

Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC

2021 NY Slip Op 31316(U)

April 14, 2021

Supreme Court, Kings County

Docket Number: 503441/2012

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 14th day of April 2021.

PRESENT:

Honorable Reginald A. Boddie
Justice, Supreme Court

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METROPOLITAN LOFTS OF NY, LLC,

Plaintiff,

Index No. 503441/2012
Cal. No. 19-22 (MS 36-40)

-against-

DECISION AND ORDER

METROEB REALTY 1, LLC, REDSKY CAPITAL,
LLC AND REDSKY JZ ROEBLING, LLC,

Defendants.
-----X

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

<u>Papers</u>	<u>Numbered</u>
MS 36	Docs. No. 681-689; 700-709
MS 37	Docs. No. 690-698; 700-709
MS 38	Docs. No. 699-709
MS 40	Docs. No. 710-751

Upon the foregoing cited papers, the RedSky defendants' motion (MS 36) to reargue the decision of the Honorable Larry Martin, dated July 15, 2020, pursuant to CPLR 2221 (d), (MS 37) RedSky's motion, pursuant to CPLR 6312 (b), seeking an undertaking for any preliminary injunction, (MS 38) plaintiff's motion to amend, and (MS 40) plaintiff's motion to reargue the decision of the Honorable Reginald Boddie, dated January 20, 2021, denying a stay pending leave to appeal to the Court of Appeals, are decided as follows:

The instant case has a long history, including multiple appearances before the Appellate Division, Second Department, and several former Commercial Division Justices. Some familiarity with the history of this case is assumed and only the facts relevant to deciding the instant motions are discussed herein.

LE 36-40

Plaintiff commenced this action on October 22, 2012, for breach of contract, specific performance and declaratory relief. Plaintiff alleged it entered into a thirty million dollar contract with defendant Metroeb for the sale of real property located at 143-157 Roebling Street, Brooklyn, New York. Plaintiff alleged it tendered a check for three million dollars with twenty seven million to be delivered at closing. Plaintiff alleged it later received notice, prior to closing, that defendant was negotiating to sell the property to another buyer, RedSky Capital LLC, at a higher price.

A bench trial was held in the Spring of 2014. The trial court (Ash, J) determined that plaintiff did not have an enforceable contract because there was no meeting of the minds. The court further ordered defendant Metroeb to convey the property to RedSky within 90 days. RedSky reorganized into two entities and bought the property from Metroeb. Plaintiff appealed that order.

In the interim, in a decision dated July 15, 2020, which defendants appealed and now seek to reargue, the court (Martin, J) granted plaintiff a preliminary injunction barring transfer or further encumbrance of the property. Plaintiff also filed MS 38 on December 2, 2020, while a decision on a prior motion, dated May 22, 2019, denying similar relief was pending on appeal. MS 38 sought to amend the second cause of action to allege the transfer to JZ Roebling was in violation of the court's June 6, 2014 order directing Metroeb convey the property to RedSky and the fourth cause of action to allege a constructive trust and declare the deed held by JZ Roebling null and void.

During the pendency of the appeals, plaintiff also filed a motion seeking to enjoin the RedSky defendants from transferring or encumbering the property. By Order dated July 15, 2020, Justice Martin granted injunctive relief and further directed the parties "to make

submissions as to the appropriate measure of the bond to be fixed by the court.” RedSky moved for reargument and vacatur of the injunction (MS 36), and also for an order setting the amount of an injunction bond (MS 37).

In a decision dated December 9, 2020, the Appellate Division reversed the trial court and determined that plaintiff’s contract was valid and enforceable and that Redsky was a bonafide purchaser of the property as it justifiably relied on the Supreme Court’s decision that the contract was not valid and the order directing Metroeb to convey the property to RedSky. The Court also noted plaintiff cannot now avail itself with the remedy of specific performance and must be content with other potential remedies.

Thereafter, plaintiff moved in the Appellate Division for leave to reargue the appeal or in the alternative for leave to appeal to the Court of Appeals. On December 17, 2020, plaintiff moved in this court by Order to Show Cause (MS 39), pursuant to CPLR 5519 (c), seeking to stay the Appellate Division’s Decision and Order dated December 9, 2020, and any enforcement of the order pending resolution of plaintiff’s motions for leave to appeal to the Court of Appeals, a temporary restraining order barring the transfer or encumbrance of the property at issue, and continuing and re-affirming preliminary injunction. This court denied plaintiff’s motion on February 19, 2021. In the interim, on February 22, 2021, the Appellate Division denied the motion to reargue and renew in its entirety. On March 2, 2021, plaintiff moved by Order to Show Cause (MS 40) seeking leave to reargue pursuant to CPLR 2221.

In MS 36, RedSky sought to reargue the court’s order dated July 15, 2020, which enjoined the RedSky defendants from transferring or encumbering the real property located at 143-157 Roebling Street a/k/a 1-19 Hope Street and 320-336 Metropolitan Avenue, Brooklyn, NY, identified as Block 2368, Lot 1, in Kings County, and further denying plaintiff’s motion for

injunctive relief. Pursuant to CPLR 2221 (d) (2), a motion 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.” In ECF Doc # 707, defendants contend the two decisions of the Appellate Division, Second Department require vacating the injunction order of Justice Martin and that plaintiff’s cross-motion to amend to assert new claims of constructive trust also be denied. This court agrees.

In *Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 189 AD3d 1024, 1025-1026

[2d Dept 2020], the Court held:

Significantly, before this Court issued its decision and order on the prior appeal, Metroeb sold the property to RedSky. Thereafter, the plaintiff moved, inter alia, for leave to amend the complaint to assert new causes of action, including one designated as the second cause of action, against RedSky and RedSky JZ Roebing, LLC, to restore the deed to Metroeb and thereupon to direct Metroeb to transfer the property to the plaintiff. The Supreme Court granted that branch of the plaintiff’s motion. RedSky appeals.

In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit (*see Healey v Ean Holdings, LLC*, 180 AD3d 1017, 1018; *Rodgers v New York City Tr. Auth.*, 109 AD3d 535, 536; *Delahaye v Saint Anns School*, 40 AD3d 679, 685; *see also CPLR 3025 [b]*). Here, the proposed causes of action the plaintiff sought to add were palpably insufficient and patently devoid of merit since RedSky was a good faith purchaser of the property and entitled to the protections afforded by CPLR 5523 (*see George v Grand Bay Assoc. Enter. Inc.*, 45 AD3d 451, 452). RedSky paid valuable consideration for the property and justifiably relied on the judgment of the Supreme Court declaring that the May 4, 2012 contract between the plaintiff and Metroeb was not valid and enforceable and directing that Metroeb convey the property to RedSky within 90 days (*see Da Silva v Musso*, 76 NY2d 436). Notwithstanding this Court’s decision and order on the prior appeal, the plaintiff cannot now avail itself of the remedy of specific performance and must content itself with other potential remedies.

Accordingly, the Supreme Court should have denied that branch of the plaintiff’s motion which was for leave to amend the complaint.

Further, in a related order also issued on December 9, 2020, the Court dismissed as academic plaintiff’s appeal of a prior order dismissing all of plaintiff’s claims against Red Sky in

light of the above decision (*Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 189 AD3d 1026 [2d Dept 2020]).

RedSky's motion (MS 36) seeking leave to reargue is denied on the ground movant failed to establish a basis for reargument pursuant to CPLR 2221 (d) and did not move for renewal pursuant to CPLR 2221 (e). Nevertheless, the injunction issued in the decision of the court dated July 15, 2020 is vacated pursuant to the rulings of the Appellate Division. RedSky's related motion (MS 37), which sought an undertaking as a result thereof is denied as moot. Moreover, the Second Department had already determined that any prior request by Red Sky for a bond related to an injunction was academic in light of its findings that the contract with plaintiff is valid (*see Metropolitan Lofts of NY, LLC v Metroeb Realty 1, LLC*, 160 AD3d 637 [2d Dept 2018]).

For the reasons indicated above, plaintiff's motion (MS 38) seeking to amend the complaint to include claims for a constructive trust and for an order declaring that the transfer to RedSky JZ Roebling violated the court order is also denied as without merit.

Finally, in MS 40, plaintiff sought to reargue a prior motion in which this court declined to grant a stay of the Appellate Division decisions issued on December 9, 2020, pending application to appeal to the Court of Appeals. Plaintiff contends the court in rendering its decision denying the motion for a stay on February 19, 2021, erred in concluding it could not issue a stay in light of the Appellate Division being a court of superior jurisdiction, and having already denied the merits of the claims. Plaintiff seeks to have this court 1) pursuant to CPLR 5519 (c), stay the Appellate Division's Decision [Decisions] and Order dated December 9, 2020, and any enforcement pending resolution of its motions for leave to appeal to the Court of Appeals; and 2) issue a temporary restraining order barring transfer or encumbrance of the

property or re-affirm the preliminary injunction issued on July 15, 2020, pending leave to appeal to the Court of Appeals. Defendants opposed and contended: “First, there is no pending claim against the RedSky Entities that could provide a jurisdictional predicate for any injunctive relief. Second, the Appellate Division Decision is controlling law of the case that precludes any such claim in this Court. Third, Plaintiff’s request for a ‘stay’ of the Appellate Division Decision independently fails because this Court cannot issue a ruling that contravenes the ruling of the Appellate Division Decision, and because no part of the Appellate Division Decision is executory such that it could be subject to a stay in any event.”

CPLR 5519 (c) provides:

Stay and limitation of stay by court order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal in a case not provided for in subdivision (a) or subdivision (b), or may grant a limited stay or may vacate, limit or modify any stay imposed by subdivision (a), subdivision (b) or this subdivision, except that only the court to which an appeal is taken may vacate, limit or modify a stay imposed by paragraph one of subdivision (a).

Whether to grant or deny a stay under CPLR 5519 (c) is discretionary (*Schwartz v New York City Hous. Auth.*, 219 AD2d 47 [2d Dept 1996]).

Here, plaintiff correctly stated, in relevant part, that CPLR 5519 (c) permits a plaintiff to seek a discretionary stay in this court, the Appellate Division or the Court of Appeals. Plaintiff moved to stay the December 9 decision of Appellate Division in the instant court while also awaiting a decision on its motion to reargue the December 9, 2020 decision of the Appellate Division or in the alternative for leave to appeal to the Court of Appeals. This court denied the motion on February 19, 2021. The Appellate Division denied the motion to reargue before it and leave to appeal on February 22, 2021. Thus, the Appellate Division has already unanimously determined that there is no merit to the plaintiff’s claims or for a stay as against the RedSky

defendants regarding possession of the premises, thereby obviating any basis for a stay or injunctive relief.

Moreover, plaintiff can suffer no prejudice by the denial of the stay or injunction since the underlying claim lacks merit and a preliminary injunction requires 1) a probability of success on the merits, 2) a danger of irreparable injury in the absence of an injunction, and 3) a balance of equities in the movant's favor (*see Congregation Erech Shai Bais Yoef, Inc. v Werzberger*, 183 AD3d 1165 [2d Dept 2020]; *Herczl v Feinsilver*, 153 AD3d 1338 [2d Dept 2017]). Even assuming the equities were in plaintiff's favor, plaintiff cannot demonstrate a probability of success on the merits in regaining possession of the property since RedSky was determined to be a bonafide purchaser for value (*Ying Fung Moy v Hoho Umeki*, 10 AD3d 604 [2d Dept 2004]). Plaintiff also cannot establish irreparable injury since the Appellate Division favorably determined that its contract with Metroeb is valid and plaintiff is entitled to monetary compensation (*DiFabio v Omni Point Communications*, 66 AD3d 635 [2d Dept 2009]).

Further, although plaintiff may feel aggrieved because it has been unable to obtain possession of the subject premises, the status quo was not altered since plaintiff never acquired possession of the premises. Accordingly, reargument is granted on the ground this court has the apparent authority to issue a stay. Upon reargument, on these facts, the motion for a stay and other injunctive relief is denied in entirety for the reasons indicated herein.

It is therefore, so ordered:

MS 36, RedSky's motion to reargue the decision of the Honorable Larry Martin, dated July 15, 2020, pursuant to CPLR 2221 (d), is denied; and it is further ordered,

The injunction issued by order of the court dated July 15, 2020, is vacated; and it is further ordered,

MS 37, RedSky's motion, pursuant to CPLR 6312 (b), seeking an undertaking for any preliminary injunction is denied as moot; and it further ordered,

MS 38, plaintiff's motion to amend is denied; and it is further ordered,

MS 40, plaintiff's motion to reargue the decision of the Honorable Reginald Boddie, dated January 20, 2021, is granted, and upon reargument, the motion is denied.

ENTER:

RAB

Hon. Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.

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KINGS COUNTY CLERK
FILED