

2875 W. 8th St. Assoc., L.P. v Bonomo

2023 NY Slip Op 33657(U)

October 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 520683/2019

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 8

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 2875 WEST 8TH STREET ASSOCIATES, L.P.,

Plaintiff,

Decision and order

- against -

Index No. 520683/2019

(1) Tico Bonomo, individually, Victor A. Bonomo and Zephra Bonomo, also known as Sophie Bonomo, as Trustees under Amended and Restated Revocable Trust Agreement made the 17th day of May, 1988 between Victor A. Bonomo, as Granter and Victor A. Bonomo and Zephra Bonomo, also known as Sophie Bonomo, as Trustees, Victor A. Bonomo and Zephra Bonomo, also known as Sophie Bonomo, as Trustees under Amended and Restated Revocable Trust Agreement made the 17th day of May, 1988 between Zephra Bonomo, also known as Sophie Bonomo, as Granter, and Zephra Bonomo, also known as Sophie Bonomo, and Victor A. Bonomo, as Trustees, and Tico Bonomo and Anna Bonomo, as Trustees under Trust Agreement dated the 17th day of May, 1988 between Victor A. Bonomo and Zephra Bonomo, also known as Sophie Bonomo, as Granters, and Tico Bonomo and Anna Bonomo, as Trustees,

(2) BONOMO GRANDCHILDREN'S TRUST, and

(3) TIROB REAL ESTATE PARTNERS, LTD.,

Defendant,

October 17, 2023

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 PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4

The plaintiff has moved seeking summary judgement pursuant to CPLR §3212 arguing there are no questions of fact that Tirob Real Estate Partners Ltd., is not the landlord and may not maintain any defaults against the plaintiff. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

As recorded in a prior decision, on August 28, 1992 the plaintiff tenant entered into a lease with the Bonomo Trust

concerning the rental of space located at 2875 West Eighth Street in Kings County. A notice to cure was served on March 3, 2022 and again on April 7, 2022 alleging one default, namely the failure to maintain adequate insurance pursuant to the terms of the lease. The notice to cure was served by defendant Tirob Real Estate Partners Ltd., [hereinafter 'Tirob'] the successor-landlord of the property. The plaintiff has now moved arguing that entity is not the landlord of the property and cannot serve any defaults against the plaintiff. As noted, the motion is opposed.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

As recorded in the prior decision and recounted again in full, according to ACRIS on April 24, 1973 an entity called Tirob Real Estate Company Inc., recorded a deed demonstrating ownership of the property located at 2875 West 8th Street. On December 19,

1985 Tirob Real Estate Company Inc., conveyed its interest in the property to the Bonomo Trust and Tirob Real Estate Company Inc., was dissolved in April 1986. On February 22, 1991 and August 27, 1992 further transfers were made among various Bonomo family members. On September 28, 2015 Tirob Real Estate Company Inc., conveyed the deed to the property to Tirob. In the prior decision it was noted that Tirob failed to explain how it obtained a deed from a company that had been dissolved for close to thirty years.

In this action, Tirob has submitted affidavits from various attorneys who argue in favor of Tirob's legal possession of the deed through a valid chain of title. Thus, James Khani has submitted an affidavit and explains that he was counsel to various defendants and was involved with many of the deed transfers noted above. He asserts that during 2015 "after initially reviewing the Property's transfers and title myself, I engaged Intercounty Abstract Corp. of Floral Park, New York, to review the chain of title for possible title issues, and they concluded that the December 16, 1985 deed did not effectively transfer title to the Property and that Tirob Real Estate Company, Inc. was thus still its fee owner as of August 2015" (see, Affirmation of James Khani, ¶12 [NYSCEF Doc. No. 67]). To remedy that situation "by deed dated September 1, 2015 (Exhibit J), Tirob Real Estate Company, Inc. transferred the 100% fee

interest that it had owned to defendant Tirob" (see, Affirmation of James Khani, ¶14 [NYSCEF Doc. No. 67]). Mr. Khani acknowledges that Tirob Real Estate Company, Inc. had been dissolved three decades earlier but insists that the transfer was "simply a corrective action to fix the defects in the December 16, 1985 transfer (Exhibit E) which occurred months before the dissolution. However, even if it was considered to be a later transfer it would be within permissible winding down activities" (see, Affirmation of James Khani, ¶15 [NYSCEF Doc. No. 67]).

Business Corporation Law §1005(a)(1) states that after "dissolution the corporation shall carry on no business except for the purpose of winding up its affairs" (id). Thus, other than for the express purpose of winding up affairs, the corporation could not engage in any action even "corrective action" to fix earlier defects in title. Further, although there is no time frame concerning the length of time a corporation can be winding up its affairs, courts have imposed a reasonable time (see, Lance International Inc., v. First National City Bank, 86 AD3d 479, 927 NYS2d 56 [1st Dept., 2011]). Thus, "the winding up of affairs cannot continue indefinitely" (id). In this case it cannot seriously be argued that Tirob Real Estate Company, Inc. was still winding up its affairs thirty years after dissolution. This is especially true since there is no evidence presented at all that Tirob Real Estate Company, Inc. was winding up its

affairs in other areas.

Moreover, the affidavit of Melvin Jacobowitz, another attorney who advised the parties in 2015 merely echoes the same facts and explanation provided by Mr. Khani. Thus, rather than providing any legal basis to conclude Tirob Real Estate Company, Inc. had the authority to transfer the deed to Tirob in 2015 the defendants effectively concede that Tirob Real Estate Company, Inc. did not possess title in 2015 and could not have transferred the deed to Tirob.

Tirob presents two other arguments in support of its ownership of the property. Both arguments are based upon alleged admissions on the part of the plaintiff that Tirob is the owner. However, as explained in the prior decision nothing the tenant could say or do can infuse Tirob with legal ownership of the property. Thus, first, they assert that the plaintiff admitted Tirob is the owner by paying rent to Tirob for many years. However, any payments of rent to Tirob or any other entity cannot be a legal "admission" concerning ownership. Ownership is only defined by legal documents supporting such ownership, not by rental payments made by a tenant. Next, Tirob argues that in a personal injury lawsuit entitled *Giarraffa v. Tirob Real Estate Partners Ltd., and 2875 West Eight Street Associates L.P.*, Index Number 501131/2019 the plaintiff admitted Tirob was the owner and those "judicial admissions" are conclusive of the issue of

Tirob's ownership.

A judicial admission is any act or statement made during the course of a judicial proceeding which essentially concedes a disputed fact (see, Jones v. Morehead, 68 US 155, 17 L.Ed 662, 1 Wall 155 [1863]). Thus, a statement in a pleading admitting ownership of a vehicle due to the fact such name appeared on a certificate of title is an admission of such ownership and "conclusive" evidence of that fact (Zegarowicz v. Ripatti, 77 AD3d 650, 911 NYS2d 69 [2d Dept., 2010]). This was true because a certificate of title is prima facie evidence of vehicle ownership. Therefore, a formal judicial admission is a substitute for evidence and absolves a party with the need to present evidence that is the substance of the admission (see, State Farm Mutual Auto Insurance Company v. Worthington, 405 F.2d 683 [8th Cir. 1968]). To be considered a formal judicial admission the statement or act must be clear, unequivocal and deliberate (Rahman v. Smith, 40 AD3d 613, 835 NYS2d 404 [2d Dept., 2007]).

There can be no judicial admission by the plaintiff that Tirob owns the property since that admission cannot take the place of evidentiary proof which wholly contradicts the content of the admission. Indeed, taken to its logical conclusion any party or counsel could make statements regarding ownership of property which if supported as admissions would obviate the need

for deeds or contracts or other documents of ownership, an untenable position. Thus, the plaintiff did not make any formal and binding judicial admissions.

Therefore, based on the foregoing, Tirob has failed to raise any question of fact it is the owner of the property. Consequently, the motion of the plaintiff seeking summary judgement on the first cause of action that Tirob is not the title owner of the property and had no standing to issue any notices of default to the plaintiff is hereby granted.

So ordered.

ENTER:

DATED: October 17, 2023
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

