

Clarke v Antione

2020 NY Slip Op 32705(U)

August 17, 2020

Supreme Court, Kings County

Docket Number: 501481/2020

Judge: Loren Baily-Schiffman

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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 17th day of August, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN

JUSTICE

MAYLEEN CLARKE,
 Plaintiff,
 - against -
 ANGELA ANTIONE,
 Defendant.

Index No.: 501481/2020
 Motion Seq. # 2
 DECISION & ORDER

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

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Affirmation in Opposition to Cross-Motion	2

Upon the foregoing papers, Angela Antione (“Defendant”) moves this Court for an Order (1) pursuant to CPLR § 2221(d) and CPLR § 2221(e) to reargue and renew the Decision and Order issued by this Court on April 14, 2020 in favor of Mayleen Clarke’s (“Plaintiff”) Order to Show Cause for an Preliminary Injunction; and (2) for granting such other and further relief on Defendant’s behalf as the Court may deem just and proper.

Background

This case involves a transaction involving 682 Alabama Ave., Brooklyn, NY 11207 (“the premises”). It is undisputed that Plaintiff was the owner of the premises. Defendant maintains that she purchased the premises from Plaintiff when Plaintiff had trouble making mortgage payments. Plaintiff alleges that she never intended to sell the premises and any conveyance of the premises was the result of fraud. In a Decision and Order dated April 14, 2020, this Court granted a preliminary injunction enjoining Defendant from taking any adverse action regarding

the premises, including evicting Plaintiff and selling the premises to a third party. In granting the preliminary injunction, this Court found that there was a likelihood of success or the merits of Plaintiff's fraud claims; irreparable injury to Plaintiff absent the Court granting the preliminary injunction; and the balance of equities favored the granting the preliminary injunction. *See Albini v. Solork Association, 37 A.D.2d 835 (2d Dep't 1971).*

Discussion

Under CPLR § 2221(d), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." Under CPLR § 2221(e), a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." In the instant case, Defendant provides no basis upon which to grant leave to renew. Accordingly, the Court will only consider the branch of the motion requesting leave to reargue.

The motion to reargue is granted. In her papers, Defendant contends that the Court failed to take into account an agreement between Plaintiff and Defendant which Defendant argues would defeat Plaintiff's fraud claims. In the April 14, 2020 Decision and Order, the Court held that the statute of limitations for fraud claims had not yet run, because Plaintiff allegedly did not discover the fraud until an eviction proceeding was commenced in 2019. The agreement in question is a handwritten, one paged, undated document entitled "OPTION AGREEMENT" that lists Plaintiff as "seller" and Defendant as "purchaser." The agreement lists four requirements for Plaintiff to repurchase the premises. Defendant maintains that because

this document exists, it would be impossible for Plaintiff to not have known about any alleged fraud in the conveyance of the premises, therefore, the statute of limitations for the fraud claims have run.

However, the agreement in question sheds no light whatsoever on when Plaintiff discovered the premises was sold or a fraud was perpetrated. First, the agreement is undated and may have been drafted after the eviction proceeding had been commenced. Second, Plaintiff alleged she was the victim of an automobile accident, was concussed, suffered memory loss and could no longer work. Plaintiff alleges that she was essentially tricked into conveying the premises and confused about that nature of the transaction. That alleged confusion may have extended to the agreement in question. Accordingly, the Court declines to modify its April 14, 2020 Decision and Order to deny the preliminary injunction.

Defendant additionally contends that this Court failed to order an undertaking pursuant to CPLR § 6212(b). CPLR § 6212(b) pertains to orders of attachment which is not relevant to the present case. CPLR § 6312(b) provides, "prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court." "CPLR § 6212(b) clearly and unequivocally requires the party seeking an injunction to give an undertaking." *Chao—Yu Huang v. Harry An—Ling Shih*, 164 A.D.3d 1298 (2d Dep't 2018). Plaintiff contends that an undertaking need not be fixed, as the relief requested in the underlying motion was for a TRO. However, in the initial Order to Show Cause, Plaintiff requested an Order "[p]reliminary enjoining defendants, their agents, employees and representatives, pursuant to CPLR sections, 6301." (emphasis added). While CPLR § 6301 pertains to both TROs and preliminary injunctions, it is clear that Plaintiff requested the latter. Moreover, in the April 14, 2020 Decision and Order

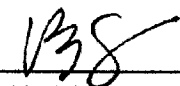
this Court reviewed the requested relief under the standard applicable to preliminary injunctions. Accordingly, an undertaking must be fixed. In fixing an undertaking in the instant case, the Court notes that this action arises from Plaintiff's inability to pay her mortgage. Therefore, an undertaking is fixed at \$300.00. It is HEREBY

ORDERED that the motion is granted to the extent that the April 14, 2020 Decision and Order is modified to require Plaintiff to post an undertaking of \$300.00.

The parties' remaining contentions are without merit.

This is the Decision and Order of the Court.

ENTER



LOREN BAILY-SCHIFFMAN
JSC

KINGS COUNTY CLERK
FILED
2020 AUG 19 PM 2:00