

Sunnyview Farm, LLC v Levy Leverage, LLC
2023 NY Slip Op 35257(U)
March 13, 2023
Supreme Court, Columbia County
Docket Number: File No. E012018013127
Judge: Sara W. McGinty
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF COLUMBIA

SUNNYVIEW FARM, LLC and SIMON B. LEVY,

Plaintiffs,

vs.

ORDER

File No. E012018013127

HON. SARA W. MCGINTY

LEVY LEVERAGE, LLC, DANIEL Z. LEVY, and ROBERT M.
GREENBERG,

Defendants.

Appearances:

Laura E. Ayers, Esq. (Law Office of Laura E. Ayers, Esq.), attorneys for Plaintiffs

Paul M. Freeman, Esq. (Freeman Howard, PC), attorney for Defendants Levy Leverage LLC and
Daniel Z. Levy)

Donald Hillman, Esq. (Couch White LLP), attorneys for Defendant Robert Greenberg

McGINTY, S., ASCJ

This proceeding arises from a settlement agreement (the "Agreement") by and among
Defendants Daniel Z. Levy and his LLC, Levy Leverage LLC (Daniel Z. Levy is hereinafter referred
to as "Defendant") and Plaintiffs Simon B. Levy and his limited liability company, Sunnyview
Farm LLC. (Simon B. Levy is hereinafter referred to as "Plaintiff.")

Defendant and Plaintiff are brothers; they are the sons of the late Morris Levy, who
acquired about 122 acres of farmland in the Towns of Ghent and Clavarack, New York in the
1970's. The property Morris Levy bought had never been surveyed, so the property
descriptions used in the deed to Morris Levy and, later, in the estate's deeds to the parties,
were artifacts of 19th century custom, fixing the boundaries of Morris Levy's property by

reference to the boundaries of nearby third-party properties¹. The property was further identified by reference to street addresses and the section/block/lot numbers assigned to the property in town tax rolls.

Morris Levy died in 1990. He left his estate in equal shares to his three sons. In 2006, Plaintiff and Defendant bought out the share of their brother Adam.

Defendant and Plaintiff entered into a June 24, 2014 stipulated order (the "Agreement") to resolve their differences with regard to their late father's assets. The Agreement provides that title to premises known as the "Schnackenberg property" was to be conveyed to Defendant. Title to "Sunnyview Farm" was to be deeded to Plaintiff. Defendant later contracted to sell the Schnackenberg property to a third party, Greenberg, who finally had the Schnackenberg property surveyed.

The survey metes and bounds of the Schnackenberg property did not coincide with the town tax maps. The deed from Defendant to Greenberg therefore employed both the description from Morris Levy's 1974 deed and the survey's metes and bounds description.

In 2018, Plaintiff intervened by means of this proceeding, claiming that the deed to Greenberg wrongly included a portion of the Sunnyview property, which was owned by him. Greenberg, named in Plaintiff's suit, filed an answer with a cross-claim against Defendant and a counter-claim against Plaintiff to quiet title. Defendant, in turn, filed cross-claims against Greenberg and a counterclaim against Plaintiff. Dispositive motions were filed and ultimately the Court dismissed Plaintiff's claims, finding that no part of Plaintiff's Schnackenberg parcel

¹ The surveyor certainly had his work cut out for him. The description of the 122-acre parcel incorporates by reference the descriptions from deeds dated 1860 and 1895, as well as a quit claim deed by out-of-title occupant and an unrecorded deed conveying an out-parcel.

had been included in Defendant's sale to Greenberg (Decision/Orders of Hon. Laura M. Jordan dated April 7, 2022 and September 30, 2022).

This summary judgment motion is brought by Defendant against Plaintiff for payment of attorney's fees arising under the terms of Agreement, which provides, in relevant part:

Upon a breach of the terms of this [Agreement], among any other damages, the non-defaulting party may recover reasonable attorney's fees, costs and disbursements in the enforcement of terms of this [Agreement], in such amount as may be established by the court in rendering its judgment.

Defendant asserts that Plaintiff breached the agreement by accepting a deed to Sunnyview Farm which employed the 1974 deed description and then employing the same description in the deed conveying the property to Greenberg. In so doing, Defendant claims, Plaintiff attempted to convey a portion of the Schnackenberg property owned by Defendant.

In her April 7, 2022 decision, Judge Jordan found that the doctrine of merger barred Plaintiff's claim of breach of contract with respect to the Agreement, citing the absence of evidence that the parties intended the terms of the Agreement to survive delivery of the deeds (*1455 Washington Ave. Assocs. v Rose & Kiernan, Inc.*, 260 AD2d 770, 771 [3d Dept 1999]).

Unquestionably, the right to sue for attorneys fees on a breach of the Agreement survives the delivery of the deeds, but only to the extent that the underlying alleged breach arises from "a collateral undertaking that is not connected with the title, possession or quantity of land" referred to in the deeds (*Alexy v. Salvador*, 217 AD2d 877, 878 [3d Dept 1995]). Thus, for example, if the alleged breach arose from Plaintiff's failure to permit Defendant to have access to Sunnyview to retrieve personal property or to visit Morris' gravesite, Defendant's claim would survive because these were contractual obligations collateral to the deeds conveying the subject real property.

Here, however, Defendant alleges breaches arising from the very descriptions attached to the Schnackenberg and Sunnyview deeds and thus directly implicates issues as to "title, possession or quantity of land." The causes of action which purportedly arose from the text of the deeds did not survive the delivery and acceptance those conveyancing documents, and Defendant's motion for summary judgment must be denied.

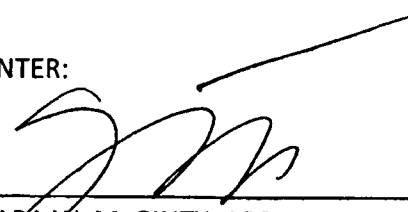
It is, therefore,

ORDERED and DECREED, Defendant's motion for summary judgment is denied in its entirety.

This constitutes the order of the Court. All papers, including this Order, are hereby entered and filed with the County Clerk. Counsel is not relieved from the applicable provisions of CPLR Section 2220 relating to service and notice of entry.

DATED: March 13, 2023

ENTER:


SARA W. MCGINTY, ASCJ

Documents reviewed:

1. Docket No. 265 Notice of Motion
2. Docket No. 266 Affidavit or Affirmation in Support of Motion, together with Exhibits (Docket No. 267)
3. Docket No. 268 Affidavit or Affirmation in Support of Motion, together with Exhibits (Docket No. 269)
4. Docket No. 270 Memorandum of Law in Support
5. Docket No. 271 Affidavit or Affirmation in Opposition to Motion, together with Exhibits (Docket Nos. 272-274)
6. Docket No. 275 Affidavit or Affirmation in Opposition to Motion, together with Exhibits (Docket Nos. 276-280)
7. Docket No. 281 Memorandum of Law in Opposition
8. Docket No. 283 Affidavit or Affirmation in Reply
9. Docket No. 284 Memorandum of Law in Reply