

Rios v Addams

2022 NY Slip Op 32853(U)

August 24, 2022

Supreme Court, New York County

Docket Number: Index No. 153589/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MAGDA ROSA RIOS,

Plaintiff,

- v -

ROBERT DAVID ADDAMS, ADDAMS PROPERTIES LLC

Defendants.

-----X

INDEX NO. 153589/2022
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The motion by plaintiff for a preliminary injunction is denied.

Background

The instant property dispute arises out of a previous romantic relationship between plaintiff and defendant Addams. They met in 1988 and had two children (one in 1989 and one in 1992). The two never married but decided, in 1993, to purchase an apartment. This is where the parties' stories divert. Plaintiff argues that during the loan application process, the parties agreed to leave plaintiff off the loan and the deed because of defendant Addams' better credit rating.

Addams claims that there was little negotiation about the price of the apartment because it was sponsor unit at a condo and that he paid the entire deposit of \$12,500 from his own funds. He insists that because of plaintiff's poor credit history, the lender would not issue financing with plaintiff on the title or the mortgage; he disputes plaintiff's assertion that a better rate was offered if plaintiff was left out of the transaction. He points the Court to the amended purchase

agreement (a document uploaded by plaintiff) in which she was removed from the purchase agreement entirely (NYSCEF Doc. No. 4).

Plaintiff and Addams soon broke up after he purchased the apartment and Addams moved out. Both parties agree that plaintiff continued to live in the apartment while their children were minors and that no lease agreement was ever entered into. Plaintiff alleges that she proceeded as if she co-owned the unit, maintained the apartment, and paid all condo charges as well as all mortgage payments. Defendant Addams claimed that he thought it was best for plaintiff to pay the combined maintenance and mortgage payments rather than forcing plaintiff to find a new place and pay rent there. It also allowed their children to stay in the same apartment. He insists that he paid the property taxes, however.

In 2016, Addams transferred title to the property to co-defendant Addams Properties LLC. He claims he did this after the mortgage was paid off and that he then told plaintiff to make the maintenance payments to the corporate entity but she refused. Addams contends that he then commenced a non-payment proceeding in Housing Court. However, the judge ultimately found that there was no landlord-tenant relationship and rejected Addams' petition. Addams insists that plaintiff has not made any payments for the use and occupancy of the apartment since March 2016 (except for two payments made while the non-payment case was active).

Addams explains that he wanted to bring a new action in Housing Court under the theory that plaintiff is a licensee but waited over the last few years for various reasons including the wedding of his daughter and the Covid-19 pandemic. He eventually commenced that proceeding in June 2022 in Housing Court (NYSCEF Doc. No. 21).

In this motion, plaintiff comes to Supreme Court and seeks injunctive relief barring Addams from taking any actions to evict plaintiff from the apartment and to stay the summary holdover proceeding now pending in the Housing Court. She insists that the multiple equitable issues she alleges in this complaint require that that holdover proceeding be stayed. She argues she has expended hundreds of thousands of dollars for the subject apartment and she is entitled to an equity interest in the unit.

Addams emphasizes that plaintiff is an experienced real estate attorney who should know that she does not have an interest in the property – she knows she was never married to Addams and was never on the deed– and she should not be allowed to stay in the apartment for free.

Discussion

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted])

The Court denies the motion and vacates the temporary restraining order it issued in the order to show cause. Plaintiff did not demonstrate a likelihood of success on the merits sufficient to warrant a stay of the summary holdover proceeding. The Court’s analysis begins with the purchase agreement and the amended purchase agreement (NYSCEF Doc. Nos. 3 and 4). The initial purchase agreement clearly includes plaintiff and then the amended purchase agreement consists of a single page in which plaintiff is expressly removed from the agreement. The parties do not dispute that plaintiff was not included on the loan initially, was never added to the loan,

and was never added to the deed after the purchase was completed. In fact, plaintiff seems to have conceded that she had no ownership interest in the apartment in connection with a dispute involving Addams in Family Court where she tried to get her name added to the deed (*see* NYSCEF Doc. No. 40, ¶ 8). There is no evidence submitted that this proposed agreement in Family Court ever went into effect.

In other words, there is no dispute that plaintiff was never included on any ownership documents with respect to this apartment. Her only route to acquiring an actual ownership interest is through her cause of action for a constructive trust (the second cause of action). But, for the reasons stated above, the Court finds that she did not show she is likely to succeed on that point. Addams indisputably was solely on the loan and the deed, owned the property outright and then transferred it to a corporate entity. At this stage of the litigation, plaintiff's assertions that oral agreements somehow contravene these documents are not enough to grant the drastic remedy that a preliminary injunction entails.

It may be that plaintiff is entitled, as she demands in the complaint, to some amount of damages for the money she expended to purportedly maintain the apartment. Both plaintiff's first and third causes of action seek damages. However, "[d]amages compensable in money and capable of calculation . . . are not irreparable" (*SportsChannel Am. Assoc. v Natl. Hockey League*, 186 AD2d 417, 418, 589 NYS2d 2 [1st Dept 1992]). Plaintiff is not entitled to a preliminary injunction where she can be compensated with money damages (*OraSure Tech., Inc. v Prestige Brands Holdings, Inc.*, 42 AD3d 348, 348, 839 NYS2d 744 [1st Dept 2007]).

And a balancing of the equities does not favor plaintiff. Addams contends, and plaintiff does not deny, that plaintiff has not made a single payment for the monthly maintenance since 2016. Although plaintiff was upset that Addams demanded she make payments to the corporate

entity and that he brought a non-payment proceeding against her, the Court declines to issue a stay of the holdover proceeding based on this record. Plaintiff is not entitled to indefinitely reside in the apartment for free while Addams is forced to make the monthly maintenance payments if he wants to retain the unit.

The Court recognizes that there is a dispute about certain of the real estate tax payments made (plaintiff says she made some of them). That issue may affect the ultimate amount of damages but does not change the Court's analysis with respect to the request for injunctive relief.

Summary

The Court observes that the instant circumstances are unique. Had plaintiff and Addams been married, the situation would be quite different. Instead, the Court is left to consider a record that shows that Addams always had sole ownership of the property, paid the real estate taxes and insurance and agreed to let plaintiff and their children live there, with plaintiff covering monthly expenses, until she stopped. Plaintiff also alleges that there was an oral agreement that she would acquire some sort of ownership interest in the property. The Court finds that there is no basis to grant the drastic remedy of a preliminary injunction on these papers.

The Housing Court may, or may not, agree with Addams' theory that plaintiff is a licensee in the holdover proceeding. But defendants are entitled to try and pursue that theory in that forum. Any amount of damages that either party might be entitled to in this case is separate from the fact that Addams Properties LLC holds the title to the property.


The Court also recognizes that defendants made arguments about the statute of limitations. Those arguments, although relevant to the likelihood of success prong for a preliminary injunction, are more appropriate for a subsequent motion (should defendants choose to make one) and the Court makes no explicit findings about that issue here. The Court's

analysis is based only on the notion that most of plaintiff's claims can be compensated with damages (meaning a preliminary injunction is not appropriate) and the equitable relief sought does not justify the imposition of an injunction. That it, the Court makes no rulings on the merits of this case; it just rules, at this point, that the Housing Court case should proceed.

Accordingly, it is hereby

ORDERED that the motion by plaintiff is denied and the temporary restraining order issued in NYSCEF Doc. No. 26 is hereby vacated.

A conference will be held on December 6, 2022 at 10:30 a.m. By November 29, 2022 the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement or 3) letters explaining why no agreement about discovery could be reached. The failure to upload something by November 29, 2022 will result in an adjournment of the conference.

<u>8/24/2022</u> DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	