

Hosannah v Millennium Abstract Corp
2021 NY Slip Op 30405(U)
February 10, 2021
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, February 10, 2021
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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §2221 seeking to
reargue a decision dated October 13, 2020 which granted the
defendant's motion to dismiss the complaint. Papers were
submitted by the parties and after reviewing all the arguments
this court now makes the following determination.

As recorded in the prior order, 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 instituted this lawsuit alleging the defendants had no authority to disburse the funds without the plaintiff's consent. The court rejected that argument and concluded, based upon the escrow agreement and other documents, that the defendants were duly empowered to release escrow funds of the plaintiff. The court noted this was true even though the two foreclosures had been dismissed. The plaintiff has now moved seeking to reargue that determination on the grounds at the time the defendants made those disbursements they had full knowledge the foreclosure actions had been dismissed. Thus, the plaintiff argues the lawsuit should be reinstated and the funds disbursed should be returned to the plaintiff. The defendants oppose the motion arguing the plaintiff has not raised any argument not already considered by the court in its previous order.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The plaintiff argues that a letter sent by plaintiff's counsel to Mr. Dilmanian indicating the court had cancelled the notices of pendency and dismissed all claims and that any action was now time barred required the defendant to abide by the request and not disburse any funds to pay off the foreclosures. However, the escrow agreement did not include any such exception to the defendant's obligations in this regard and a letter sent to that effect cannot abrogate a duly executed agreement between the parties. Moreover, the letter itself is difficult to comprehend. While it does state the notices of pendency have been cancelled it does then state that "negotiations with the banks are continuing, even though the Banks are not now able to enforce any claims against Mrs. Hosannah in the respect of the properties" (see, Letter from Robert Smith Esq. dated April 12, 2016). Any continued negotiations undermines the very assertion the banks have no legal recourse due to the fact the actions were dismissed. Further, the plaintiff never demonstrated any conclusive proof the statutes of limitation barred the ability of


the banks to seek legal recourse. Thus, there was no conclusive proof the encumbrances were no longer applicable. In any event, as noted, there has surely been no evidence presented why the escrow agreement which gave Mr. Dilmanian the unquestioned right to disburse the funds pursuant to his discretion does not govern the results of this case. The plaintiff has not presented any evidence necessitating a reconsideration of that decision.

Therefore, based on the foregoing, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: February 10, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC