

Eide v Marsh

2023 NY Slip Op 33458(U)

October 5, 2023

Supreme Court, New York County

Docket Number: Index No. 151263/2023

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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ROBERT J. EIDE, GWEN S. EIDE
Plaintiff,

- v -

PETER MARSH,
Defendant.

INDEX NO. 151263/2023
MOTION DATE 06/28/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of the alleged breach of a real estate sales contract. Defendant moves for summary judgment, as well as to strike plaintiffs' affirmative defenses; plaintiffs oppose and cross-move for summary judgment. For the reasons set forth below, defendant's motion is denied, and plaintiff's motion is granted.

Plaintiffs contracted with defendant to purchase the real property located at 332 Parsonage Lane, Sagaponack, New York 11962. Pursuant to the contract, plaintiffs deposited \$1,450,000.00 into an escrow account, as a down payment. Prior to the closing date, which plaintiffs contend was unilaterally chosen by defendant, plaintiffs discovered an issue, upon the review of the title report, and informed defendant of the alleged breach.

Specifically, the deed contains an address of 322 Parsonage Lane, Sagaponack, New York 11962, not 332 Parsonage Lane, as provided for in the contract.

Plaintiffs commenced the instant action alleging that defendant breached the contract based on its alleged failure to produce a marketable title. Plaintiffs seek the return of their down payment, costs and attorneys' fees.

Defendant now moves for summary judgment contending that the title is in fact marketable, and plaintiffs breached the contract. Specifically, defendant contends that the address of 322 Parsonage Lane does not exist and that notwithstanding the address in the deed, the metes and bounds are identical in the recorded conveyances, as well as the same tax identification. Defendant contends that plaintiffs breached the contract by failing to give it an opportunity to cure the alleged defect, notwithstanding its position that it does not need to cure. As to plaintiffs' affirmative defenses, defendant contends that the defenses should be stricken as they contain no factual support.

Plaintiffs oppose defendant's motion and cross-move for summary judgment contending that absent parole evidence, the defendant's voluminous evidentiary submission, the title is unclear and therefore not marketable. Specifically, plaintiffs allege the breach of contract is defendant's inability to produce the deed for the property address described in the contract. As to its affirmative defenses, plaintiffs argue that the Court should grant leave to replead, however do not provide the Court with proposed amendments or the factual basis to support its affirmative defenses.

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University*

Medical Center, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

“The law assures to a buyer a title free from reasonable doubt, but not from every doubt” *Regan v Laze*, 40 NY2d 475, 482 [1976]. The Court of Appeals has held that the test of marketability of title is "whether there is an objection thereto such as would interfere with a sale or with the market value of the property" (*Voorheesville Rod & Gun Club v E. W. Tompkins Co.*, 82 NY2d 564, 571 [1993] quoting *Regan*). Moreover, “[e]xcept for extraordinary instances in which it is very clear that the purchaser can suffer no harm from a defect or incumbrance, he will not be compelled to take title when there is a defect in the record title which can be cured only by a resort to parol evidence or when there is an apparent incumbrance which can be removed or defeated only by such evidence” (*Regan* at 482).

The ultimate issue is that the parties entered into a contract for the address of 332 Parsonage Lane, the deed contains the address of 322 Parsonage Lane. While defendant contends that the documents all contain the same metes and bounds, as well as tax identification number, this information cannot be confirmed without parol evidence. Here, the Court finds that plaintiffs have established that without the reference to parol evidence the state of the title is unclear and consistent with the caselaw plaintiffs have established that they should not be compelled to perform under the contract. *See Simis v McElroy*, 12 AD 434, 436 [1st Dept 1896].

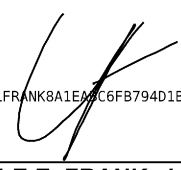
Any relief sought not expressly addressed herein is denied. Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is denied in its entirety and plaintiffs’ cross-motion for summary judgment is granted; and it is hereby

ADJUDGED AND DECLARED that Defendant defaulted in her obligations under the Contract to provide marketable title; and it is further

ADJUDGED AND DECLARED that the Contract is canceled because of defendant-seller's default; and it is further

ADJUDGED AND DECLARED that the escrow agent is directed to release to the plaintiffs the down payment of \$1,450,000.00.

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LYLE E. FRANK, J.S.C.

10/5/2023

DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	<input type="checkbox"/> REFERENCE