

1133 Lexington Ave. Realty Corp. v Seiden Lexington Holdings, LLC

2024 NY Slip Op 30837(U)

March 15, 2024

Supreme Court, New York County

Docket Number: Index No. 160933/2022

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

1133 LEXINGTON AVE. REALTY CORP.,

Plaintiff,

- v -

SEIDEN LEXINGTON HOLDINGS, LLC, OFFICE OF THE
CITY REGISTER OF THE CITY OF NEW YORK, 1131
PROPERTY OWNER LLC, 150-152 EAST 79, LLC,

Defendant.

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INDEX NO. 160933/2022

MOTION DATE 09/19/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98

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

Upon the foregoing documents, plaintiff’s motion for summary judgment is granted.

Background

This case involves a dispute between the property owners of two adjacent lots in Manhattan. Plaintiff 1133 Lexington Ave. Realty Corp., (“plaintiff”) is the owner of the property located at 1133 Lexington Avenue, New York, New York ("Lot 153"). Intervenor Defendant, W 79th Street Owner, LLC (“intervenor defendant”) is the owner of the property located at 1131 Lexington Avenue, New York, New York (“Lot 154”).

Plaintiff commenced this action to cancel two recorded documents, one which created a single zoning lot consisting of Lots 153 and 154, and the Development Agreement which entitled the Lot 154 owner to utilize certain unused development rights. As none of the named defendants currently own Lot 154, the current owner, W 79th Street moved to intervene. This Court granted

W 79th Street's motion to intervene. Plaintiff now moves for summary judgment. Intervenor defendant opposes.

In 2016, Plaintiff and Seiden Lexington Holdings, LKLC ("Seiden") entered into a contract whereby Seiden, agreed to purchase Lot 153 from plaintiff. According to plaintiff, in anticipation with the potential sale, plaintiff and defendant Seiden executed a Declaration of Zoning Lot Restrictions and a Zoning Lot and Development Agreement and Temporary Construction Licenses. The Zoning Declaration was recorded against the Subject Property with the Office of the City Register of the City of New York, County of New York. The documents were executed by Seiden, on behalf of Lot 154. However, at the time the documents were executed, third party Ana Development was the owner of Lot 154. According to plaintiff, Ana Development has contracted to sell Lot 154 to Seiden Lexington Holdings, but the zoning documents were executed prior to the sale.

Plaintiff therefore seeks an Order declaring the Memorandum of Sale, Zoning Declaration and Development Agreement and Licenses to no longer be in full force and effect and directing the Office of the City Register of the City of New York to cancel and discharge such instruments as encumbrances to the Subject Property.

Discussion

Plaintiff argues that the zoning documents should be cancelled as Ana Development, as owner of Lot 154, and thus a necessary "party in interest," did not execute the documents. Intervenor defendant does not dispute that Ana Development was a party in interest and didn't sign the documents; however, intervenor argues that the language "all parties in interest (as defined in the [Zoning] Resolution) to the Property as shown on the Zoning Lot Certification of

Choice Abstract ... have joined in this Declaration or have waived their right to do so,” establishes Ana Development waived its rights.

Plaintiff contends that as Ana Development was not a party to the documents, nor is Ana Development identified or named, there can be no waiver of its right. The Court agrees. Ana Development was not a party to the zoning documents. That the documents state all parties have waived their right is of no consequence when the executing party had no ability to waive such parties' rights. Moreover, Section 12-10(d) of the New York City Zoning Resolution requires “[e]ach declaration [to] be executed by each party in interest...” That did not occur here. As such, the zoning documents are void.

The Court does not find intervenor defendant's argument that regardless, the documents should remain in effect under a theory of equitable estoppel availing. It is well established that in order to prevail on the theory of equitable estoppel, the party seeking estoppel must demonstrate a lack of knowledge of the true facts; reliance upon the conduct of the party estopped; and a prejudicial change in position. *Burrowes v. Combs*, 25 A.D.3d 370 [1st Dept 2006]. Here, intervenor defendant fails to establish reliance upon the conduct of the party estopped. Here, it was Seiden, not plaintiff, who entered into the zoning agreements and allegedly made a promise to which the intervenor defendant relies on. That Seiden represented himself as the owner of the property in the zoning documents before the sale had been completed, cannot be imputed to plaintiff. Moreover, as plaintiff argues, this information was discoverable to intervenor defendant had they engaged in diligent research regarding title of the property.

The Court has reviewed the remaining contentions of the intervenor defendant and finds them unavailing.

Accordingly, it is hereby

ADJUDGED that plaintiff's motion for summary judgment is granted; and it is further ORDERED and DECLARED that the recorded April 19, 2016, Memorandum of Sale, Zoning Declaration and Zoning Lot and Development Agreement to be null, void and unenforceable, and directing the City Register of the City of New York to cancel such instruments of record; and it is further

ORDERED that the portion of this Court's July 12, 2023 Decision and Order staying Plaintiff's motion for default judgment against the non-appearing parties, to wit: SEIDEN LEXINGTON HOLDINGS, LLC, OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK, 1131 PROPERTY OWNER LLC, 150- 152 EAST 79, LLC, is vacated and plaintiff is awarded judgment by default against those non-appearing parties for the same relief sought and granted herein.


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3/15/2024
 DATE

 LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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