

**Drakes v Williams**

2023 NY Slip Op 31363(U)

April 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 502587/2018

Judge: Karen B. Rothenberg

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 35

\_\_\_\_\_  
DONNA DRAKES,

Plaintiff,

-against-

JAMAL WILLIAMS,

Defendant.

Index No. 502587/2018

DECISION & ORDER

\_\_\_\_\_  
Recitation, as required by CPLR §2219 [a], of the papers considered in the plaintiff’s order to show cause and non-party/proposed intervenor’s motion to intervene or be joined as a necessary party.

Papers	Numbered
Notice of Motion and Affidavit.....	229-252
Answering Affidavits.....	297
Replying Affidavits.....	298

Upon the foregoing cited papers and following oral argument, the Decision/Order on this motion is as follows:

In this action, *inter alia*, pursuant to RPAPL article 15 to quiet title to real property, the plaintiff moves by order to show cause [seq. no. 9] for an order (1) pursuant to RPL 329 and RPAPL 1501 cancelling a certain deed from defendant Jamal Williams [Williams] to JJPB 370 Lewis Avenue LLC [JJPB], recorded on April 8, 2022, for the real property located at 370 Lewis Avenue, Brooklyn [Subject Property], on the ground that the deed was procured by fraud or other misconduct, and (2) for sanctions and costs against defendant and/or his counsel. Non-party/proposed intervenor JJPB moves [seq. no. 10] for an order (1) pursuant to CPLR 1012(a)(3) or CPLR 1013 for leave to intervene in this proceeding, amending the caption to add JJPB as a defendant, deeming its proposed answer with counterclaims and cross-claims served or, alternatively (2) pursuant to RPAPL 1511(2) and CPLR 1001(a), joining JJPB as a party defendant, and directing that plaintiff join non-party Eric Goldfine, as Trustee of the Eric Goldfine Self Employed Retirement Plan and Trust [Goldfine] as a party defendant, and amending the caption accordingly.

Plaintiff claims that she is the owner of the Subject Property, having purchased it from its prior owner, Renee Swift, on January 27, 2012. According to plaintiff, she and Williams, a close friend of the family, entered into an agreement to place Williams’s name on the deed for convenience as a “straw buyer”, due to her poor credit and inability to

obtain the necessary financing to purchase the Subject Property. Plaintiff contends that it was the intention of the parties that Williams would later transfer the deed into plaintiff's name after she obtained mortgage financing. That Williams never paid any consideration for the Subject Property and that to date, plaintiff has been responsible for all payments relating to the Subject Property including upkeep, taxes, insurance, mortgage payments, and has expended money in making improvements at the premises. Plaintiff claims that although she demanded that Williams transfer the deed into her name, he refused.

Plaintiff commenced this action against Williams seeking, inter alia, to quiet title by e-filing a summons and complaint on February 7, 2018. In April 2018, Williams moved by order to show cause for an order (a) requiring plaintiff to provide Williams with copies of the keys for the Subject Property's door locks that plaintiff changed; (b) enjoining Plaintiff from changing any more door locks; and (c) enjoining Plaintiff from entering into any lease or occupancy agreements or collecting any rent payments for the Subject Property. The order to show cause was resolved pursuant to a so-ordered stipulation in which the parties agreed, among other things, that plaintiff would provide Williams' counsel copies of all keys to the door locks she recently changed; provide Williams with a monthly accounting of all rents she collects, and, thereafter, pay the monthly mortgage payment for the Subject Property and provide Williams with proof of payment. The stipulation also provided that the "the status quo shall otherwise be maintained."

On March 15, 2022, JJPB purchased the Subject Property from Williams, and a deed was recorded on April 8, 2022. JJPB subsequently obtained a mortgage in the amount of \$499,999.00 from Goldfine, secured by the Subject Property. Plaintiff brings the instant order to show cause to cancel the deed contending that Williams failed to comply with the May 30, 2018 stipulation. Specifically, plaintiff argues that Williams failed to comply with that portion of the stipulation wherein the parties agreed to "maintain the status quo", by transferring the deed to the Subject Property to JJPB.

As a threshold matter, before plaintiff may obtain any relief affecting title to the subject property, JJPB and Goldfine must be joined as necessary parties. RPAPL 1511(2) provides that, in an action such as this, "[w]here it appears to the court that a person not a party to the action may have an estate or interest in the real property which may in any manner be affected by the judgment, the court, upon application ... of any party to the action, or on its own motion, may direct that such person be made a party." Necessary parties are persons "who might be inequitably affected by a judgment in the action" and must be made plaintiffs or defendants (see *Censi v. Cove Landings, Inc.*, 65 AD3d 1066, 1067, [internal quotation marks omitted]; see CPLR 1001[a]). CPLR 1001(b) requires the

court to order such persons summoned, where they are subject to the court's jurisdiction.

JJPB makes a sufficient initial showing that it is a bona fide purchaser for value of the Subject Property who is a necessary party to this action. Pursuant to Real Property Law § 266, a bona fide purchaser for value is protected in its title unless it had previous notice of an alleged fraud (*see Irwin v. Regal 22 Corp.*, 175 AD3d 671, 671–672 [2d Dept 2019]). To establish that it is a bona fide purchaser for value, a party has “the burden of proving that [it] purchased the property for valuable consideration and that [it] did not purchase with knowledge of facts that would lead a reasonably prudent purchaser to make inquiry” (*Cencore Properties, Inc. v Spitzer*, 189 AD3d 983 [2d Dept 2020], *quoting Berger v. Polizzotto*, 148 AD2d 651, 651–652 [2d Dept 1989]). Here, JJPB submits the affidavit of its’ sole member, Jude Bernard, who asserts that JJPB purchased the Subject Property from Williams for \$650,000 in an arm’s length transaction, without actual notice of plaintiff’s alleged arrangement with Williams to acquire the Subject Property for her as an accommodation due to her inability to get funding. JJPB also claims that it did not have constructive notice of any claims to the Subject Property as the Lis Pendens search performed by its title company reflects that no notice of pendency was indexed against the subject property. JJPB also sufficiently demonstrates that Goldfine who has a recorded mortgage on the Subject Property in the amount of \$499,999 is also a necessary party herein (*see Menorah Home and Hosp. for Aged and Infirm v Jelks*, 61 AD3d 648 [2d Dept 2009]).

Therefore, because JJPB, as an alleged bona fide purchase for value of the Subject Property, and Goldfine, the mortgagee of the Subject Property, could be adversely affected by the outcome in this proceeding they must be joined as party defendants (*see Sorbello v Birchez Assocs, LLC*, 61 AD3d 1225 [3d Dept 2009]; RPAPL 1511[2]; CPLR 1001[a]). In light thereof, the plaintiff’s order to show cause for an order cancelling the deed recorded on April 8, 2022 is deemed premature. Discovery is necessary to fully develop the record in this matter.

Finally, it is noted that despite the clerk's marking of this action as disposed on March 6, 2019, the matter was never dismissed or discontinued by court order or stipulation, and remains pending (*see Pena v Deutsche Bank National Trust Company*, 192 AD3d 697 [2d Dept 2021]). Therefore, a motion to restore is not required (*see Lopez v Imperial Delivery Service, Inc.*, 282 AD2d 190 [2d Dept 2001]).

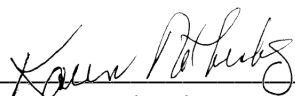
In conclusion, JJPB's motion is granted to the extent that plaintiff is directed to join JJPB and Goldfine as party defendants in this proceeding. The plaintiff’s order to show cause is denied as premature.

The Clerk of the Court is directed to restore this matter to active status.

This constitutes the Order and Decision of the court.

Dated: April 20, 2023

ENTER,

  
\_\_\_\_\_  
Hon. Karen B. Rothenberg, J. S. C.