

Speiss v Beyrer
2020 NY Slip Op 32395(U)
July 10, 2020
Supreme Court, Suffolk County
Docket Number: 19092/2014
Judge: Joseph Farneti
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SHORT FORM ORDER

INDEX NO. 19092/2014

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

MARGARET SPEISS, MARK SPEISS,
 NANCY SPEISS and MATTHEW SPEISS,

Plaintiffs,

-against-

CHARLES BEYRER,

Defendant.

ORDER**PAINTIFFS' ATTORNEY:**

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DEFENDANT'S ATTORNEY:

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Upon the following papers read on this application by plaintiffs for an Order, pursuant to CPLR 602 (b), granting consolidation of the within action with a summary proceeding for eviction pending in the Sixth District Court of Suffolk County under Index Number LT-2574-14/BF and for a temporary restraining order, pursuant to CPLR 6313, staying the petition in the summary proceeding for eviction pending a decision herein or pending a hearing on a permanent injunction pursuant to CPLR 6311 and 6312, and on the cross-motion of defendant for an Order dismissing the complaint pursuant to CPLR 3211 (a) (3) and (5): Order to Show Cause dated September 29, 2014, Affidavits in Support dated September 24, 2014, Affirmation in Support dated September 25, 2014 with Exhibits A through H annexed thereto; Notice of Cross-Motion and Affirmation in Support dated January 8, 2015 and Affidavit in Support dated January 8, 2015; Affidavit in Opposition dated January 29, 2015, Affirmation in Opposition dated January 29, 2015 together with Plaintiffs' Memorandum of Law dated January 29, 2015; and upon the subsequent proceedings in this matter; it is

ORDERED that the respective motions (mot. seq. #001 and #002) are consolidated for purposes of a determination herein; and it is further

ORDERED that the cross-motion by defendant Charles Beyrer for an Order dismissing plaintiffs' verified complaint, pursuant to CPLR 3211 (a) (3) and (5), upon the defenses of standing and statute of limitations, is hereby **GRANTED**, only as to the claims asserted by plaintiffs Mark Speiss, Nancy Speiss, and Matthew Speiss, for the reasons set forth herein; and it is further

ORDERED that the application for a temporary restraining order having been granted by Order of this Court dated September 29, 2014, the further application by plaintiff Margaret Speiss for a preliminary injunction is hereby **GRANTED** for the reasons set forth herein; and it is further

ORDERED that pursuant to CPLR 6312 (b), plaintiff Margaret Speiss shall post an undertaking in the amount of **\$500.00** within sixty (60) days from the date of this Order; and it is further

ORDERED that the motion by plaintiff Margaret Speiss for an Order, pursuant to CPLR 602 (b), consolidating this action for a constructive trust with the petition in the summary proceeding for eviction pending in the Sixth District Court of Suffolk County, New York under Index Number LT-2574-14/BF, is hereby **GRANTED** to the extent and for the reasons set forth herein; and it is further

ORDERED that the Clerk of the District Court of the County of Suffolk, Sixth District, upon service of a copy of this Order with notice of entry, shall transfer the action under Index Number LT-2574-14/BF to the Supreme Court, Suffolk County, and deliver to the Clerk of the Supreme Court, Suffolk County, all papers and records in connection with the pending action entitled *Charles Beyrer v Margaret Speiss, Mark Speiss, Nancy Speiss and Matthew Speiss* under Index Number LT-2574-14/BF; and it is further

ORDERED that the Suffolk County District Court action entitled *Charles Beyrer v Margaret Speiss, Mark Speiss, Nancy Speiss and Matthew Speiss* under Index Number LT-2574-14/BF, once removed and transferred to the Supreme Court, Suffolk County, shall be joined with this action for purposes of discovery and trial; and it is further

ORDERED that each action joined for trial and discovery shall retain a separate caption, separate index number, and separate court costs shall be paid in each action, including those costs attendant with the filing of Notes of Issue; and it is further

ORDERED that the pleadings in the aforesaid matter now pending in the District Court of the County of Suffolk, Sixth District under Index Number LT-2574-14/BR and the pleadings in the above-entitled action now pending in this Court stand as the pleadings in the actions joined for discovery and trial; and it is further

ORDERED that the parties and/or counsel shall appear for a Compliance Conference of this matter on **Thursday, September 10, 2020, at 10:00 a.m.**, at the Supreme Court, Suffolk County, Part 37, located at One Court Street, Riverhead, New York, for the purposes of reaching a mutually-agreeable discovery schedule for the joined actions.¹

Plaintiffs commenced this action for the imposition of a constructive trust regarding the property located at 271 Washington Avenue, Patchogue, New York (the "subject property"). The summons and verified complaint were filed on September 25, 2014 and simultaneously therewith, plaintiffs moved by Order to Show Cause, pursuant to CPLR 602 (b), for an Order consolidating this action with a summary proceeding for eviction brought by defendant pending in the Suffolk County Sixth District Court under index number LT-2574-14/BF (the "summary proceeding") and for a preliminary injunction staying the summary proceeding pending the determination of the within action. By Order dated September 29, 2014, the summary proceeding, which seeks to evict plaintiffs from the subject property, was temporarily stayed. Defendant opposes plaintiffs' within application and cross-moves for an Order dismissing plaintiffs' complaint pursuant to CPLR 3211 (a) (3) and (5) on the grounds that the action is barred by the statute of limitations and that plaintiffs Mark Speiss, Nancy Speiss, and Matthew Speiss lack standing. Plaintiffs oppose the cross-motion.

The verified complaint herein alleges that Margaret Speiss, who is presently 95 years old, was the surviving spouse and sole owner of the subject property from December 21, 1995 until June 29, 1999, when it was transferred to defendant Charles Beyrer and his then wife, Patricia Beyrer, the daughter of plaintiff Margaret Speiss. While the recorded deed does not reflect the actual consideration paid, plaintiffs allege that defendant Charles Beyrer and Patricia Beyrer paid one hundred thirty-five thousand dollars (\$135,000.00) for the subject property based upon the transfer tax paid of five hundred and forty dollars (\$540.00). Plaintiffs allege that the consideration paid was less than the fair market value of the property, which was two hundred thousand dollars (\$200,000.00) at the time of the transfer to defendant and Patricia Beyrer. Plaintiffs further allege that it was agreed between defendant, Patricia Beyrer, and plaintiff Margaret Speiss, that plaintiff Margaret Speiss would hold a life estate in the subject property enabling her to live there for the remainder of her life. It is further alleged that in October of 2002, plaintiffs, defendant and Patricia

¹ The Court will advise the parties in advance as to whether the conference will be conducted in person, via Skype for Business, a combination of both.

Beyrer, agreed that plaintiffs Mark Speiss, the son of plaintiff Margaret Speiss, his wife, Nancy Speiss, and their son, Matthew Speiss, would reside at the subject property to assist plaintiff Margaret Speiss, who was 77 years of age at that time, and pay use and occupancy of one thousand two hundred dollars (\$1,200.00), purportedly on a monthly basis, although the complaint does not reflect as such. Plaintiffs have continued to reside at the subject property until the present date. On July 31, 2010, Patricia Beyrer passed away and in September of 2014, defendant commenced the summary proceeding to evict plaintiffs as holdover tenants.

In her sworn affidavits² submitted herein in support of plaintiffs' applications and in opposition to defendant's cross-motion to dismiss, plaintiff Margaret Speiss avers that she has resided at the subject property since 1966 and that she transferred the subject property to her daughter and son-in-law on June 29, 1999 for one hundred thirty-five thousand dollars (\$135,000.00) with the understanding that she would live there for the remainder of her life. Ms. Speiss further avers that an existing mortgage of ninety-five thousand five hundred dollars (\$95,500.00) was satisfied by defendant and her daughter Patricia, on June 29, 1999 through a mortgage taken by them on the subject property in the amount of one hundred one thousand two-hundred fifty dollars (\$101,250.00), which was issued on June 29, 1999 and recorded on July 8, 1999 (the "Beyrer mortgage"). A recorded satisfaction indicates that the Beyrer mortgage was paid on September 17, 2003. Ms. Speiss further avers that she did not receive any funds at or after the closing from defendant and her daughter Patricia, nor did she expect any, but it was agreed that defendant and Patricia would pay the property taxes, oil, and maintenance for the subject property. Ms. Speiss alleges that she was not represented by counsel at the closing and that she was not concerned with the value of her home but rather with the satisfaction of the existing mortgage and retaining a life estate. She understood that this arrangement between family was done so that she could continue to live in her home, where she has resided since 1966, and that in 2002, it was agreed that her son, Mark Speiss, and his wife and son would reside there in order to assist her and to offset some of the expenses related to the upkeep and taxes on the subject property.

² The affidavits of plaintiff Margaret Speiss are considered not as evidence to support her constructive trust claim, but rather to remedy any pleading defects (see *Hampshire Prop. v BTA Bldg. and Developing, Inc.*, 122 AD3d 573, 996 NYS2d 129 [2d Dept 2014], quoting *Leon v Martinez*, 84 NY2d 83, 88, 638 NE2d 511, 614 NYS2d 972 [1994]). Indeed, affidavits may preserve "inartfully pleaded, but potentially meritorious, claims" (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636, 389 NYS2d 314 [1976]).

Defendant Beyrer commenced the summary proceeding through the filing and service of a holdover petition dated August 29, 2014. The holdover petition was returnable on October 1, 2014, necessitating the instant application by plaintiffs to stay the summary proceeding and consolidate that action with this constructive trust action. By prior Order of this Court, the motions were set down for a conference in an attempt to resolve the matter in its entirety. However, a settlement was not reached, thereby necessitating the instant decision on the merits of the parties' applications.

An action for a constructive trust may be maintained to remedy a situation where property has been acquired under such circumstances that the record owner should not, in good conscience, retain the beneficial interest in such property (*see Sharp v Kosmalski*, 40 NY2d 119, 386 NYS2d 72 [1976]; *Quadrozzi v Estate of Quadrozzi*, 99 AD3d 688, 952 NYS2d 74 [2d Dept 2012]; *Rowe v Kingston*, 94 AD3d 852, 942 NYS2d 161 [2d Dept 2012]). In order to impose the equitable remedy of a constructive trust, generally four factors must be considered: "(1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment" (*Sharp v Kosmalski*, *supra* 40 NY2d at 121; *see also Rowe v Kingston*, *supra*; *Marini v Lombardo*, 79 AD3d 932, 912 NYS2d 693 [2d Dept 2010], *appeal denied* 17 NY3d 705, 929 NYS2d 97 [2011]).

The equitable claim for the imposition of a constructive trust is governed by a six-year statute of limitations, which begins to run upon the occurrence of the wrongful act from which a duty of restitution arises (*Bodden v Kean*, 86 AD3d 524, 927 NYS2d 137 [2d Dept 2011]; *Quadrozzi v Estate of Quadrozzi*, 99 AD3d 688, 952 NYS2d 74 [2d Dept 2012]; *Jakacic v Jakacic*, 279 AD2d 551, 719 NYS2d 675 [2d Dept 2001]). "A determination of when a wrongful act triggering the running of the Statute of Limitations occurs depends upon whether a constructive trustee acquired the property wrongfully, in which case the property would be held adversely from the date of acquisition or whether the constructive trustee wrongfully withholds property acquired lawfully from the beneficiary, in which case the property would be held adversely from the date the trustee breaches or repudiates the agreement to transfer the property" (*Quadrozzi v Estate of Quadrozzi*, 99 AD3d 688, 690, *quoting Maric Piping v Maric*, 271 AD2d 507, 508 [2000] [internal quotation marks and citations omitted]).

On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (5) on statute of limitations grounds, the moving defendant must establish, *prima facie*, that the time in which to commence the action has expired. The burden

then shifts to the plaintiff to raise an issue of fact as to whether the statute of limitations is tolled or is otherwise inapplicable (see *Baptiste v Harding-Marin*, 88 AD3d 752, 930 NYS2d 670 [2d Dept 2011]; *Rakusin v Miano*, 84 AD3d 1051, 923 NYS2d 334 [2d Dept 2011]).

Here, plaintiffs allege that a confidential or fiduciary relationship existed between plaintiff Margaret Speiss, her daughter Patricia, and her son-in-law defendant Beyrer. Plaintiff alleges that a promise of a life estate was made to her at the time of the transfer of the subject property on June 29, 1999 to defendant and Patricia, as evidenced by her continued residency at the subject property from the date of the transfer and until defendant commenced the summary proceeding against Ms. Speiss in August of 2014. Ms. Speiss alleges that she relied upon the promise of a life estate in order that she could continue to live in her home for the remainder of her life, and that defendant was unjustly enriched to the extent that the value of the property exceeded the consideration paid at the time of the transfer on June 29, 1999. Accepting the facts as alleged in the verified complaint as true and according plaintiff Margaret Speiss the benefit of every possible favorable inference, she has stated a claim for the imposition of a constructive trust as to the subject property (see *Sharp v Kosmalski*, 40 NY2d 119, 386 NYS2d 72 [1976]; *Burns v Burns*, 174 AD3d 570, 106 NYS3d 167 [2d Dept 2019]; *Quodrozzi v Estate of Quodrozzi*, 99 AD3d 688, 952 NYS2d 74 [2d Dept 2012]). Moreover, the six-year statute of limitations did not begin to run until defendant commenced the summary proceeding on August 29, 2014 to evict plaintiff Margaret Speiss from the subject property, which is the date it is alleged defendant failed to honor his promise and took steps to wrongfully withhold the life estate from her (see *Morris v Gianelli*, 71 AD3d 965, 897 NYS2d 210 [2d Dept 2010]; *Zane v Minion*, 63 AD3d 1151, 882 NYS2d 255 [2d Dept 2009]; *Cilibrasi v Gagliardotto*, 297 AD2d 778, 747 NYS2d 801 [2d Dept 2002]; *Jakacic v Jakacic*, 279 AD2d 551, 719 NYS2d 675 [2d Dept 2001]).

However, as to plaintiffs Mark Speiss, Nancy Speiss, and Matthew Speiss, a constructive trust cannot be imposed upon the subject property in their favor, as they never possessed a prior interest in nor made a conveyance of the subject property (see *Burns v Burns*, 174 AD3d 570, 106 NYS3d 167 [2d Dept 2019]; *Liselli v Liselli*, 263 AD2d 468, 693 NYS2d 195 [2d Dept 1999]; see also *Eickler v Pecora*, 12 AD3d 635, 785 NYS2d 126 [2d Dept 2004]). The Court notes as well that plaintiffs do not refute the arguments raised by defendant in this regard, and to that extent, plaintiffs have waived any opposition to same (see *Patel v American Univ. of Antigua*, 104 AD3d 568, 962 NYS2d 107 [1st Dept 2013]). Thus, defendant's cross-motion to dismiss is **GRANTED** as to the

constructive trust claims asserted by Mark Speiss, Nancy Speiss, and Matthew Speiss.

Regarding the application for a preliminary injunction, it is well established that to be awarded this relief, the movant must demonstrate, by clear and convincing evidence: (1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of the equities favors the movant's position (see CPLR 6301; **Mangar v Deosaran**, 121 AD3d 650, 993 NYS2d 182 [2d Dept 2014]; see also **Aetna Ins. Co. v Capasso**, 75 NY2d 860, 552 NYS2d 918 [1990]; **Blinds and Carpet Gallery, Inc. v E.E.M. Realty, Inc.**, 82 AD3d 691, 692, 917 NYS2d 680 [2d Dept 2011]; **Dixon v Malouf**, 61 AD3d 630, 875 NYS2d 918 [2d Dept 2009]; **Coinmach Corp. v Alley Pond Owners Corp.**, 25 AD3d 642, 808 NYS2d 418 [2d Dept 2006]; **Ginsberg v Ock-A-Bock Cmty. Ass'n, Inc.**, 34 AD3d 637 [2d Dept 2006]). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Court (see **Dixon v Malouf**, *supra*). Further, preliminary injunctive relief is a drastic remedy that will not be granted unless the movant establishes a clear right to such relief which is plain from the undisputed facts (**Blueberries Gourmet v Aris Realty Corp.**, 255 AD2d 348, 680 NYS2d 557 [2d Dept 1998]; see also **Hoeffner v John F. Frank, Inc.**, 302 AD2d 428, 756 NYS2d 63 [2d Dept 2000]; **Peterson v Corbin**, 275 AD2d 35, 713 NYS2d 361 [2d Dept 2000]; **Nalitt v City of New York**, 138 AD2d 580, 526 NYS2d 162 [2d Dept 1988]). Failing to establish even one required element of a preliminary injunction mandates denial of the relief requested (**Schweizer v Town of Smithtown**, 19 AD3d 682, 798 NYS2d 99 [2d Dept 2005]).

Here, plaintiff Margaret Speiss has stated a claim for the imposition of a constructive trust and has demonstrated a likelihood of success on the merits, irreparable injury through the potential loss of her life estate should the eviction proceed, for which money damages would be insufficient, and a balancing of the equities favors her position in that an eviction would deprive plaintiff of her alleged existing life estate. A preliminary injunction is appropriate to maintain the status quo of the parties pending a determination herein (see **Deutsch v Grunwald**, 165 AD3d 1035, 85 NYS3d 589 [2d Dept 2018]).

Further, CPLR 602 (b) provides in pertinent part that where "an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together with that in the supreme court." A motion to consolidate or for a joint trial pursuant to CPLR 602 rests in the sound discretion of the trial court (**Mattia v Food Emporium, Inc.**, 259 AD2d 527, 686 NYS2d 473 [2d Dept 1999]). Being that the

two actions involve the subject property and common questions of law and fact exist, joining the actions for discovery and trial is warranted, as joinder would best serve the interests of justice and judicial economy (see **Handler v Handler**, 198 AD2d 330, 605 NYS2d 888 [2d Dept 1993] [consolidation of constructive trust action and summary proceeding]; **Romandetti v County of Orange**, 289 AD2d 386, 734 NYS2d 629 [2d Dept 2001]; **McIver v Canning**, 204 AD2d 698, 612 NYS2d 248 [2d Dept 1994]). Joining these actions for discovery and trial rather than a consolidation is appropriate where, as here, the plaintiffs in both actions are different (**Obuku v New York City Tr. Auth.**, 141 AD3d 708, 35 NYS3d 710 [2d Dept 2016]; **Mas-Edwards v Ultimate Services, Inc.**, 45 AD3d 540 845 NYS2d 414 [2d Dept 2007]; see also **Cola-Rugg Enterprises, Inc., v Consolidated Edison Company of New York, Inc.**, 109 AD2d 726, 486 NYS2d 43 [2d Dept 1985]). Indeed, the parties would be both plaintiffs and defendants if a true consolidation were ordered, which would result in jury confusion. Moreover, the Second Department prefers joint trials over consolidations in the interest of justice and judicial economy (**Megyesi v Automotive Rentals, Inc.**, 115 AD2d 596, 496 NYS2d 473 [2d Dept 1985]).

The foregoing constitutes the decision and Order of the Court.

Dated: July 10, 2020


HON. JOSEPH FARNETI
Acting Justice Supreme Court

_____ FINAL DISPOSITION

 X NON-FINAL DISPOSITION