

Sunnyview Farm, LLC v Levy Leverage LLC
2022 NY Slip Op 35213(U)
September 30, 2022
Supreme Court, Columbia County
Docket Number: Index No. E012018013127
Judge: Laura M. Jordan
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**STATE OF NEW YORK
SUPREME COURT COUNTY OF COLUMBIA**

SUNNYVIEW FARM, LLC and SIMON B. LEVY,

Plaintiffs,

DECISION AND ORDER

Index No. E012018013127

-against-

**LEVY LEVERAGE LLC, DANIEL Z. LEVY, and
ROBERT M. GREENBERG,**

Defendants.

All Purpose Term
Hon. Laura M. Jordan, Supreme Court Justice

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Jordan, J.

Plaintiffs Sunnyview Farm, LLC and Simon Becket Levy ("Becket Levy") commenced this action against Defendants Levy Leverage, LLC, Daniel Z. Levy ("Zach Levy"), and Robert Greenberg on July 10, 2018 (*see generally* Dkt. No. 1, 7). Plaintiffs allege various causes of action stemming from the transfer and use of a disputed parcel of real property in the Towns of Ghent and Claverack, New York (*see id.*). Defendant Greenberg filed an answer containing cross-claims

against Defendants Zach Levy and Levy Leverage LLC and a counterclaim to quiet title against Plaintiffs (*see generally* Dkt. No. 32). Defendants Levy Leverage and Zach Levy filed cross-claims against Defendant Greenberg and a counterclaim against Plaintiff Beckett Levy (*see* Dkt. No. 19).

Defendants moved for summary judgment seeking dismissal of all claims and cross-claims against them (*see* Dkt. Nos. 26, 47). Plaintiffs opposed Defendants' motions and cross-moved to disqualify Paul Freeman, Esq. as defense counsel and preclude the introduction of expert testimony by Defendant Levy (*see* Dkt. No. 64). In a Decision and Order dated April 7, 2022, the Court denied Defendant Levy's and Plaintiffs' motions. Defendant Greenberg's motion was granted in part and denied in part.

In the previous decision, the Court reviewed the various deeds executed between Plaintiffs and Defendants Levy and Levy Leverage LLC and found that there were triable issues of material fact as to whom the "Schnackenberg Property" was last conveyed (Dkt. No. 166 at 10-11). The question of fact which the Court found also precluded summary judgment on the following claims also alleged by Plaintiffs: action to quiet title against all Defendants, declaratory judgment against all Defendants, breach of the covenant against encumbrances against Defendant Zach Levy, ejectment against Defendant Greenberg, and trespass against Defendant Greenberg (*see generally* Dkt. No. 166). All parties now move to reargue.

A motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221 [d] [2]). Such motions are left to the sound discretion of the court which decided the previous motion (*see Viola v City of New York*, 13 AD3d 439, 440 [2004], lv denied 5 NY3d 706 [2005]).

A. Defendants' Motion to Reargue

Although Defendants have separately moved to reargue, the basis for their motions and the relief sought are the same. Therefore, the Court will address both motions together.

Defendants primarily make two arguments in support of their motions. First, Defendants argue that the "Schnackenberg Property" was never owned by Morris Levy and, therefore, the reservation language included by reference in the deeds does not apply (Dkt. No. 196 at 9). Second, Defendants argue that the corrective deed was intended to remedy a minor error in the original deed, but that it does not have the legal effect of conveying the "Schnackenberg Property" from Defendants Levy and Levy Leverage LLC to Plaintiffs (*Id.* at 3-7; Dkt. No. 187 at 5).

In opposition, Plaintiffs argue that the corrective deed intended that the lands "considered Sunnyview Farm" be conveyed from Defendant Levy to Plaintiffs (Dkt. No. 198 at 7; Dkt. No.). Alternatively, Plaintiffs argue that Defendant Levy Leverage LLC is the alter ego of Defendant Levy (Dkt. No. 198 at 8).

As the Court indicated in its previous decision, the language which led the Court to conclude that there was a question of fact regarding title of the "Schnackenberg Property" was the following sentence in a deed description that is referenced in both the September 4, 2014 deed conveying "Sunnyview Farms" to Plaintiff and the February 9, 2015 corrective deed doing the same: "[t]ogether with all other lots, pieces and parcels of land owned by Morris Levy at the time of his death which presently constitute any part of the farm known as Sunnyview Farm" (Dkt. No. 166 at 9-10 [quoting Dkt. Nos. 69, 70]). The Court found a question of fact as to whether the description quoted above, as referenced in the February 9, 2015 corrective deed from Defendant Levy to Plaintiff Levy, included the "Schnackenberg Property."

Through their motions, Defendants have sought to clarify the chain of title for the "Schnackenberg Property." In doing so, it is now clear to the Court that the "Schnackenberg Property" was never owned by Morris Levy. Defendants have provided a title report which indicates that the "Schnackenberg Property" was conveyed to Adam R. Levy & Father Enterprises, Inc. in 1974, was conveyed to Levy Leverage LLC in 2006, and finally conveyed to Robert M. Greenberg in 2015 (Dkt. No. 216). Attached to the report are the deeds which the parties provided on the underlying motions for summary judgment.

The first deed indicates that the "Schnackenberg Property" was conveyed from Nathan McCalla to Adam R. Levy & Father Enterprises, Inc. in 1974 (*Id.* at 3). The property was not conveyed to Morris Levy. In 2006, the property was conveyed from Adam R. Levy & Father Enterprises, Inc. to Adam R. Levy & Father Enterprises, Inc. and Levy Leverage LLC¹ (*Id.* at 17). In 2014, the property was conveyed from Adam R. Levy & Father Enterprises, Inc. and Levy Leverage LLC to Levy Leverage LLC (*Id.* at 22). Finally, in November 2015, the same property was conveyed from Levy Leverage LLC to Defendant Greenberg (*Id.* at 26).

Thus, the property was never owned by Morris Levy. Instead, the property was owned by his company, Adam R. Levy & Father Enterprises, Inc. Thus, the property does not fall under the language quoted above, regardless of whether it was colloquially referred to as part of "Sunnyview

¹ In 1981, Adam R. Levy & Father Enterprises LCC conveyed a portion of the "Schnackenberg Property" to Neil and Victoria Smith (Dkt. No. 216 at 14-15). However, in subsequent conveyances of the "Schnackenberg Property," the grantors continued to use the language from the 1974 deed. The Court inquired of the parties how the 1981 conveyance impacts the parties' claims to ownership of the property as described in the 1974 deed on September 6, 2022. The parties filed responses detailing their positions soon thereafter (Dkt. Nos. 221, 228, 230). Defendants, through their responses and exhibits, demonstrated that the portion conveyed in 1981 was specifically excepted from the "Schnackenberg Property" as surveyed by Dan Russell (Dkt. No. 221 at 1-2, Dkt. No. 225, Dkt. Nos. 230-232). In reviewing the survey, which Plaintiffs did not dispute, it is clear that the portion of the property referenced in the 1981 deed was excluded from the "Schnackenberg Property" as it is currently stands.

Farms." Based on the proof before the Court, there are no questions of fact as to the chain of title for the "Schnackenberg Property." The evidence indicates that the "Schnackenberg Property" was conveyed from Plaintiff Adam R. Levy & Father Enterprises, Inc. to Defendant Levy (Dkt. No. 76). The February 9, 2015 corrective deed did not alter that conveyance. The property was then conveyed to Defendant Greenberg. As there are no questions of fact as to the chain of title to the "Schnackenberg Property," and for the reasons set forth above, Defendant Greenberg's motion for summary judgment as to his counterclaim to quiet title should have been granted.

In support of their second argument, Plaintiffs point to the fact that the parties have used the parties' names interchangeably with their companies throughout the litigation (Dkt. No. 198 at 8). However, Plaintiffs have not provided any evidence to support this claim and use of interchangeable references is not sufficient to pierce the corporate veil (*Austin Powder Co. v McCullough*, 216 AD2d 825, 826 [3rd Dept 1995]; *Damianos Realty Group, LLC v Fracchia*, 35 AD3d 344, 344 [2nd Dept 2006]). Plaintiffs also argue that they previously alleged that the corporate forms of the parties' respective companies were disregarded and that by Defendants' failure to controvert that allegation, they have admitted it (Dkt. No. 198 at 8). Regardless of whether Plaintiffs alleged that the parties' respective companies are alter egos of the parties, there has been no allegation as to the corporate form of Adam R. Levy & Father Enterprises, Inc. Thus, this argument also fails.

The Court finds that it previously misunderstood the chain of title as it relates to the "Schnackenberg Property." The boundaries lines of the property were decided in the Court's previous Decision and Order, but the Court mistakenly found a question of fact as to whom has title to the property. The Court finds that Defendants have met their burden on their motions to re-argue and the motions are granted. The following claims are dismissed: action to quiet title

against all Defendants, declaratory judgment against all Defendants, breach of the covenant against encumbrances against Defendant Zach Levy, ejectment against Defendant Greenberg, and trespass against Defendant Greenberg. Additionally, the Court mistakenly found questions of fact that precluded summary judgment as to Defendant Greenberg's cross-claims. As the Court now finds that there are no triable issues of material fact as to these issues, the following cross claims against Defendant Levy and Levy Leverage LLC are dismissed: breach of deed covenant, unjust enrichment, negligent misrepresentation, and mutual mistake.

B. Plaintiff's Motion

1. Motion to Re-Argue

Plaintiffs make various arguments in support of their motion to re-argue, but they all stem from the erroneous belief that the Court either (1) applied the incorrect legal standard to the motions or (2) that the Court misunderstood certain facts (*see* Dkt. No. 190). The Court is unpersuaded by both arguments.

Plaintiffs argue that the Court incorrectly granted summary judgment on their fraud claim and applied the wrong standard of review to their reformation of deeds claim (Dkt. No. 190 at 8-9). Plaintiffs first argue that issues of material misrepresentation are not subject to summary disposition and that the Court incorrectly applied a clear and convincing standards (*Id.* at 8). However, a review of the case law in this area makes clear that fraud claims may be dismissed on summary judgment (*see Melia v Riina*, 204 AD2d 955, 956-57 [3d Dept 1994]; *Oxford Health Plans (NY), Inc. v Biomed Pharms., Inc.*, 181 AD3d 808, 812 [2nd Dept 2020]).

Plaintiffs next argue that the Court improperly applied a clear and convincing standard to their claim for reformation of deeds, when the correct standard is whether there are triable issues of material fact (Dkt. No. 190 at ¶¶ 42-44). Plaintiffs do not address the clear case law cited by

the Court which applies a clear and convincing standard to a claim for reformation of deeds on a motion for summary judgment, nor do they provide any indication that such clear authority has been overruled (*see Lacoparra v Bellino*, 296 AD2d 480, 481 [2nd Dept 2002]).

Finally, Plaintiffs make arguments that the Court misunderstood or overlooked numerous issues of fact (*see generally* Dkt. No. 190). However, all of the evidence which Plaintiffs argue the Court overlooked constitute parol evidence. The Court did not overlook the evidence, but instead explicitly found that because the deeds in question were not ambiguous, consideration of parol evidence is impermissible (*see* Dkt. No. 166 at 8). Accordingly, Plaintiffs' motion to re-argue is denied.

2. Motion to Amend

"A party may amend [their] pleading . . . at any time by leave of court or by stipulation of all parties" (CPLR § 3025 [b]). Applications should be freely granted, unless the delay in seeking leave to amend would prejudice or surprise the non-moving party, and the decision as to whether to grant such leave is generally left to the sound discretion of the trial court (*NYAHS A Servs., Inc., Self-Insurance Trust v People Care Inc.*, 156 A.D.3d 99, 102 [3d Dept 2017]; *see Edenwald Contracting Co. v. New York*, 60 N.Y.2d 957, 959 [1983]). Where there has been considerable delay on the part of the movant in bringing their application to amend, such as waiting until the eve of trial, a court may find that the non-moving party would be significantly prejudiced by granting such application (*Haller v Lopane*, 305 A.D.2d 370, 372 [2d Dept 2003]). Additionally, "when a proposed amendment is devoid of merit or fails to state a cause of action, leave to amend should be denied" (*Corman v LaFountain*, 38 AD3d 706, 707 [2nd Dept 2007] [citations omitted]).

Plaintiffs' proposed amendments seek to incorporate the language referenced by the Court in its previously Decision and Order in which it found a question of fact as to whether the

"Schnackenberg Property" was conveyed to Plaintiffs based on language referenced in the deed which stated the following: "[t]ogether with all other lots, pieces and parcels of land owned by Morris Levy at the time of his death which presently constitute any part of the farm known as Sunnyview Farm" (*see* Dkt. No. 166 at 9-10). Defendants oppose the amendment (Dkt. Nos. 201, 240).

As the Court discussed above, the "Schnackenberg Property" was not owned by Morris Levy at this time of his death, rather it was owned by Adam R. Levy & Father Enterprises LLC. The chain of title to the "Schnackenberg Property" is clear and was not modified by the February 9, 2015 corrective deed. Thus, the proposed amendment would not entitle Plaintiffs to ownership of the disputed property. Therefore, the motion to amend is denied.²

Accordingly, the Court hereby

ORDERS that Defendant Zach Levy and Levy Leverage LLC's motion to reargue is **GRANTED**; and the Court further

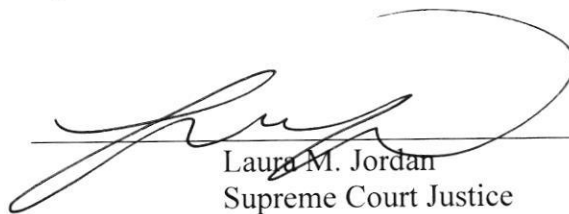
ORDERS that Defendant Greenberg's motion to reargue is **GRANTED**; and the Court further

ORDERS that Plaintiffs' motion to reargue and amend is **DENIED**; and the Court further

ORDERS that title of the "Schnackenberg Property" rests exclusively with Defendant Greenberg and he is entitled to sole possession of that property; and the Court further

ORDERS that the remainder of Plaintiffs' complaint is **DISMISSED**.

September 30, 2022
Hudson, New York



Laura M. Jordan
Supreme Court Justice

² Additionally, the Court notes that the motion to amend was made almost four years after the commencement of the action and years after the completion of discovery.

Papers Considered:

1. Docket Number 186 – Defendant Greenberg's Notice of Motion
2. Docket Number 187 – Defendant Greenberg's Memorandum of Law
3. Docket Number 188 – Affidavit of Service
4. Docket Number 189 – Plaintiffs' Notice of Motion
5. Docket Number 190 – Plaintiffs' Affidavit in Support of Motion
6. Docket Number 191 – Plaintiffs' Exhibit 1
7. Docket Number 192 – Plaintiff's Exhibit 2
8. Docket Number 193 – Defendant Levy and Levy Leverage LLC's Notice of Motion
9. Docket Number 194 – Defendant Levy and Levy Leverage LLC's Affidavit in Support
10. Docket Number 195 - Defendant Levy and Levy Leverage LLC's Exhibit A
11. Docket Number 196 - Defendant Levy and Levy Leverage LLC's Memorandum of Law
12. Docket Number 198 – Plaintiffs' Memorandum of Law in Opposition
13. Docket Number 199 – Plaintiffs' Affidavit in Opposition to Motion
14. Docket Number 200 – Plaintiff's Memorandum of Law in Opposition
15. Docket Number 201 – Defendant Greenberg's Memorandum of Law in Opposition
16. Docket Number 203 – Defendant Levy and Levy Leverage LLC's Affidavit in Opposition
17. Docket Number 204 - Defendant Levy and Levy Leverage LLC's Memorandum of Law in Opposition
18. Docket Number 205 – Plaintiffs' Affidavit in Reply
19. Docket Number 206 – Plaintiff's Exhibit 1
20. Docket Number 207 – Plaintiff's Memorandum of Law in Reply
21. Docket Number 211 – Defendant Greenberg's Memorandum of Law in Reply
22. Docket Number 214 – Defendant Greenberg's Memorandum of Law in Reply
23. Docket Number 215 – Letter to Court re Information Requested at Oral Argument
24. Docket Number 216 – Information Requested at Oral Argument
25. Docket Number 221 - Defendant Levy and Levy Leverage LLC's Letter re Additional Briefing
26. Docket Number 222 - Defendant Levy and Levy Leverage LLC's Exhibit A
27. Docket Number 223 - Defendant Levy and Levy Leverage LLC's Exhibit B
28. Docket Number 224 - Defendant Levy and Levy Leverage LLC's Exhibit C
29. Docket Number 225 - Defendant Levy and Levy Leverage LLC's Exhibit D
30. Docket Number 226 - Defendant Levy and Levy Leverage LLC's Exhibit E
31. Docket Number 228 – Plaintiff's Letter re Additional Briefing
32. Docket Number 229 – Plaintiff's Exhibit 1
33. Docket Number 230 – Defendant Greenberg's Letter re Additional Briefing
34. Docket Number 231 – Defendant Greenberg's Exhibit A
35. Docket Number 232 – Defendant Greenberg's Exhibit B