

**Ingram v Malcolm**

2022 NY Slip Op 31415(U)

April 28, 2022

Supreme Court, New York County

Docket Number: Index No. 650561/2022

Judge: Sabrina Kraus

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

*Justice*

-----X

EDWARD INGRAM, LAUREN PICCOLO-INGRAM

Plaintiff,

- v -

ARI MALCOLM, LAUREN DOUGLASS,

Defendant.

-----X

INDEX NO. 650561/2022

MOTION DATE 04/04/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for CANCEL A NOTICE OF PENDENCY.

**BACKGROUND**

This action involves the breach of a July 15, 2021 contract of sale under which defendants agreed to purchase plaintiffs' condominium unit located at 103 West 117th Street.

Plaintiffs allege that defendants breached the contract by wrongfully procuring their mortgage lender to withdraw its financing commitment to the defendants. Plaintiffs sued to retain a \$155,000 down payment. Defendants counterclaimed seeking a declaration that they were entitled to a return of the down payment and seeking attorneys' fees.

On March 2, 2022, defendants filed a notice of pendency concerning the unit.

**PENDING MOTION**

On April 4, 2022, plaintiffs moved for an order pursuant to CPLR § 6514 cancelling the Notice of Pendency filed on March 2, 2022, and awarding plaintiffs' attorneys' fees and costs pursuant to CPLR § 6514(c). The motion was fully briefed and submitted to this court for determination. For the reasons set forth below, the motion is granted.

## DISCUSSION

The notice of pendency provisions of the CPLR enable a plaintiff to “cloud a defendant's title merely by serving a summons and filing a proper complaint and notice of pendency stating the names of the parties, the object of the action, and a description of the action.” *5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313, 318 (1984). This is a powerful tool since it permits a party to restrain the alienation of real property “without any prior judicial review. *Id.* It has been described as “an extraordinary privilege” *Israelson v. Bradley*, 308 N.Y. 511, 516 (1955).

Under CPLR § 6501, a notice of pendency is appropriate only where “the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property.” As the courts have repeatedly observed, “[t]he filing of a notice of pendency is an extraordinary privilege, and the statute conferring it should be strictly construed.” *Chambi v. Navarro, Vives & Cia, Ltd.*, 95 A.D.2d 667, 667 (1st Dep’t 1983); *see also In re Sakow*, 97 N.Y.2d 436, 441 (2002).

The severe impact of the notice of pendency authorized by N.Y. CPLR § 6501 requires strict applications of that statute. *5303 Realty Corp. v. O Y Equity Corp.*, 64 N.Y.2d 313, 315-16, 323 (1984), and the New York Court of Appeals has imposed a narrow interpretation in reviewing whether the action affects title to, or the possession, use or enjoyment of, real property *Id.*

This lawsuit does not in any way affect title to, possession or use and enjoyment of real property. Although the parties contracted for the sale of the unit, plaintiffs sue only to obtain the down payment under the contract of sale, which is specified to be the “sole remedy” available to them for defendants’ breach. Plaintiffs do not seek to compel defendants to purchase the unit. Defendants’ counterclaims seek no more than a contrary declaration—contesting plaintiffs’

rights to the down payment—and seeking attorneys’ fees. Neither party is making a claim as to the unit itself; rather, both are making purely monetary claims under the contract of sale.

As such the motion to cancel the notice of pendency is granted.

Plaintiffs’ request for costs is denied, as they do not deny the complaint asserts that CPLR §507, which pertains to “... an action in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated” is a basis for venue in this action.

### **CONCLUSION**

A motion having been made by Edward Ingram and Lauren Piccolo-Ingram, aggrieved persons, to cancel a notice of pendency herein, filed in the office of the County Clerk of New York County on March 2, 2022 and notice of such motion having been given, and due deliberation having been had thereon, and the court having determined that cancellation is appropriate for the reasons set forth above, it is now hereby:

ORDERED that the County Clerk of New York County, upon service upon him of a copy of this order with notice of entry, shall cancel the aforesaid notice of pendency; and it is further

ORDERED that such service upon the County Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the counsel are to appear for a Virtual Preliminary Conference on June 23, 2022 at 12 noon; and it is further

ORDERED that this constitutes the decision and order of the court.

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4/28/2022  
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: