

Templar v Templar
2021 NY Slip Op 31611(U)
May 14, 2021
Supreme Court, Wayne County
Docket Number: 84778
Judge: Daniel G. Barrett
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At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
26th day of March, 2021.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

PAUL W. TEMPLAR AND
KATHLEEN TEMPLAR,

Plaintiffs,

DECISION
Index No. 84778

-VS-

JEROMIE TEMPLAR AND
JESSICA TEMPLAR,

Defendants

The Plaintiffs, Kathleen and Paul Templar, have brought this action seeking to evict the Defendants, Jeromie and Jessica Templar from 232 East DeZeng Street, Clyde, New York. The parties are married to each other and Defendant, Jeromie Templar, is the son of Plaintiff, Paul Templar.

Each of the Plaintiffs and Defendant, Jessica Templar, testified in this case. Defendant Jeromie Templar, although present at the hearing, did not testify and no reason was given for his non-participation in this hearing.

There is no dispute that the Plaintiffs are record owners of the property located at 232 DeZeng Street. The Defendants are relying upon a writing signed by all parties dated December 1, 2016, as a land contract which prevents the Plaintiffs from evicting them. This writing will be evaluated at a later point in this Decision.

The testimony of the Plaintiffs is consistent. Plaintiff Kathleen Templar moved to her daughters house in Canastota in March of 2016 to help the daughter run her business. This was a temporary move not a permanent relocation. She left various personal effects at 232 East DeZeng Street including her mother's ashes, family antiques and other items. She left these various articles of personal property in the first floor bedroom, parlor, rooms upstairs and the attic. One of the rooms was locked.

In December 2016 Plaintiff Paul Templar moved to Canastota to be with his wife. He, likewise, left various personal effects, family antiques, military documents and his military uniform. These items were left in the same places as Kathleen Templar's belongings-the first floor bedroom, parlor, rooms on the second floor and the attic. One of these rooms was locked.

The Plaintiffs allowed the Defendants to move into 232 DeZeng Street when Plaintiff, Paul Templar, temporarily moved to Canastota to be with his wife. The Plaintiffs entertained the idea of maintaining a life use of the residence with the property passing to the Defendants after their passing. This was simply a verbal discussion, nothing was committed to in writing. The Plaintiffs clearly intended to return to 232 DeZeng Street to live.

The previously referenced writing dated December 1, 2016, was executed by all of the parties and labeled as Exhibit 10 and duly admitted into evidence.

The house needed a new furnace. A grant program was available but it was not available unless the applicant owned the premises. According to the Plaintiffs that is the reason Exhibit 10 came into existence. The Plaintiffs testified they did not prepare Exhibit 10. Defendant, Jessica Templar, testified the Plaintiffs had already executed the writing before it was presented to her. Plaintiffs testified they signed Exhibit 10 so that the Defendant would qualify for the grant to replace the furnace. A new furnace, in fact, was installed.

While residing in Canastota, at times unsolicited, Defendant Jeromie Templar would transport the Plaintiffs' personal property to Canastota on a regular basis. The Plaintiffs did not request that he do that nor did they give him permission to empty their house. Defendant, Jessica Templar, refuted this testimony. She testified that the transport of the personal property was done at the request of the Plaintiffs.

While the Plaintiffs were residing in Canastota, Defendant, Jeromie Templar told the Plaintiff, Paul Templar, he needed the key to the locked door so that the room could be winterized. The key was not returned and the lock was replaced by the Defendants. No key to open this door was ever presented to the Plaintiffs.

In June 2019 the Plaintiffs intended to move back into 232 DeZeng Street. They were forbidden to do so by the Defendants. The Plaintiffs were barred from moving their personal belongings back into the house and they have had to seek a residence elsewhere.

According to the Verified Complaint, the Plaintiffs served a 30 Day Notice to Vacate on the Defendants on July 10, 2019.

The Defendants, per the testimony of Defendant Jessica Templar, asserted that Exhibit 10 is a land contract. Exhibit 10 was not prepared to qualify for a new furnace grant. It was her understanding she was purchasing an interest in land.

ANALYSIS

This case pivots on the legal significance of Exhibit 10. Exhibit 10 is very brief and is reproduced here in its entirety:

Kathleen and Paul Templar have entered into a rent to own agreement with Jessica and Jeromie Templar. Jessica and Jeromie are living in the house at 232 East DeZeng Street at this time, as of December 1, 2016. Kathleen and Paul Templar reside at 2990 State Route 31, Canastota.

The phrase in the first sentence “have entered into a rent to own agreement” gives one the impression that there is a separate agreement that has already been executed. But this is not the case. The next two sentences tell us where the Defendants and Plaintiffs resided on December 1, 2016.

Since we are dealing with an interest in real property the Statute of Frauds has to be satisfied. “The essential terms of a real estate contract typically include the purchase price, the time and terms of payment, the required financing, the closing date, the quality of title to be conveyed, the risk of loss during the sale period, and adjustments for taxes and utilities...[W]here a contract’s material terms are not reasonable definite, the contract is unenforceable” (Matter of Licata, 76 A.D. 3d 1076, 1077 [2nd Dep’t 2010] 443; Jefferson Holdings, LLC v Sosa, 174 A.D. 3d 486, 487 [2nd Dep’t 2019]).

It is argued that parol evidence will provide the missing links to save this contract. In Pfiel v Cappiello, 29 A.D. 3d 1187, [3rd Dep’t 2006] quoting the following portion of the decision in the case of Wacks v King shows this is not accurate:

GOL 5-703(2) provides, in relevant part, that a contract for the sale of any real property, or interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged. To that end, the underlying instrument must designate all parties, identify and describe the subject matter and state all essential terms of a complete agreement. Where as here, the subject matter of the agreement is real property, the writing must describe the property involved with such definiteness and exactness as will permit it to be identified with reasonable certainty. Finally, the determination of whether an instrument satisfies the Statute of Frauds is based solely on the language of the document itself, without consideration of parol evidence.

Also, to satisfy the Statute of Frauds, a memorandum subscribed by the party to be charged, must designate the parties, identify and describe the subject matter, and state all of the essential terms of a complete agreement. A writing is not a sufficient memorandum unless the full intention of the parties can be ascertained from it alone, without recourse to parol evidence, Dahan v Weiss, 120 A.D. 3d 540 [2nd Dep't 2014].

“Parol evidence, that is evidence outside the four corners of the document, is admissible if a court finds an ambiguity in the contract. As a general rule, extrinsic evidence is inadmissible to alter or add a provision to a written agreement.” §3:19 Statute of Frauds, generally. 11 PT 1 West’s McKinley’s Forms Real Property.

It is also argued that this Court should look at the text messages between the parties. This is not permissible because of parol evidence and it is not permissible as a writing that would satisfy the Statute of Frauds, (see Vista Developers Corp. v VFP Realty, LLC, 17 Misc. 3d 914, 847 N.Y.S. 2d 416).

All the parties who testified, Plaintiffs and Defendant Jessica Templar, testified they did not prepare Exhibit 10. Defendant Jeromie Templar did not testify. The Court is permitted to draw a negative inference as a result of his not testifying and find that he prepared Exhibit 10. In that event the contract can be interpreted against the interests of the Defendants.

Based on the foregoing the Court finds that there is no contract for the sale of the real property and the Plaintiffs are entitled to a warrant of eviction. Counsel for Plaintiffs to prepare a warrant of eviction which may be served on or after June 25, 2021.

Dated: May 14, 2021
Lyons, New York

A handwritten signature in dark ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett
Acting Supreme Court Justice