

Torres v Equity Holdings LLC
2022 NY Slip Op 33573(U)
October 7, 2022
Supreme Court, Kings County
Docket Number: Index No. 517615/2020
Judge: Ingrid Joseph
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At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of October 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

JOSE ANIBAL TORRES, EDNA IVETTE LOZADA
TORRES, BERESWINDA LEDEE FKA BERESWINDA
TORRES, GLORIA JANET TORRES FRANCISQUINI FKA
GLORIA ALVAREZ and MELIDA M. TORRES FIGUEROA
FKA MELIDA M. TORRES,

Index No.: 517615/2020

DECISION & ORDER

Plaintiffs,

-against-

EQUITY HOLDINGS LLC,

Defendant.

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Defendant's motion.

<u>Papers</u>	<u>NYSCEF Nos.</u>
Notice of Motion/Affidavits/	
Affirmations Annexed.....	56 – 62
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Reply to Opposition Papers.....	77

In this matter, Plaintiffs, Jose Anibal Torres, Edna Ivette Lozada Torres, Bereswinda Ledee f/k/a Bereswinda Torres, Gloria Janet Torres Francisquini f/k/a Gloria Alvarez and Melida M. Torres Figueroa f/k/a Melida M. Torres (“Plaintiffs”), are the children of decedent Anibal Torres (“Mr. Torres”). By an October 22, 1986 deed, Mr. Torres became the fee owner of real properties known as and located at 418 and 420 Lorimer Street, Brooklyn, New York 11206 (“the Property”). Additionally, Plaintiffs claim and it is undisputed that in addition to 418 and 420

Motion #3

Lorimer Street, Mr. Torres owned 426 Lorimer Street, Brooklyn, New York (“426 Lorimer”). In June of 2002, Mr. Torres died intestate. Thereafter, by a June 24, 2002 deed (2002 Deed), Plaintiffs purportedly conveyed their alleged interest in the Property to Defendant, Equity Holdings LLC (“Equity”) for \$150,000. On June 31, 2002, the 2002 Deed in favor of Equity was recorded with the County Clerk’s office. From 2009 until 2019, New York City Department of Finance’s quarterly tax statements for the Property listed Equity as the owner of the Property¹.

On September 18, 2020, Plaintiffs commenced this action to quiet title to the Property by filing a summons and unverified complaint (“initial complaint”). Plaintiffs’ initial complaint included two causes of action. The first cause of action seeks an order canceling and discharging the 2002 Deed alleging forgery (initial complaint at ¶¶ 13 and 16). The second cause of action is for unjust enrichment based on Equity’s alleged collection of rental income from the Premises since 2002 (*id.* at ¶ 18).

In the instant motion, Plaintiffs move (motion sequence 3) pursuant to CPLR § 3025(b) for leave to amend their complaint to substitute the cause of action for forgery with fraud in the factum. In support of their motion, Plaintiffs submitted, among other items, the affirmation of their attorney, Edward A. Vincent (“Mr. Vincent”). Mr. Vincent asserted that leave to amend the complaint is warranted here because the initial complaint was not verified by the Plaintiffs prior to its filing, and his firm was just retained to fix prior counsel’s pleading which incorrectly pled a claim of forgery rather than fraud in the factum. Plaintiffs in essence state that since the parties are still at the pleading stage, Equity would not be prejudiced by the amendment. Plaintiffs submitted a copy of their proposed verified amended complaint (“proposed amended complaint”) wherein Plaintiffs attest that the deed they signed was in conjunction with the sale of 426

¹ Equity has submitted as Exhibit I copies of NYC Finance Department’s quarterly tax records for the years 2009 through February 2022

of 426 Lorimer, and that Equity fraudulently altered the deed and other documents to add a legal description for the Property at 418 and 420 Lorimer Street (proposed amended complaint at ¶¶ 20, 21 and 27).

Equity, in opposition, submitted, among other items, the affirmation of their attorney, Joyce A. Davis (“Ms. Davis”). Ms. Davis argued that Plaintiffs motion must be denied because Plaintiffs’ proposed amendments are premised on a new legal theory and new purported facts that are inconsistent with and contradictory to the claim of forgery as set forth in their initial complaint. Ms. Davis argued that to allow Plaintiffs to change their entire theory would force Equity to relitigate this case anew, thereby prejudicing Equity’s rights. In addition, Ms. Davis asserted that Plaintiffs should be precluded from inequitably adopting a position that is directly contrary to or inconsistent with a position they assumed earlier in the same proceeding. Further, Ms. Davis argued that Plaintiffs’ should not be granted leave to amend their complaint because their proposed amendments are based on an implausible purported belief that they were attempting to convey 426 Lorimer Street. Ms. Davis contended that by a November 9, 1999 deed which was recorded on April 3, 2000 (2000 deed), Mr. Torres conveyed 426 Lorimer to non-party, Boyoner Gemilas Chesed Inc. (Boyoner). Ms. Davis contends that since Mr. Torres conveyed 426 Lorimer to Boyoner prior to his death in 2002, Plaintiffs never owned or had any rights in or to 426 Lorimer and, therefore, could not have believed they were conveying 426 Lorimer to Equity.

As a general rule, leave to amend a complaint is committed to the sound discretion of the court and should be freely given in the absence of prejudice or surprise to the opposing party (*see* § CPLR 3025(b); *Kaur v Lema*, 187 A.D.3d 870, 873 [2d Dept 2020]). However, the motion should be denied where the proposed amendment is palpably insufficient or patently devoid of


merit (*AB Oil Servs., Ltd. v TCE Ins. Servs., Inc.*, 188 AD3d 624, 643 [2d Dept 2020]; *J.W. Mays, Inc. v Liberty Mut. Ins. Co.*, 153 AD3d, 1386, 1387 [2d Dept 2017]).

After consideration of the documents submitted the Court finds that the Plaintiffs' proposed amendments to the initial complaint is palpably insufficient and patently devoid of merit insofar as the amendment submitted by Plaintiffs is contradictory in nature and does not constitute a viable claim. In the amended complaint, the Plaintiffs allege that they believed they were signing a deed for the transfer of 426 Lorimer, which was another property that was owned by Mr. Torres (amended complaint ¶ 15). Then, Plaintiffs alleged that prior to Mr. Torres's death, 426 Lorimer was sold to Boyoner (amended complaint ¶ 16). Plaintiffs have failed to proffer any evidence sufficient to show that at the time Mr. Torres died intestate, either Plaintiffs or Mr. Torres owned 426 Lorimer. Thus, based upon the undisputed claims that Mr. Torres had conveyed his interest in 426 Lorimer Street prior to his death, it is clear that even if at the time Plaintiffs purportedly intended to convey 426 Lorimer to Equity via the 2002 Deed, they were unable to do so since they did not have any interest in 426 Lorimer. Stated another way Plaintiffs cannot convey what they did not own or have any interest in on June 24, 2002.

Accordingly, Plaintiffs' motion for leave to amend their complaint is denied.

This constitutes the Decision and Order of the Court.

ENTER



HON. INGRID JOSEPH, J.S.C.
Hon. Ingrid Joseph
Supreme Court Justice