Bikes By Olga LLC v People
2022 NY Slip Op 33668(U)
October 24, 2022
Supreme Court, Kings County
Docket Number: Index No. 506816/21
Judge: Leon Ruchelsman
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8
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BIKES BY OLGA LLC,

Plaintiff, Decision and order

- against - Index No. 506816/21

THE PEOPLE OF THE STATE OF NEW YORK,
NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF TRANSPORTATION, NYCTL 2018-A TRUST,
2017-A TRUST, NYCTL 2016-A TRUST &
NYCTL 1998-2 TRUST,

Defendants, October 24, 2022
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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3212 seeking summary judgement on the third cause of action for trespass. The City of New York has opposed the motion arguing the City has an easement and thus cannot be liable for any trespass. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on June 3, 2019 the plaintiff purchased property located at 353 Berry Street in Kings County at a tax foreclosure auction for $2.3 million and the deed was recorded a few days later on June 13, 2019. The City of New York acknowledged the property was being used by the Department of Transportation and in light of the plaintiff's ownership of the property began negotiations for the withdrawal of such use. On December 23, 2020 the City of New York presented plaintiff with a Notice of Appropriation which demonstrated that through eminent domain the State of New York had taken possession of the property in 1992. On October 18, 2021 this court issued a decision granting summary judgement and essentially holding there were no questions of fact the plaintiff was the owner of the property. The plaintiff has now moved seeking a determination the City committed trespass by maintaining commercial trucks and other vehicles on the property. Thus, Joel Wertzberger a manager of the plaintiff has submitted an affidavit wherein he states that since the plaintiff purchased the property on June 3, 2019 the City's vehicles have been unlawfully parked on his property constituting a trespass. Furthermore, the plaintiff argues the City should compensate the plaintiff for the use of plaintiff's property. The City has opposed the motion arguing an easement recorded in a deed dated July 12, 1983 permits the City to utilize the property for its maintenance of the Williamsburg Bridge.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021).

An easement generally entitles a party to an interest in land owned by another person and enables the holder of the easement to use or control the land for a specific and limited purpose (see, Sutera v. Go Jokir Inc., 86 F3d 298 [2d Cir. 1996]). Thus, it is more than the mere privilege to use the land, it is an interest in the land (id). It is well settled that "there are two types of express or record easements: (1) an easement appurtenant which contemplates a dominant and a servient estate and provides an interest in land; and (2) an easement in gross which is a personal, non assignable, noninheritable privilege or license" (see, Koepp v. Holland, 688 F.Supp2d 65 [N.D.N.Y. 2010]). Concerning an easement appurtenant, a parcel of land that benefits from an easement is known as the dominant estate whereas the parcel being burdened is known as the servient estate (Strnad v. Brudnicki, 200 AD2d 735, 606 NYS2d 913 [2d Dept., 1994]). Regarding an easement in gross there is no dominant estate, rather only land, the servient estate, is burdened. This rare easement thus permits the holder to use the land of another even though the holder does not own a dominant estate (see, U.S. v. Turoff, 701 F.Supp 981 [E.D.N.Y. 1988]).

Unlike other states that define whether an easement is appurtenant or in gross (see, Cal. Civ. Code SS 801, 802; Mont.

Code Ann. §§ 70-17-101, 70-17-102; N.D. Cent. Code §§ 47-05-01, 47-05-02; Okla. Stat. Ann. tit. 60, §§ 49, 50; S.D. Codified Laws §§ 43-13-1, 43-13-2; 21 Guam Code Ann. §§ 7101, 7102) New York courts examine the express language of the easement "to give effect to the [conveyors'] intent, as manifested by the language of the grant" (see, Stone v. Donlon, 156 AD3d 1308, 69 NYS3d 115 [3rd Dept., 2017]). The case of Niceforo v. Haeussler, 276 AD2d 949, 714 NYS2d 788 [3rd Dept., 2000] is instructive. In that case an easement for the use of a driveway existed between two adjacent neighbors. One neighbor argued the easement was an easement in gross which extinguished upon the sale of the property to others. The court disagreed. The court explained that the easement was created "for the benefit of the dominant estate (now plaintiffs' land) burdening the servient estate (now defendant's land)" (id). Thus, where the easement services another (dominant) estate the easement is classified as appurtenant. Indeed, although courts refer to them as easements, strictly speaking an easement in gross is not an easement at all but a personal privilege or license to use the land of another (Loch Sheldrake Associates v. Evans, 306 NY 297, 118 NE2d 444 [1954]). Examples include the right to place telegraph poles on property (Antonopulos v. Postal Telegraph Cable Company, 261 AD 564, 26 NYS2d 403 [2d Dept., 1941] and the right to place signs on a wall or fence on another's property (XAR Corp., v. Di

Donato, 76 AD2d 972, 429 NYS2d 59 [3rd Dept., 1980], Whitmier and Ferris Company v. State of New York, 12 AD2d 165, 209 NYS2d 247 [4th Dept., 1961]).

The deed recorded in 1983 states that it is "subject to easement for maintenance of the Williamsburg Bridge" (see, Deed, included as Exhibit 1 to Defendant's Motion in Opposition, [NYSCEF #153]). Thus, by its very terms the easement services the Williamsburg Bridge, the dominant estate. The plaintiff argues that "the City failed to identify a dominant estate that the easement serves, which defeats, as a matter of law, its defense to Plaintiff's trespass claim" (Reply Memorandum, page 4 [NYSCEF Doc. #159]). However, the plaintiff acknowledges the easement is intended to conduct maintenance on the bridge and fails to remove any questions of fact why the bridge cannot serve as the dominant estate.

The plaintiff next argues that even if the easement is an easement appurtenant the easement extinguished when the City foreclosed upon the parcel. The plaintiff asserts that when one entity owns both the dominant and servient estates then the easement extinguishes (see, generally, Will v. Gates, 89 NY2d 778, 658 NYS2d 900 [1997]). Thus, the plaintiff asserts that "the dominant and servient interests merged into one owner (the City)" (see, Memorandum in Reply, page 5, supra). Thus, an examination of whether the entity that foreclosed upon the property, namely NYCTL 2016-A TRUST, is the same entity as the City of New York. If the two entities are really the same then a merger will cause the easement to extinguish.

In 1996 the City of New York authorized the sale of delinquent property taxes to the private market. The City established the New York City Tax Lien ("NYCTL") as entities that would purchase various tax lien portfolios or individual tax liens. The trust in this case, a Delaware statutory trust, was created on May 10, 2016. The plaintiff has submitted an independent auditor's report regarding the financial statements of the trust in this case (see, Independent Auditor's Report [NYSCEF Doc. #161]). Page 9 of the Report notes that "although legally separate from the City, the Trust is an instrumentality of the City and, accordingly, is included in the City's financial statements as a blended component unit" (id). The precise status of the trust within the ownership structure of the City is not easily defined, however, it can hardly be said there are no questions of fact it is not a distinct entity. Indeed, other commentators that have examined the relationship between the trust created and the municipality have concluded the trust is a distinct legal entity that maintains a relationship with the City of New York. Thus, in Standard & Poor's, NYCTL 1996-1 Trust 1 (reprinted in New Developments in Securitization 1996, at 265 [PLI Practice Course Handbook Series No. A-747 [1996]), Charles

C. Henneman compares the Delaware business trust and the municipality that creates the trust to a parent corporation and a subsidiary. The distinct legal status of the trust is important in situations where the municipality declares bankruptcy, insulating the trusts assets from any claims by creditors (see, Selling Municipal Property Tax Receivables: Economic Privatization and Public Policy in an Era of Urban Distress, 30 Connecticut Law Review 157 by Georgette C. Poindexter, Lizabethann Rogovoy and Susan Wachter [Fall 1997]).

It is true that a party may argue that a parent and subsidiary are really one entity. However, to demonstrate two corporations are really the same and that obligations flowing from one are incumbent upon the other a "heavy burden" of evidence must be presented (Etex Apparel Inc., v. Tractor International Corp., 83 AD3d 587, 922 NYS2d 315 [1st Dept., 2011]). The Second Department in explaining the definition of an 'alter ego entity' held that a party must demonstrate that one entity controls the "day to day" activities of the other (Constantine v. Premier Cab Corp., 295 AD2d 303, 743 NYS2d 516 [2d Dept., 2002]). The language "day to day" activities was borrowed from another area of corporate law, namely the doctrine of piercing the corporate veil. The standard espoused in that context was that a parent corporate entity's veil could be pierced if it controlled the daily activities of the subsidiary such that it was "the true prime movers behind the subsidiary's actions" (Pebble Cove Homeowners' Association Inc. v. Fidelity New York FSB, 153 AD2d 843, 545 NYS2d 362 [2d Dept., 1989]). Thus, the court held that joint stock ownership and interlocking directors and officers was insufficient to fuse the two companies together to pierce all corporate veils, rather control of the daily activities was required. Whether one entity controls another's day to day activities is obviously a factual question. Therefore, in Mournet v. Educational & Cultural Trust Fund of Electrical Industry, 303 AD2d 474, 756 NYS2d 433 [2d Dept., 2003], the court concluded that where insufficient evidence was presented whether two companies were alter egos of each other it was not proper to resolve that issue in a motion for summary judgement.

Therefore, the plaintiff has not demonstrated there are no factual questions whether the trust is really the same entity as the City of New York. Thus, these factual issues require resolution. Consequently, the motion seeking summary judgement is denied.

So ordered.

ENTER:

DATED: October 24, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC