as Defendant allegedly moved other persons into the premises and entered into a stipulation of settlement during the litigation.

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do... an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.” **CPLR § 6301**. “[O]n a

motion for a preliminary injunction the movant must prove three things: (1) likelihood of [her] ultimate success on the merits; (2) irreparable injury to [her] absent granting of the preliminary injunction; and (3) a balancing of equities.” *Albini v. Solork Association*, 37 A.D.2d 835 (2d Dep’t 1971). The plaintiff is only required to make a prima facie showing that there is a likelihood of success on the merits for a preliminary injunction to be granted. *Florio v. Incorporated Vil. of Lynbrook*, 138 A.D.2d 672, 672-673 (2d Dep’t 1988).

In the instant case, Plaintiff made a prima facie showing of likelihood of success on the merits for some of the causes of action pled in the Verified Complaint. First, Plaintiff has shown that the statute of limitation for some of the causes of actions has not run. Under CPLR § 213(8), “the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud.” The fourth and fifth causes of action both entitled “Fraudulent Misrepresentation” make out fraud claims Plaintiff allegedly did not discover until 2019. Accordingly, those causes of action may have been discovered less than two years before Plaintiff brought this action. Furthermore, Plaintiff stands to suffer an irreparable injury if she is evicted from the premises or the premises is sold, if she is the rightful owner of the premises.

The Court rejects the Defendant’s argument that the balancing of equities does not favor a preliminary injunction. The settlement referenced involves the premises and a landlord tenant action. The handwritten settlement is largely illegible but appears to read “Respondent to voluntarily vacate from the premises or otherwise fully comply with the terms of this agreement.” In the settlement, Plaintiff either does not concede any rights in the premises to

Defendant or such a concession is so illegibly written that this Court could not make it out. Defendant's argument that the balancing of equities disfavors a preliminary injunction, because Plaintiff moved other people into the premises is also unavailing. Plaintiff claims that she has an interest in the premises, which would give her the right to live with others in the premises. Accordingly, the balancing of equities favors this Court granting a preliminary injunction to maintain the status quo.

Turning now to the branch of the order to show cause requesting to void the November 8, 2006 deed, Plaintiff does not illustrate why the deed should be voided or the title to the premises should be transferred at this stage of the litigation. Moreover, as there is a question of fact as to whether the deed was the result of fraud, this branch of the order to show cause is denied.

Turning now to the branch of the order to show cause requesting that this Court compel the defendant to provide copies of documents related to the November 8, 2006 closing, this relief is essentially a discovery request which is premature at this stage of litigation. This branch of the order to show cause is, therefore, denied. Accordingly, it is HEREBY:

ORDERED that Defendant, her agents, employees and representatives are enjoined from taking taking any adverse action regarding the premises, including but not limited to eviction of the plaintiff and selling the premises to a third party, pending resolution of the instant action; and it is further

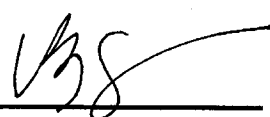
ORDERED that the motion to void the November 8, 2006 deed and transfer title to Plaintiff is DENIED; and it is further

ORDERED that the motion to compel Defendant to provide certain documents is DENIED.

The parties' remaining contentions are without merit.

This is the Decision and Order of the Court.

ENTER



LOREN BAILY-SCHIFFMAN, JSC