

Cobb v Kaufman

2022 NY Slip Op 31303(U)

April 18, 2022

Supreme Court, Kings County

Docket Number: Index No. 14840/2013

Judge: Wayne P. Saitta

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At an IAS Term, Part 29 of the Supreme Court
of the State of New York, held in and for the
County of Kings, at 360 Adams Street
Brooklyn, New York, on the 18th day of April,
2022.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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RANDAULL COBB,

Plaintiffs,

Index No.: 14840/2013

-against-

DECISION AND ORDER
MS #11 and MS #12

JOEL KAUFMAN, MONROE UNIQUE HOMES LLC,
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4
(A/K/A "MOSHE"), SEA & SUN GROUP, LLC, and
JOHN DOE 5 (A/K/A "ROB"),

Defendants.

The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	2-4, 42, 54-58, 86, 88-89
Answering Affidavit (Affirmation) _____	23, 90
Reply Affidavit (Affirmation) _____	35, 41, 91
Supplemental Affidavit (Affirmation) _____	
Pleadings – Exhibits _____	5-20, 24-32, 36-39, 43-53, 59-85, 92-93
Stipulations – Minutes _____	
Filed Papers _____	

This action arises from the conveyance of real property located at 253 Monroe Street, Brooklyn, New York 11216 (the Premises), while the Premises was in foreclosure. Plaintiff argues that the transfer of his deed was fraudulent and seeks to rescind the contract of sale and cancel the deed.

Defendant MONROE UNIQUE HOMES, LLC (Defendant MONROE) moves for partial summary judgment dismissing Plaintiff's First, Third, and Tenth Causes of Action as against them.

Plaintiff cross-moves for partial summary judgment on his First, Third, Fourth and Tenth Causes of Action.

First Cause of Action

Plaintiff's First Cause of Action is for recession of the contract of sale and canceling of the deed pursuant to RPL § 265-a, the Home Equity Theft Prevention Act of 2007. The Act applies to the sale of a residences and defines "Residence" as a "residential real property consisting of one- to four-family dwelling units, one of which the equity seller occupies or occupied at a time immediately prior to the equity sale as his or her primary residence".

Here, neither Plaintiff or Defendant is entitled to summary judgement as there are questions of fact as to whether the Premises was a one- to four-family dwelling and whether it was Plaintiff's primary residence.

Plaintiff submits the certificate of occupancy that shows the Premises is a two-family residence as well as real estate tax bills showing that the building is less than four units. The Real Property Transfer Report executed as part of the sale of the Premises indicates that it is a two or three family residential dwelling.

Defendant submits a 2007 ECB Violation from New York City Buildings for creating 5 apartments at the building without a permit. Defendant also submits an affidavit from Joel Kaufman, the sole principal and member of Defendant MONROE, stating that there were five apartments in the Premises.

Plaintiff states in an affidavit that the violation occurred under a prior owner of the building and was resolved before he purchased the premises.

There also remain questions of fact as to whether the premises were Plaintiffs primary residence at the time of the sale.

Plaintiff executed an Affidavit at the closing of the Premises stating that 245 Weirfield Street, not the Premises, was his residence. Plaintiff contends that 245 Weirfield Street is the address where he grew up and that he resided at the premises at the time of the sale. Plaintiff also testified at his deposition that he has lived at the alternate address since 1999. A person may have more than one residence, but it is not clear from the motion papers submitted what Plaintiff's primary residence is.

Tenth Cause of Action

Plaintiff's Tenth Cause of Action to quiet title under RPAPL § 1515 is dependent on his First Cause of Action for violations under RPL § 265-a. As there are questions of fact as to the First Cause of Action, neither motion can be granted as to the Tenth Cause of Action.

Third Cause of Action

Plaintiff's Third Cause of Action seeks to rescind Plaintiff's sale of the Premises to Defendant based on unconscionability.

Here, summary judgement to either Plaintiff or Defendant is inappropriate as there are questions of fact as to whether Plaintiff actually received, \$24,100 or \$50,000, how much equity Plaintiff had in the property at the time of sale, and what amount, if any, Plaintiff was entitled to receive under the terms of the conditional promissory note.

Fourth Cause of Action

Plaintiff's Fourth Cause of Action is for compensatory damages for conversion of the deed to the Premises based on fraud.

However, “[a]n action sounding in conversion does not lie where the property involved is real property” (*Mannino v. Passalacqua*, 172 AD3d 1190, 1193 [2d Dept 2019]; *Scott v. Fields*, 85 AD3d 756, 757 [2d Dept 2011], quoting *Garelick v. Carmel*, 141 AD2d 501, 502 [2d Dept 1998]; *Dickinson v. Igoni*, 76 AD3d 943, 945 [2d Dept 2010]). “[N]o cause of action sounding in conversion will lie where the property that is the subject of the dispute is real property” (*Crawford v. Smith*, 130 AD3d 968, 968-969 [2d Dept 2015]).

Here, the property at issue is real property. Plaintiff brings his claims under New York Real Property Law. Therefore, Plaintiff cannot assert a claim of conversion.

WHEREFORE, it is ORDERED that Defendant MONROE's motion is DENIED in its entirety; and it is further

ORDERED that Plaintiff's cross-motion is DENIED in its entirety.

This constitutes the decision and order of the Court.

ENTER,



J.S.C.