

Puryear v Hutchinson
2021 NY Slip Op 30761(U)
January 15, 2021
Supreme Court, Kings County
Docket Number: 510143/2017
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Index Number 510143/2017

SEQ #003 & 004

Part 91

DECISION/ORDER

ELIZABETH PURYEAR,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed	1-2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2-3
Replying Affidavits	3
Exhibits	
Other	

ANTOINETTE HUTCHINSON A/K/A ANTOINETTE
HUTCHINSON HOWELL, 861 EASTERN PARKWAY LLC,
AND THE BANK OF NEW YORK TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS 2004-12,

Defendant.

Upon review of the foregoing documents,¹ plaintiff’s motion (Seq. 003) to extend his notice of pendency and defendant 861 Eastern Parkway’s cross-motion (Seq. 004) to amend its answer and counterclaims, for leave to conduct an insurance inspection at the property, and for permission to utilize the vacant apartment at the property, are decided as follows:

Plaintiff brings an action to quiet title and for judgment declaring she is 50% owner of the subject property, and to invalidate all deeds and mortgages on the property related to defendant Hutchinson. Plaintiff filed the notice of pendency on May 23, 2017. Plaintiff now seeks to extend the notice of pendency, which expired on May 22, 2020 in accordance with CPLR 6513.

CPLR 6513 provides that a notice of pendency is valid for three years from the date of filing and may be extended for additional three-year periods “for good cause shown.” The

¹ This court will not consider the defendant 861 Eastern Parkway’s reply in further support of its cross-motion, as such papers are not authorized by CPLR 2214.

general rule is that the extension must be requested, and the extension order “filed, recorded and indexed,” before expiration of the prior notice (CPLR 6513; *see also Sudit v Labin*, 148 AD3d 1077, 1077 [2d Dept 2017]). “This is an exacting rule; a notice of pendency that has expired without extension is a nullity” (*Ampul Elec., Inc. v Vil. of Port Chester*, 96 AD3d 790, 791 [2d Dept 2012]).

Typically, a party seeking to extend its notice of pendency will move by order to show cause, and will request a temporary extension of the notice of pendency while the motion is waiting to be heard. Plaintiff did not move by order to show cause here, and defendant 861 Eastern Parkway argues that plaintiff’s failure to do so renders the motion procedurally defective.

Although this court agrees that an order to show cause is the prudent and correct method for seeking an extension of a notice of pendency, plaintiff’s failure to employ this procedure is not dispositive. The purpose of an order to show cause is so the court may determine the method of notice and control the return date. There appears to be no problem with either in this case, and defendant does not argue otherwise.

Defendant also argues that plaintiff should not be entitled to an extension because plaintiff is not allowing defendant to access the property. During oral argument, I directed plaintiff to provide such access. Defendant recently advised by letter that plaintiff has done so. Accordingly, that issue appears to be resolved.

More problematic for plaintiff is the timing of her request. The notice of pendency expired on May 22, 2020. Although plaintiff moved in January 2020, the motion was not heard until November 4, 2020, largely due to the COVID-19 pandemic. Plaintiff did not seek a temporary extension of the notice of pendency during the interim. Under other circumstances,

the notice of pendency would have expired and the court would not be permitted to reinstate it (*Sudit*, 148 AD3d at 1077).

However, the Governor's Executive Order 202.8, dated March 20, 2020, tolled "any specific time limit for the commencement, filing, or service of any . . . notice . . . until April 19, 2020". This tolling period was ultimately extended to November 3, 2020, pursuant to Executive Order 202.67. Thus, when the tolling went into effect, plaintiff's notice of pendency would have been effective for another 61 days. Those 61 days began to run on November 4, 2020, and expired on January 5, 2021 (the day after the 61st day).

This court finds there is good cause to extend the notice of pendency, as the action has been delayed in part due to the initial dismissal of defendant 861 Eastern Parkway, which was subsequently reversed on appeal. The notice of pendency is hereby extended nunc pro tunc from November 4, 2020, the date this motion was argued. Any delay in extending the notice of pendency from that date until now is due to this court's deliberations. Accordingly, it is proper to extend the notice of pendency from that date (*Thelma Sanders & Assoc., Inc. v Hague Dev. Corp.*, 131 AD2d 462, 462 [2d Dept 1987]).

Separately, defendant 861 Eastern Parkway cross-moves to amend its answer and counterclaims, for leave to conduct an insurance inspection at the property, and for permission to utilize the vacant apartment at the property. 861 Eastern Parkway claims that it recently purchased the subject property and wants to add counterclaims for ouster if the court finds it owns the entire property, and for partition if the court finds that it and the plaintiff are co-tenants. Plaintiff does not oppose the motion to amend.

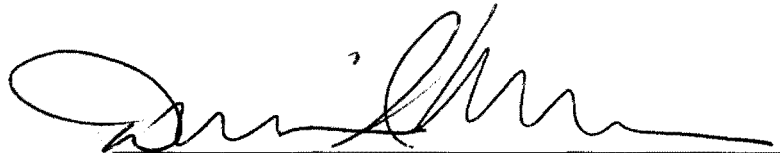
As mentioned above, 861 Eastern Parkway also seeks access to the property for an insurance walkthrough to avoid cancellation of the policy, and such access was permitted.

861 Eastern Parkway also requests permission to take possession of the vacant unit on the property. Inasmuch as 861 Eastern Parkway is, according to plaintiff, at least a fifty percent owner of the property, permission is granted, subject to the notice of pendency.

For the foregoing reasons, plaintiff's motion (Seq. 003) and defendant's cross-motion (Seq. 004) are granted. Defendant shall serve its amended complaint within twenty days of notice of entry of this order.

This constitutes the decision and order of the court.

January 15, 2021
DATE



DEVIN P. COHEN
Justice of the Supreme Court

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