

209 Barbey St. Trust v Scotland

2023 NY Slip Op 34203(U)

November 28, 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,

November 28, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #5

The plaintiff has moved seeking to dismiss the second, third, fourth, fifth, sixth, seventh, ninth, tenth and eleventh affirmative defenses pursuant to CPLR §3211. The defendants have opposed the motion. Papers were submitted by all parties and after reviewing all the arguments, this court now makes the following determination.

As recorded in a prior order, according to the amended complaint, on June 25, 2019 defendant Izetta Scotland entered into a contract to sell property located at 209 Barbey Street in Kings County to the plaintiff. The amended complaint alleges that Scotland refused to close title and that on September 27, 2019 conveyed the premises to defendant 209 Barbey Street LLC. This action was commenced and the amended complaint asserts causes of action for specific performance, quiet title and intentional interference with a contract. In a prior decision the court permitted the defendant 209 Barbey Street LLC to serve an answer and 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.

The plaintiff has now moved seeking to dismiss nine affirmative defenses. As noted the motion is opposed.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the pleading as true, whether the party can succeed upon any reasonable view of those facts (Dauids v. State, 159 AD3d 987, 74 NYS3d 288 [2d Dept., 2018]). Further, all the allegations in the pleading are deemed true and all reasonable inferences may be drawn in favor of the party that asserted the pleading (Dunleavy v. Hilton Hall Apartments Co., LLC, 14 AD3d 479, 789 NYS2d 164 [2d Dept., 2005]).

The second affirmative defense asserts the plaintiff lacks standing to assert this cause of action. However, the answer alleges the contract between the plaintiff and Scotland was not recorded and that consequently the defendant purchased the property without any knowledge it had previously been sold to the plaintiff. While further discovery and a trial will surely sharpen these issues and indeed resolve the litigation, at this juncture the assertion the defendant validly purchased the property must be explored. If a conclusion is reached that in

fact the defendant's purchase was valid then the plaintiff does not maintain any standing to pursue this action. Therefore, the second affirmative defense is valid and the motion seeking to dismiss it is denied.

The motion seeking to dismiss the third affirmative defense is granted.

The fourth affirmative defense alleges the plaintiff's action is barred by documentary evidence. While that assertion is vague and will require elaboration, at this juncture it is a valid defense. Again, the plaintiff maintains a validly recorded contract of sale. While there are allegations there was a prior contract between the plaintiff and Scotland, factual issues have been presented which require resolution. Therefore, this affirmative defense is valid at this juncture and the motion seeking to dismiss it is denied.

The fifth affirmative defenses allege the plaintiff's causes of action are barred by collateral estoppel and/or waiver. The motion seeking to dismiss this affirmative defense is granted.

The sixth affirmative defense asserts unjust enrichment. This defense is valid. As noted, the defendant entered into a contract with Scotland. The plaintiff's allegations of a prior contract serve to unjustly enrich the plaintiff at defendant's expense. The motion seeking to dismiss this affirmative defense is denied.

The seventh affirmative defense alleges a lack of good faith on the part of the plaintiff. This allegation, likewise, is valid since it goes to the heart of the lawsuit, namely whether the plaintiff validly entered into a prior contract and recorded such contract so that the defendant and all others were put on notice regarding the plaintiff's ownership. Again, further discovery will narrow these allegations, however, at this juncture they are proper and the motion seeking to dismiss this affirmative defense is denied.

The ninth affirmative defense alleges the plaintiff failed to mitigate damages and the tenth affirmative defense alleges laches. These defenses are valid. The plaintiff alleges they entered into a contract with Scotland, however, there are serious questions whether that contract was ever recorded and whether a notice of pendency was ever timely filed. These defenses speak to those issues. Therefore, the motion seeking to dismiss these two affirmative defenses is denied.

The eleventh affirmative defense alleges the plaintiff has failed to name necessary parties, specifically the party or parties who failed to properly file the notice of pendency. However, the plaintiff does not assert any such failure occurred at all. Thus, in essence, this defense seeks to fault the plaintiff for failing to take any actions against himself, an untenable position. Rather, if further discovery reveals the


identity of any party who failed to file any document properly the defendant can surely move to include that party. However, at this juncture the affirmative defense is improper and the motion seeking its dismissal is granted.

Thus, the motion seeking to dismiss any affirmative defenses is granted to the extent the third, fifth and eleventh affirmative defenses are granted. The motion seeking to dismiss any further affirmative defenses is denied.

So ordered.

ENTER:

DATED: November 28, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC