

Joglo Realities, Inc. v Tortorella
2021 NY Slip Op 31819(U)
May 27, 2021
Supreme Court, Kings County
Docket Number: 20503/13
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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JOGLO REALITIES, INC.,
AND ROBERT I. TOUSSIE,

Plaintiff,

Decision and order

- against -

Index No. 20503/13

MERILYN TORTORELLA & OTTAVIO TORTORELLA
d/b/a TORTORELLA LANDSCAPING,

Defendants,

May 27, 2021

-----X
MERILYN TORTORELLA & OTTAVIO TORTORELLA
d/b/a TORTORELLA LANDSCAPING,

Counterclaim-Plaintiffs

- against -

JOGLO REALITIES, INC., & ROBERT I. TOUSSIE,
Counterclaim-Defendants

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Counterclaim-Defendant

-----X
PRESENT: HON. LEON RUCHELSMAN

The defendants/counterclaim plaintiffs have moved pursuant to CPLR §3124 seeking various discovery demands from the plaintiff. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

As recorded in prior orders, the defendants Marilyn and Ottavio Tortorella own property located at 4316 Ocean Avenue in Kings County. Following damage to the property caused by Hurricane Sandy, the defendants entered into a contract with plaintiffs wherein the defendants agreed to pay the plaintiffs \$8,950 to clean debris upon defendants property. The plaintiffs claimed they owned

the southerly adjoining property which measured approximately forty feet by over a thousand feet in length, a strip running from the east side of Ocean Avenue to the east side of Beaumont Avenue along the Atlantic Ocean. The contract further provided the defendants would perform lawn maintenance for the plaintiffs at five locations at no charge. This lawsuit was filed wherein the plaintiffs alleged a cause of action for breach of contract asserting the defendants failed to perform the lawn maintenance as promised and failed to pay \$200,000 based upon an oral modification to the contract. The defendants have counterclaimed based on a claim of adverse possession concerning a certain portion of land and associated claims of partition and to quiet title.

Discovery materials have been sought by the defendants/counterclaim plaintiffs concerning the relationship and the role, if any, of Isaac Toussie with Joglo Realities Inc. The basis for the request is that Robert Toussie testified at a deposition wherein he stated that his son Isaac drafted the agreement between the neighbors. Thus, the defendants/counterclaim plaintiffs seek information concerning Isaac's precise role with Joglo. Further, the movants seek "all documents and communications between plaintiffs and the New York State Department of Environmental Conservation re DEC File No. R2-20130724-348" (see, Affirmation in Support, page 9). That information is sought to probe the plaintiff's interaction with the Department of Environmental Conservation regarding the side yard and the

ownership of such side yard. This information could significantly impact the adverse possession claims in this case. The plaintiffs oppose both requests arguing they are not relevant and need not be produced.

Conclusions of Law

The evidence concerning Isaac Toussie is brief. It consists of one response by his father Robert wherein Robert testified that Isaac drafted the agreement between the neighbors (see, Deposition of Robert Toussie, page 106). Notably, Robert did not testify that Isaac negotiated the agreement, rather that he simply drafted it.

There is no utility in conducting any further discovery regarding Isaac's role in the company since there is no evidence he played any role. Further, there is no basis to inquire whether he played any role in Joglo and if he did then the nature of the role. That information has nothing to do with the issues in this case at all. There is no dispute an agreement was reached between the parties and it is subject to litigation. There are no allegations the agreement was the product of any fraud or duress or improper influence thus the drafting of the agreement is not a proper line of inquiry. The movant characterizes Isaac as a "key trial witness" and wonders why Joglo has not disclosed the existence of Isaac for the first six years of the litigation. However, Isaac cannot contribute to any issues in this case and that is precisely why his presence was unknown. It could very well be that Isaac is employed at joglo. It may also be true that he is not employed

there and merely assisted his father in only drafting the agreement. Either way, his role does not advance any issue and consequently the discovery sought in this regard is denied.

Turning to the DEC file, the movant seeks the fil to discover any statements that may have been made by the plaintiff concerning the disputed side yard and whether Toussie ever acknowledged or made any statement regarding such yard. This is a proper avenue to explore and directly affects a n important element of the case. Therefore, the motion seeking the DEC file is granted.

So ordered.

ENTER:



DATED: May 27, 2021
Brooklyn NY

Hon. Leon Ruchelsman
JSC