

BH Sterling Realty LLC v Longoria

2023 NY Slip Op 34277(U)

December 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 515289/2023

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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BH STERLING REALTY LLC,

Plaintiffs,

Decision and order

- against -

Index No. 515289/2023

LOUISE LONGORIA, ELAINE JONES, 727
KNICKERBOCKER AVE LLC, S3 RE FUNDING III
LLC, and UNLIMITED HOMES REALTY INC.

Defendants,

December 7, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2 & #3

The defendants 727 Knickerbocker Ave LLC [hereinafter 'Knickerbocker'] S3 Funding III LLC have moved seeking to dismiss certain causes of action of the complaint pursuant to CPLR §3211. The plaintiff opposes the motion and has cross-moved seeking to amend the complaint to correct the name of the plaintiff. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the amended complaint, on August 1, 2021 the plaintiff entered into a contract to purchase property located at 727 Knickerbocker Avenue from the defendants Longoria and Jones. While the plaintiff maintained it was ready, willing and able to close, the defendants entered into another contract with Knickerbocker and Knickerbocker closed on the property on May 17, 2023. A week later, on May 24, 2023, the plaintiff placed a notice of pendency on the property. Knickerbocker recorded the deed on May 30, 2023, after the notice of pendency had been

filed. The plaintiff instituted this action and asserted Knickerbocker cannot be the owner of the property since there was an existing contract entered between plaintiff and other defendants. The plaintiff has asserted, among others, causes of action that Knickerbocker cannot be a good faith purchaser for value since it should have been aware of plaintiff's contract. Knickerbocker has now moved seeking to dismiss the first two causes of action of the amended complaint arguing that there is no basis to conclude Knickerbocker is not a good faith purchaser for value. Knickerbocker asserts that the contract between plaintiff and defendants was not recorded and therefore Knickerbocker could not possibly have know of the plaintiff's contract. Thus, Knickerbocker argues it was a good faith purchaser for value as a matter of law and the first two causes of action that assert otherwise should be dismissed. As noted, the plaintiff opposes the motion arguing there are questions which foreclose a summary determination at this time.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are

deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

Knickerbocker argues that it was a good faith purchaser because the plaintiff's "notice of pendency does not impute notice of a prior claim because: (i) the notice of pendency is not a substitute for recording the 2021 contract of sale; and (ii) the Defendants won the race to the Register's Office by being the first to record" (see, Affirmation in Support, ¶24 [NYSCEF Doc. No. 30]). Thus, an examination of the requirements necessary to record first must be examined.

It is well settled that when two or more parties maintain contracts to purchase the same property priority is given to whichever contract is recorded first (see, RPL §294(3)). The filing of a notice of pendency is not a substitute for the filing of a contract (Varon v. Annino, 170 AD2d 445, 565 NYS2d 540 [2d Dept., 1991]). Notwithstanding the fact that New York is a race-notice state the notice of pendency is simply insufficient to comply with RPL §294(3) (see, Avila v. Arsada Corp., 34 AD3d 609,

826 NYS2d 322 [2d Dept., 2006]). In Bello v. Oullette, 211 AD3d 784, 181 NYS3d 577 [2d Dept., 2022] a buyer, Vertex, closed on property on June 7, 2017. The plaintiff then learned of Vertex's interest in the property and filed a notice of pendency on June 20. Vertex recorded its deed on July 10. Vertex moved seeking to cancel the notice of pendency and for a determination it was the sole owner of the property. The court granted Vertex's motions. The court explained that "[t]he status of good faith purchaser for value cannot be maintained by a purchaser with either notice or knowledge of a prior interest or equity in the property, or one with knowledge of facts that would lead a reasonably prudent purchaser to make inquiries concerning such" (id). The court concluded that Vertex did not have either actual or constructive notice of plaintiff's claims to the property. Significantly, the court concluded that the "filing of a notice of pendency against the property before Vertex filed its deed did not negate Vertex's status as a good-faith purchaser" (id).

In this case, there was no actual or constructive notice that would have notified Knickerbocker of the plaintiff's prior contract. The mere fact a copy of plaintiff's contract was contained in a court file concerning a foreclosure of the property is not sufficient facts that would lead a reasonable person of knowledge of a prior interest in the property (see, 436 Franklin Realty LLC v. U.S. Bank National Association, 188 AD3d

960, 137 NYS3d 88 [2d Dept., 2020]). This is specially true where the foreclosure action was resolved by the purchase of Knickerbocker. Thus, Knickerbocker had no constructive notice of the contract with plaintiff at all.


Therefore, Knickerbocker was a good faith purchaser as a matter of law and consequently, the motion seeking to dismiss the first two causes of action of the amended complaint is granted.

Next, the motion seeking to amend the caption to replace the plaintiff with BH Sterling Realty Group LLC is granted.

So ordered.

ENTER:

DATED: December 7, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC