

209 Barbey St. Trust v Scotland

2023 NY Slip Op 32170(U)

June 29, 2023

Supreme Court, Kings County

Docket Number: Index No. 517949/2019

Judge: Leon Ruchelsman

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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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209 BARBEY STREET TRUST,
Plaintiff, Decision and order

- against - Index No. 517949/2019

IZETTA ANNEKA SCOTLAND and
209 BARBEY STREET LLC,
Defendants, June 29, 2023

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #3 & #4

The defendant has moved pursuant to CPLR §3025 seeking to file an amended answer. The plaintiff has moved pursuant to CPLR §6513 seeking to extend the Notice of Pendency. The motions have been opposed respectively. Papers were submitted by all parties and after reviewing all the arguments, this court now makes the following determination.

According to the amended complaint, on June 18, 2020 non-party and owner of property located at 209 Barbey Street in Kings County conveyed title to the property to defendant Izetta Scotland. On June 25, 2019 Scotland entered into a contract to sell the property to the plaintiff. The amended complaint alleges that Scotland refused to close title precipitating this action. The amended complaint asserts causes of action for specific performance, quiet title and intentional interference with a contract. The defendant 209 Barbey Street LLC has now moved seeking to serve an answer to assert defenses that it purchased the subject property on September 27, 2019 prior to the imposition of any notice of pendency or any knowledge of a prior

contract with the plaintiff and thus has the right to maintain the property. Moreover, the proposed answer asserts one counterclaim, namely a determination they are the lawful owner of the property. Further, as noted, the plaintiff has moved seeking to extend the notice of pendency.

Conclusions of Law

It is well settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38 AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

The opposition to the filing of the answer is based on the fact the defendant maintains no defense since the notice of pendency was filed prior to the defendant's contract. Indeed,

while a notice of pendency appears to have been filed on August 14, 2019 (see, NYSCEF Doc. No. 72) the defendant may be given an opportunity to seek to assert a defense in efforts to support its counterclaim. It should be noted that the title report submitted which fails to note any notice of pendency is dated June 25, 2019 (see, Full Title Search [NYSCEF Doc. No. 80]) and does not really support defendant's position at all. Further, questions of fact are raised by the title insurance report (see, NYSCEF Doc. No. 79) which notes two notices of pendency and whether either of those was filed by the plaintiff foreclosing any argument the defendant had no notice of the notice of pendency.

Therefore, at this juncture the motion seeking to allow the service of the answer is granted.

Turning to the motion seeking to extend the notice of pendency, it is well settled that a Notice of Pendency may be extended upon a showing of good cause (Leven Betts, Ltd., v. Mack, 102 AD3d 840, 958 NYS2d 461 [2d Dept., 2013]). In addition, the motion seeking the extension must be made prior to its expiration (In Re Sakow, 97 NY2d 436, 741 NYS2d 175 [2002]). It is further well settled that continuing litigation as well as extensive discovery is good cause for an extension (see, Schulman Family Enterprises v. Schulman, 33 Misc3d 1234(A), 943 NYS2d 794 [Supreme Court Suffolk County 2011]).


Executive Order No. 202.8 and subsequent orders extending

that order tolled matters regarding any statute, local ordinance, order, rule or regulation (see, 9 NYCRR 8.202.8, see, also, Prestige Deli and Grill Corp., 213 AD3d 962, 184 NYS3d 154 [2d Dept., 2023]). Thus, the time in which to extend the notice of pendency was tolled and consequently the motion seeking to extend the filing of the notice of pendency is granted.

So ordered.

ENTER:

DATED: June 29, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC