

Bikes by Olga LLC v People

2023 NY Slip Op 32332(U)

July 10, 2023

Supreme Court, Kings County

Docket Number: Index No. 506816/21

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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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,

July 10, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #5 & #6

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated October 24, 2022 denying summary judgement on the cause of action for trespass. The defendant City of New York has moved seeking to amend its answer to assert a defense to the trespass cause of action. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, 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 sought a determination the City committed trespass by maintaining commercial trucks and other vehicles on the property. The court denied that request holding that an easement recorded in a deed dated July 12, 1983 permits the City to utilize the property for its maintenance of the Williamsburg Bridge.

The plaintiff has now moved seeking to reargue that determination and asserts that a judgement entered by the court on March 15, 2022 following the court's summary judgement determination regarding ownership, stated "that Plaintiff has exclusive rights to the possession, use, and enjoyment of the Property to the exclusion of all other entities or individuals" (see, Judgement, Page 4 [NYSCEF Doc. No. 129]). Thus, the plaintiff argues that judgement effectively extinguished the easement which means the City had no right to place any trucks on the property and the motion seeking judgement on the trespass cause of action should have been granted. The City opposes this motion and moves seeking to amend the answer to assert defenses

related to the existence of the easement.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

It is well settled that an easement is not a personal right of a landowner, rather, "it is inseparable from the land and a grant of the land carries with it the grant of the easement" (see, Will v. Gates, 89 NY2d 778, 658 NYS2d 900 [1997]). Thus, once an easement is created it can only be extinguished by abandonment, conveyance, condemnation or adverse possession (see, Gerbig v. Zampano, 7 NY2d 327, 197 NYS2d 161 [1960]). Therefore, "the grant of such an easement need not include language expressly describing the easement as 'permanent' because an easement appurtenant, once created, necessarily runs with the land" (see, Webster v. Ragona, 7 AD3d 850, 776 NYS2d 347 [2d Dept., 2004]). Consequently, once an easement is created "an already existing easement appurtenant passes to the grantee of the dominant estate as an 'appurtenance' even in the absence of any express reference" (Koepp v. Holland, 688 F.Supp2d 65 [N.D.N.Y. 2010]).

In this case the court granted summary judgement regarding the first two causes of action. The first cause of action sought a declaratory judgement "determining, and declaring that the Plaintiff holds title to the Property and that Plaintiff has exclusive rights to the possession, use, and enjoyment of the Property to the exclusion of all other entities or individuals" (see, Complaint, ¶52 [NYSCEF Doc. No. 2]). The second cause of action sought a declaratory judgement pursuant to RPAPL Article 15 "determining, and declaring that the Plaintiff holds title to the Property and that Plaintiff has exclusive rights to the possession, use, and enjoyment of the Property to the exclusion of all other entities or individuals" (id., at ¶67). Those causes of action only involved ownership of the property in the larger dispute centered around the State's claims of ownership. Of course, the court granted summary judgement concluding that in fact the plaintiff owned the property. It is difficult to imagine that decision, granting ownership, somehow extinguished an easement that is unrelated to ownership. This is particularly true considering the complaint does not mention the easement at all. The language of the judgement which parallels language of the complaint which declares the plaintiff the owner of the property to the exclusion of all others cannot possibly refer to the easement, which as noted, is unrelated to ownership. Rather, the judgement merely confirmed the earlier summary judgement.

decision that the plaintiff is the rightful owner of the property and no party or individual or entity maintains any ownership interest in the property. Indeed, the court does not maintain the ability to simply extinguish the easement by granting summary judgement on claims of ownership. The judgement's exclusion of express language retaining the easement does not mean the easement has been dissolved. Therefore, based on the foregoing, the motion seeking reargument is denied.

Turning to the defendant's motion seeking to amend the answer, 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 plaintiff opposes the motion arguing the easement


defense was waived by failing to assert it in prior motion practice regarding ownership. However, as noted, the issue of the easement was never raised by any party. Thus, it is difficult to waive a defense that never required to be raised in the first place. The prior summary judgment motion concerned ownership of the property. The plaintiff argues that "the City charted its own course in this litigation to pursue solely the theory of the State owning the Property to the intentional exclusion of the easement theory and cannot undo that decision now" (see, Affirmation in Opposition, ¶25 [NYSCEF Doc. No. 189]). However, pursuing an 'easement theory' when the issues of ownership were at stake would not have advanced the defendant's position in any meaningful way. The existence of an easement simply does not confer ownership. Thus, clearly, no abandonment of the easement issue can be imputed to the defendant's foreclosing their right to assert the easement defense at this time.

Therefore, the motion seeking to amend the answer to include a defense based on the easement is hereby granted.

So ordered.

ENTER:

DATED: July 10, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC