

Hosannah v Millennium Abstract Corp.
2020 NY Slip Op 33366(U)
October 13, 2020
Supreme Court, Kings County
Docket Number: 510864/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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EUGENIE HOSANNAH, INDIVIDUALLY, AND
AS EXECUTRIX OF THE ESTATE OF
STEPHEN MCLAWRENCE HOSANNAH,

Plaintiff, Decision and order

- against - Index No. 510864/18

MILLENNIUM ABSTRACT CORP, PROSPECT
PARK PROPERTIES LLC, DAVID DILMANIAN,

Defendants, October 13, 2020

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3212 seeking summary judgement. The defendants have cross-moved seeking essentially to dismiss the complaint. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On August 28, 2014 the defendant Prospect Park Properties LLC purchased three properties from the plaintiff located at 2100 Bedford Avenue, 2106 Bedford Avenue and 2110 Bedford Avenue all located in Kings County. All three properties were in foreclosure thus the plaintiff deposited \$2.9 million in escrow pursuant to an escrow agreement executed with Millennium Abstract Corp. That escrow agreement provided that the plaintiff seller would satisfy all the obligations of the three outstanding mortgages by February 28, 2015. The agreement further provided that if the seller could not comply with all these requirements then beginning March 1, 2015 the purchaser was granted consent to "discuss and obtain payoff letters and Satisfaction Documents for

each of the mortgages...and hereby irrevocably appoints David Dilmanian to discuss the mortgage loans and their settlement as of March 1, 2015" (see, Agreement dated August 28, 2014, ¶5). On May 17, 2016 the plaintiff's attorney notified the defendant to pay off the mortgage on 2106 Bedford Avenue in the amount of \$1,026,309.38 and the defendant duly paid such amount. On May 4, 2016 the defendant paid the outstanding balances of the other two mortgages in amounts of \$581,509.91 and \$697,681.17. The remaining balance of \$594,499.54 was returned to the plaintiff.

The plaintiff argues the defendant had no authority to release the funds without authorization from them. Thus, the plaintiff seeks the return of total disbursed in the amount of \$1,279,191.08 for the two other mortgages. Indeed, plaintiff argues the two foreclosures were dismissed, the notices of pendency were cancelled and the actions were time barred. Thus, the defendant had no authority to make those disbursements. This lawsuit seeking the return of those amounts has been initiated and the motions seeking summary judgement have now both been filed.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary

judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

The plaintiff argues they are entitled to summary judgement because the defendants disbursed the funds but did not comply with the strict terms of the escrow agreement which did not authorize such disbursement. The plaintiff further asserts the defendants did not have the right to disburse any funds without their consent. However, as noted the escrow agreement provided that after March 1, 2015 the defendant was authorized to "discuss and obtain payoff letters and Satisfaction Documents for each of the mortgages with the lenders and/or their servicing agents" and "irrevocably" appointed David Dilmanian "to discuss the mortgage loans and their settlement as of March 1, 2015" (see, Agreement, supra). The plaintiff argues the defendant Dimanian merely had the authority to "discuss" the outstanding mortgages but could not actually satisfy them and that in any event such authority ceased on March 1, 2015 (see, Plaintiff's Reply, pages 3-5). A simple reading of the escrow agreement makes plain that the defendant's ability and authority to negotiate and satisfy any outstanding loans did not end on March 1, 2015, rather such authority began on that date. Thus, from March 1, 2015 the defendant had full authority to discuss the outstanding loans and disburse any funds to satisfy them in their discretion. Indeed, it defies logic to argue the defendant purchased three properties

and allowed the encumbrances to remain subject to the negotiating skills of the former owner. Moreover, that contention contradicts paragraph 3 of the escrow agreement which states that "seller shall pay all money due, provide proof thereof, and deliver the Satisfaction Documents on or before February 28, 2015. TIME SHALL BE OF THE ESSENCE" (supra). Thus, paragraph 5 begins by stating that in the event she cannot comply with the terms thereof then such authority is transferred to the defendant buyer. The "as of March 1, 2015" date was not meant to limit such authority but rather to emphasize that such authority only began on that date. In truth, there is no other reasonable reading of the agreement. Further, the agreement permits the defendant to deliver satisfaction of documents which necessarily allowed defendant to disburse the funds. The mere fact plaintiff's attorney was still negotiating a satisfaction of at least one of the outstanding mortgages does not support the contention the plaintiff still retained control over the disbursement of any funds. That concession, allowing the plaintiff to try and negotiate more favorable payoff amounts, did not remove the authority of the seller to disburse funds if necessary. Thus, no question of fact has been raised whether the defendants committed some breach or wrongdoing by disbursing the funds to satisfy the mortgages. Clearly, the defendant had authority to disburse the escrow funds pursuant to the escrow

agreement.

Therefore, based on the foregoing, the plaintiff's motion seeking summary judgement is denied. The defendant's motion seeking dismissing all the causes of action of the complaint is granted.

So ordered.

ENTER:

DATED: October 13, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC