

Metropolitan Props., Inc. v WWK 140 Bay Ridge, LLC
2023 NY Slip Op 32053(U)
June 20, 2023
Supreme Court, Kings County
Docket Number: Index No. 513538/2020
Judge: Francois A. Rivera
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At an IAS Term, Part 52 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 20th day of June 2023

HONORABLE FRANCOIS A. RIVERA
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METROPOLITAN PROPERTIES, INC.

Plaintiff,

-against-

WWK 140 BAY RIDGE, LLC, CHRISTOPHER J. ALVARADO, PC AND CHRISTOPHER J. ALAVARADO.

Defendants.
-----X

DECISION & ORDER

Index No.: 513538/2020

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on September 27, 2022, under motion sequence four, by plaintiff Metropolitan Properties, Inc. (hereinafter plaintiff) for an order: (1) amending the pleadings from the above caption to 140 BRP, LLC., as plaintiff against William W. Koepfel, Christopher J. Alvarado and Christopher J. Alvarado, P.C., as defendants; (2) directing the defendants, William W. Koepfel and Christopher J. Alvarado to deposit pursuant to CPLR 2601 the sum of \$40,850.00 to secure the removal of all violations on record as of the date of closing, September 30, 2021; (3) for the entry of judgment for the plaintiff and against the defendant William W. Koepfel in the amount of \$372,170.19; (4) for entry of judgment against defendant Christopher J. Alvarado, in the sum of \$3,600.00; and (5) for such other and further relief as to the court may seem just and proper, plus attorney fees and disbursements. This motion is opposed by defendants WWK 140 Bay Ridge, LLC, Christopher J. Alvarado, P.C., and Christopher J. Alvarado.

- Notice of Motion
- Affidavit in Support
 - Exhibits 1-10
- Affidavit Of Christian Schou in Support
- Affidavit Of Selma Lalicic in Support
- Affidavit Of Ernest Saasto in Support

- Affirmation of Christopher J. Alvarado in Opposition
 - Exhibit A-B
- Affidavit of William W. Koepfel in Opposition
- Affidavit of Ernest Saasto in Reply

BACKGROUND

On July 28, 2020, plaintiff commenced the instant action by filing a summons, complaint, and notice of pendency with the King County Clerk's office. The complaint asserted seven causes of action. The first three causes of action were asserted against WWK 140 Bay Ridge, LLC (hereinafter WWK) for either rescission or reformation of a contract, or for specific performance or for breach of contract. The fourth and fifth causes of action were asserted against Christopher J. Alvarado, P.C., and Christopher J. Alvarado for breach of contract and negligence. The sixth cause of action was asserted against all the defendants for conversion through the wrongful failure to return a down payment to the plaintiff.

The complaint alleged the following salient facts. WWK, as seller, entered a contract with the plaintiff, as buyer, to purchase certain real property in Brooklyn, New York (hereinafter the subject property) for \$12,100,000.00.

The buyer could not obtain financing in accordance with the contract terms based on a mutual mistake of the parties as to loan to value requirements of potential lending banks. For this among other reasons, plaintiff seeks a rescission of the contract. Plaintiff also seeks specific performance of the contract. Plaintiff has also alleged that Christopher J. Alvarado, P.C., and Christopher J. Alvarado held the down payment of the contract in the amount of one million two hundred thousand dollars (\$1,200,000.00) as

escrow agent of the contract and in violation of the obligation under the contract. The withholding of the down payment and releasing it to the seller over the plaintiff's objection violated its obligation as a fiduciary and was negligent. Plaintiff further alleges that the release of the down payment to the seller amount to a conversion of those funds by all the defendants.

On August 25, 2020, defendants WWK, Christopher J. Alvarado, P.C. and Christopher J. Alvarado interposed and filed a joint answer to the complaint.

On September 16, 2020, WWK, Christopher J. Alvarado, P.C. and Christopher J. Alvarado interposed and filed a joint answer with counterclaim to the complaint.

On September 9, 2020, plaintiff interposed and filed a reply to the defendants' counterclaim.

On February 18, 2021, the parties submitted a stipulation of settlement of the instant action and requested that it be so ordered. On February 23, 2021, the Court so-ordered the stipulation of settlement which was filed with the Kings County Clerk's office on February 26, 2021.

The stipulation of settlement provided, inter alia, that the contract had been terminated and had no force and effect. The parties agreed that they no longer had any rights or claims thereunder as the contract has been superseded by the Contract of Sale between plaintiff and seller (hereinafter the New Contract), the terms of which are incorporated herein by reference. It further provided that the Court was to retain continuing jurisdiction over this action for the purpose of enforcing only the stipulation of settlement and the New Contract. This Stipulation further provided that it could not be

modified or amended except by an agreement in writing signed by the parties. If plaintiff or seller claims that the other has breached the New Contract, the allegedly aggrieved party shall e-file a motion, by notice of motion, in this action alleging the breach and the relief requested.

The New Contract annexed as Exhibit 2 is dated February 16, 2021, and is signed by William W. Koepfel, as sole member of WWK, as seller and by Ernest Saasto, as president of Metropolitan Properties, Inc. as purchaser.

LAW AND APPLICATION

Stipulations of settlement are favored by the courts and not lightly cast aside (*Matter of Greenberg*, 215 AD3d 967 [2d Dept 2023]). The effect of the parties' stipulation of settlement are, among other things, the termination of all the causes of action in the complaint as asserted against defendants WWK, Christopher J. Alvarado, P.C. and Christopher J. Alvarado and the three pending motions under sequence number one, two and three were deemed moot.

Addressing the instant motion in the order presented, the plaintiff first seeks to amend the above caption to "140 BRP, LLC., as plaintiff against William W. Koepfel, Christopher J. Alvarado and Christopher J. Alvarado, P.C., as defendants.

There is no dispute that William W. Koepfel (hereinafter Koepfel) has not been served with the summons and complaint. Plaintiff has not argued that Koepfel has consented to the Court's personal jurisdiction over him. He is, therefore, not a party and the Court has no personal jurisdiction over him.

A party may move to amend a complaint pursuant to CPLR 3025. However, the parties' stipulation of settlement provides that the stipulation may not be modified or amended except by an agreement in writing signed by the parties. The parties did not agree in writing to amend the caption as requested by the plaintiff. In accordance with the parties' stipulation of settlement, the motion to amend the caption is denied.

The plaintiff seeks an order directing nonparty Koeppel and defendant Christopher J. Alvarado to deposit pursuant to CPLR 2601 the sum of \$40,850.00 to secure the removal of all violations on record as of the date of closing, September 30, 2021. This branch of the motion in effect seeks a mandatory injunction.

CPLR 6301 provides in pertinent part as follows.

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

The party seeking a preliminary injunction must do more than show that the underlying action falls within one of the categories specified in CPLR 6301. Under longstanding judicial precedent, the movant in most cases must, in addition, demonstrate three things: (1) a likelihood of success on the merits of the action; (2) the danger of irreparable injury in the absence of preliminary injunctive relief; and (3) a balance of equities in favor of the moving party (*see, e.g., Nobu Next Door, LLC v Fine Arts*

Housing, Inc., 4 NY3d 839, 840 [2005]). In applying these requirements, the court must “weigh a variety of factors,” and the matter is committed to the court's sound discretion (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]).

Inasmuch as Koepfel is not a party to the action and the Court lacks personal jurisdiction over him, the plaintiff cannot demonstrate the likelihood of success on the merits of the underlying claim as against him. Accordingly, plaintiff's motion for an order directing Koepfel and Christopher J. Alvarado to deposit the sum of \$40,850.00 pursuant to CPLR 2601 is denied.

The plaintiff next seeks an order directing the entry of judgment for the plaintiff and against nonparty Koepfel in the amount of \$372,170.19. This branch of the motion is denied because the Court lacks personal jurisdiction over Koepfel.

The plaintiff also seeks an order directing entry of judgment against the defendant Christopher J. Alvarado in the sum of \$3,600.00. The parties' stipulation of settlement provided that the Court retains continuing jurisdiction over the action for the purpose of enforcing only the stipulation of settlement and the New Contract. The New Contract was signed by WWK, as the seller and Metropolitan Properties Inc. as the purchaser. Christopher J. Alvarado is not a signatory to the New Contract. The plaintiff did not point to any provision of the New Contract or the stipulation of settlement which would demonstrate entitlement to the relief requested as against Christopher J. Alvarado. This branch of the plaintiff's motion is therefore denied.

CONCLUSION

The motion by plaintiff Metropolitan Properties, Inc. for an order:

(1) amending the pleadings from the above caption to 140 BRP, LLC., as plaintiff
against William W. Koeppe, Christopher J. Alvarado and Christopher J. Alvarado, P.C.,
as defendants;

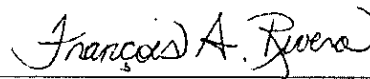
(2) directing the defendants William W. Koeppe and Christopher J. Alvarado to
deposit pursuant to CPLR 2601 the sum of \$40,850.00 to secure the removal of all
violations on record as of the date of closing, September 30, 2021;

(3) for the entry of judgment for the plaintiff and against the defendant William
W. Koeppe in the amount of \$372,170.19;

(4) for entry of judgment against defendant Christopher J. Alvarado in the sum of
\$3,600.00, is denied in its entirety.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.