

Incorvaia v Incorvaia
2024 NY Slip Op 35586(U)
April 2, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 600779/18
Judge: John J. Leo
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**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 13 SUFFOLK COUNTY**

PRESENT:**HON. JOHN J. LEO, J.S.C.**

TONI ANN INCORVAIA,

Plaintiff,

-against-

PETER JOSEPH INCORVAIA and
COUNTY OF SUFFOLK

Defendants.

TONI ANN INCORVAIA,

Petitioner,

-against-

COUNTY OF SUFFOLK,

Respondent.

DECISION & ORDER**INDEX #'s: 600779/18 & 608571/17****Motion Sequence: #09 & #10 MOTD****Motion Date: 9/20/23 & 10/13/23****PLAINTIFF'S ATTORNEY:****ROBERT A. MAHLER, ESQ.**1350 Avenue of the Americas, 2nd Floor

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Toni Ann Incorvaia ("Plaintiff") interposed an application for partial summary judgment against Peter Joseph Incorvaia ("Defendant Incorvaia ") for an Order, pursuant to CPLR §3212, granting partial summary judgment to Plaintiff and directing the payment

to Plaintiff of an additional condemnation payment in the amount of \$75,000.00 ("Additional Compensation"), that is currently being held in escrow, pending further Order of the Court, for the property owned by Plaintiff at 39 Seneca Street, Ocean Bay Park, New York 11770 ("Property").

There are two related matters in the Suffolk County Supreme Court that involve the taking of a partial easement on the Property. The County of Suffolk brought a partial condemnation action of the Property under Index No. 07738/2016 to acquire an easement on a portion of the Property ("Condemnation Action"). In another action, Plaintiff interposed an action under Index No. 608571/2017 for additional compensation for the area covered by the easement and its impact on the remainder of the Property ("Additional Compensation Action").

The Condemnation Action was consolidated with this action for joint trial. By Order dated August 9, 2018, this Court directed advance payment into Court in the amount of \$120,000.00. See: NYSCEF Doc. 20 and 256. By that Order, the County of Suffolk received an easement interest in the Premises for an advance payment of \$120,000.00, which \$95,773.20 was distributed to Plaintiff and \$24,226.80 to the mortgage lienor for the Property, Bayview Loan Servicing, LLC. See: NYSCEF Doc 257.

By Order dated April 20, 2023, the Additional Compensation Action was settled for \$75,000.00. Additional Compensation in the amount of \$75,000.00 is being held in escrow subject to Order of the Court. See: NYSCEF Doc. 258.

Here, Plaintiff seeks an order directing payment to her of the \$75,000.00 Additional Compensation free of claims by Defendant Incorvaia on the basis that Defendant Incorvaia does not have a legal or equitable interest in the Property. Plaintiff acquired sole title of the Property by a recorded deed on or about December 3, 2009. The deed provides that Plaintiff and Defendant Incorvaia are the grantors, and Plaintiff the grantee. See: NYSCEF Doc 259.

In a Decision and Order of July 2022 ("July 2022 Decision"), this Court denied Defendant Incorvaia's application for constructive trust over the subject property. See: NYSCEF Doc 204 and 260. In that Decision, Toni Ann Incorvaia is Plaintiff and Peter Joseph Incorvaia is defendant. Pursuant to the July 2022 Decision, this Court denied Defendant Incorvaia's request for a Constructive Trust:

Plaintiff has owned the Premises for more than nineteen (19) years, initially with her grandmother and father and then solely in her own name since 2009. It is not disputed that Plaintiff made significant financial contributions toward the upkeep and maintenance of the Premises, including making all of the mortgages, insurance and maintenance payments, paying for all repairs and seeking short term rentals for the Premises. Conversely, Defendant was in title for approximately fourteen (14) months solely by virtue of his father partially transferring the Premises to Defendant and, thereafter, requested Defendant voluntarily transfer the Premises entirely to his sister, the Plaintiff herein. Defendant has not claimed a personal attachment to the Premises, has not claimed any use of the Premises (he has only been at the Premises a handful of times over the past 19 years), nor that he made any personal investment in helping rebuild the Premises after it was destroyed by Hurricane Sandy.

See: Doc 204 and 260 p. 3.

As to the request for a Constructive Trust be placed on the Property this Court found:

The Plaintiff herein has owned the Premises for more than nineteen (19) years. She has expended funds for maintenance, renovations and improvements. Plaintiff has not been unjustly enriched. Moreover, Defendant has not pleaded sufficiently to prove such a claim.

Accordingly, and for the reasons set forth above, Defendant's application seeking the imposition of a constructive trust is **DENIED**.

See: NYSCEF Doc 204-260, p 4.

In the Condemnation Proceedings, Plaintiff and Defendant Incorvaia's interest in the Property was determined as to their right to the advance payment. As a result of the ownership dispute as to the property, in order for the Condemnation Action to proceed, a December 13, 2021 So-Ordered Stipulation was entered that allowed Plaintiff to prosecute and settle Additional Compensation Action and Defendant Incorvaia waived his right to bring an action against Suffolk County for any additional compensation. Plaintiff and Suffolk County entered into an agreement that Suffolk County would pay, as additional compensation, the sum of \$75,000.00 to resolve the Additional Compensation Action. See:

NYSCEF Doc. 258 and 262. The Additional Compensation Payment was to be held in escrow pending a further Order of this Court.

It is undisputed that Defendant Incorvaia voluntarily deeded his interest in the Property to Plaintiff in 2009. Plaintiff has submitted a recorded deed evidencing her title to the Property. See: Adamec v. Mueller, 94 A.D.3d 1212, 1213 (3rd Dept. 2012); 18 Assoc. v. Court St. Pizza, 57 Misc.3d 1204(A); 66 N.Y.S.3d 653 (Civ. Ct. Kings Cty September 8, 2017).

A grant of real property passes all the estate or interest of the grantor unless the intent to pass a less estate or interest appears by the express terms of such grant or by necessary implication therefrom. A grantor, as Defendant Incorvaia, is presumed to intend to convey all the interest owned by him in the premises described, unless the intent to pass a less estate is expressly manifested in the deed, or is fairly to be implied from the terms of the grant. Where as here, there is no exception or reservation contained in the deed, the deed passes the whole estate and interest of the grantor. See: RPL 245; Clark v. Darland, 35 A.D.313, 55 N.Y.S. 14 (2nd Dept. 1898) off 187 N.Y.560; Auburn L.S. Electric R. Co. v. Taeckel, 118 Misc. 375, 193 N.Y.S.337 (Cayuga Cty. 1922).

In support of her summary judgment application, Plaintiff made a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact. See: Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851 (1985); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). Such a showing having been made, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of marital issues of fact which require a trial of the action." See: Alvarez v. Prospect Hosp., 68 N.Y.2d 324; Kaufman v. Silver, 90 N.Y.2d 204, 208 (1997); Figueroa v. Gallagher, 20 A.D.3d 385, 387 (2nd Dept. 2005). Here, Plaintiff established, prima facie, she has title to the Property, thereby shifting the burden to Defendant Incorvaia to establish an equitable interest in the Property.

Defendant Incorvaia's previous effort to establish a constructive trust over the Property was denied by this Court in its July 2022 Order, finding that Plaintiff would not be unjustly enriched by retaining her full rights in the Property. See: NYSCEF Doc 204-260. The Court adheres to its prior determination. This Court denied that Defendant Incorvaia

had any interest in the Property and relied on this prior order in distributing the settlement payment to Plaintiff. See: Ryan v. New York Tel.Co., 62 N.Y.2d 494, 500 (1984).

Defendant Incorvaia's argument that Kevin Clyne, Esq. is not an attorney for this matter is without merit. This Court directed that "any motions or other filings made by the parties regarding the disposition of the \$120,000.00 advance payment, or the real property located at 39 Seneca Street... be filed and served in the action bearing Index No.: 2018-600779)" and Defendant Incorvaia consented to Mr. Clyne's prosecution of the condemnation action, which was settled pursuant to the So-Ordered Stipulation dated December 13, 2021. See: NYSCEF Doc. 168 and 261.

Contrary to Defendant Incorvaia's position, the present motion was not made moot by this Court's October 10, 2023 Decision. See NYSCEF Doc 264. That Decision did not involve the distribution of the final condemnation award in the related and consolidated proceeding, but dismissed four (4) counterclaims in this matter that have nothing to do with related condemnation proceeding.

Here, Plaintiff's application was brought pursuant to the Court's direction in its Order of April 20, 2023, that, by its terms, resolved the related condemnation proceeding filed under Index#: 608571/2017. See: NYSCEF Doc 258. Thus, contrary to Defendant Incorvaia's position, this is the appropriate and sole index number under which to bring this motion.

This Court, having balanced the equities, and based on its prior Order in which it found Defendant Incorvaia had no equitable interest in the Property, grants partial summary judgment to Toni Ann Incorvaia, dismissing the First, Second, and Third Counterclaims of Defendant Peter Joseph Incorvaia and directs the payment to Toni Ann Incorvaia of an additional condemnation payment in the amount of \$75,000.00, currently being held in escrow for the Property owned by Toni Ann Incorvaia at 39 Seneca Street, Ocean Bay Park, New York 11770 ("Property"), on the basis that Defendant Peter Joseph Incorvaia does not, as a matter of law, have a legal or equitable interest in the Property or in the additional compensation payment.

The foregoing constitutes the Decision and Order of this Court.

Dated: April 2, 2024
Central Islip, New York



HON. JOHN J. LEO, J.S.C.