

<b>19 Stanton St. LLC v 19 Stanton Realty LLC</b>
2020 NY Slip Op 31766(U)
June 1, 2020
Supreme Court, New York County
Docket Number: 653272/2018
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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19 STANTON STREET LLC

Plaintiff,

- v -

19 STANTON REALTY LLC,

Defendant.

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INDEX NO. 653272/2018
MOTION DATE 10/24/2018
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED and ADJUDGED that defendant's cross-motion for summary judgment is GRANTED; and it is further

ORDERED and ADJUDGED that this action is hereby DISMISSED, and the Clerk shall enter judgment accordingly.

DECISION

In the prior action between these parties, defendant, here 19 Stanton Realty (Realty), sued plaintiff, here 19 Stanton Street (Stanton Street), for fraudulent misrepresentation arising out of a realty purchase and sale transaction. The

court dismissed the prior action on the ground that Realty's claims were barred by the merger clause in the parties' contract of sale (19 Stanton Realty LLC v 19 Stanton Street LLC, Sup Ct, NY County, Index No.: 650482/2016, Doc. No. 210, May 1 2018, Crane, J.).

Here, plaintiff moves for summary judgment on its claim for attorney's fees based upon the dismissal of the prior action and the attorney's fees provision of the purchase and sale contract. Defendant cross-moves asserting various defenses including that plaintiff's claim is an impermissible splitting of the causes of action and that plaintiff was required to counterclaim for attorney's fees in the prior action and that the attorney's fees clause is inapplicable as having been merged into the deed upon closing of the transaction. Plaintiff counters that there is no mandatory counterclaim rule which would bar this action and that because the attorney's fees clause is a collateral to the p

The court finds defendant's arguments persuasive. Section 30 of the purchase and sale agreement contains three subsections the first of which, the jury trial waiver, explicitly provides that it survives the delivery of the deed. See 527 Smith St. Brooklyn Corp. v Bayside Fuel Oil Depot Corp., 262 AD2d 278 [2d Dept 1999] ("provisions of a contract for the sale of real property are merged in the deed and, as a result, are extinguished upon the closing of title. However, this rule does

not apply where there is a clear intent evidenced by the parties that a particular provision will survive delivery of the deed or where there is a collateral undertaking"). By contrast, the third subsection of Section 30, the prevailing party attorney's fees provision relied upon by plaintiff here, is completely silent as to its effect upon deed delivery but plaintiff argues that the attorney's fees provision is "collateral" to the transaction and therefore survives. However, the court's decision in the prior action was explicitly based upon the merging of the parties' obligations into the executory contract, thus making the dispute, and the attorney's fees arising therefrom, integral to the contract.

Further, contrary to plaintiff's arguments, the First Department's holding in O'Connell v 1205-15 First Ave. Assoc., LLC, 28 AD3d 233, 234 (1st Dept 2006) wherein it was stated that

the "prohibition against the splitting of causes of action required plaintiff to seek attorneys' fees within the action in which they were incurred, not a subsequent action" is binding on this court and has not been overruled. Therefore, plaintiff was required to make its claims for attorney's fees in the prior action and this separate action is barred.

06/01/2020 DATE					<i>Debra A. James</i> DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE