

Gomez v Joyce

2025 NY Slip Op 31560(U)

April 28, 2025

Supreme Court, New York County

Docket Number: Index No. 158159/2022

Judge: Emily Morales-Minerva

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

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

VICDANIA GOMEZ,

Plaintiff,

- v -

ROBERT JOYCE, CPA, as Temporary Administrator of the
Estate of PAUL BOGONI, B-U REALTY CORP., BOGO CO.
LLC, ROXBOROUGH APARTMENTS CORP.

Defendants.

-----X

INDEX NO. 158159/2022
MOTION DATE N/A
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 68, 69, 70, 71, 72, 73, 74, 84, 85, 86, 87

were read on this motion to/for EXTEND - ORDER

APPEARANCES:

AY Strauss, Roseland, NJ (David Salhanick, Esq., of counsel),
for plaintiff.

Bleakley Platt & Schmidt, White Plains, NY (Stephen J. Brown,
Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this action seeking, among other things, a constructive trust, plaintiff VICDANIA GOMEZ (plaintiff), moves, by order to show cause (mot. seq. no. 004), for an order, pursuant to CPLR § 6513,¹ extending the Notice of Pendency for an additional three-

¹ CPLR § 6513 states, "A notice of pendency shall be effective for a period of three years from the date of filing. Before expiration of a period or extended period, the court, upon motion of the plaintiff and upon such notice as it may require, for good cause shown, may grant an extension for a like additional period. An extension order shall be filed, recorded and indexed before expiration of the prior period."

year period. Defendants ROBERT JOYCE, CPA, as Temporary Administrator of the Estate of PAUL BOGONI, B-U REALTY CORP., BOGO CO. LLC, and ROXBOROUGH APARTMENTS CORP appear and submit written opposition to plaintiff's motion.

For the reasons set forth below, the court grants the application entirely.

BACKGROUND

On September 23, 2022, plaintiff, a real estate broker, commenced the instant action against defendants PAUL BOGONI (Bogoni), her former employer, and B-U REALTY CORP., BOGO CO. LLC, and ROXBOROUGH APARTMENTS CORP., his real estate entities. Plaintiff alleges, among other things, that Bogoni orally agreed to convey certain real property to her in return for her release and forgiveness of years of unpaid salary (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). However, Bogoni failed to convey said property to plaintiff, resulting in a breach of the oral agreement (see id.).

On that same date, plaintiff filed notice of pendency with the New York County Clerk on the property located at 945 West End Avenue, New York, New York (subject property) (see NYSCEF Doc. No. 002, Notice of Pendency, dated September 23, 2022).

Shortly thereafter, defendants moved (mot. seq. no. 001) for orders granting it summary judgment and canceling the notice of pendency on the subject property (see NYSCEF Doc. No. 13, Notice of Motion, dated May 24, 2023). However, Bogoni passed away in June of 2023, and the court (S. Adams, J.S.C.) subsequently stayed the matter in its entirety (see NYSCEF Doc. No. 37, Interim Order, dated July 19, 2023).

On May 13, 2024, the court (S. Adams, J.S.C.) appointed Robert Joyce, CPA, as temporary administrator of Bogoni's estate for the limited purpose of defending the instant action (see NYSCEF Doc. No. 53, Decision and Order, dated May 13, 2024). The stay was lifted, but discovery remained stayed due to defendants' outstanding summary judgment motion (seq. no. 001).

Thereafter, the court (S. Adams, J.S.C.) denied defendants' motion (seq. no. 001) in its entirety, finding that (1) plaintiff raised triable issues of fact that precluded the entry of summary judgment; and (2) the action was commenced in good faith, precluding the cancellation of the notice of pendency (see NYSCEF Doc. No. 65, Decision and Order, dated January 28, 2025).

With respect to denying defendants' application for an order canceling the notice of pendency, the court concluded that plaintiff's likelihood of success on the merits is irrelevant to the inquiry of whether to cancel the notice of pendency (see

id.). Instead, the court found that because CPLR § 6501² provides that a notice of pendency may be filed in any action in which a judgment demanded would affect the title to or possession of real property, and plaintiff states plausible claims to recover real property that was promised to her, the action and notice of pendency were commenced in good faith (see id.).

Now, as the notice of pendency's statutory three-year duration is coming to an end, plaintiff requests that this Court extend the notice of pendency for an additional three years pursuant to CPLR § 6513.

Defendants oppose, arguing that the oral agreements violate the Statute of Frauds, and are not supported by consideration or reliance (see NYSCEF Doc. No. 84, Affirmation in Opposition). Defendants further argue that the notice of pendency is legally defective because Bogoni never individually owned the subject property, and therefore had no individual authority to transfer or sell any ownership in the property (see id.).

ANALYSIS

² CPLR § 6501 (a) provides, as pertinent here, "A notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, incumbrance of, or the possession, use or enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property."

CPLR § 6513 governs notices of pendency, and provides that a notice of pendency is effective for a period of three years from the date of filing (see Turner Const. Co. v 75 Broad, LLC, 32 AD3d 696, 697 [1st Dept 2006]). The court, upon good cause shown, may grant an extension of the notice of pendency before the notice expires (see generally CPLR § 6513). Good cause for an extension of a notice of pendency exists where a court backlog delays resolution of the underlying claim for more than three years (see SAI Contr. Corp v 18 W. 16th St. Corp., 182 AD3d 438, 438 [1st Dept 2020], citing Tomei v Pizzitola, 142 AD2d 809, 810 [3d Dept 1988]). Where a party is itself to blame for the delay, good cause does not lie (Petervary v Bubnis, 30 AD3d 498, 499 [2d Dept 2006]).

Here, plaintiff establishes good cause for extending the notice of pendency for an additional three years because the prosecution of plaintiff's claims have been delayed due to circumstances outside of plaintiff's control (see Knopf v Sanford, 110 AD3d 502 [1st Dept 2013] [reversing lower court's denial of application to extend notice of pendency where dispositive motion stayed discovery and delayed prosecution of claims]; see also Rahman v Rahman, 184 AD3d 528 [1st Dept 2020]). Bogoni's untimely passing and the court's (S. Adams, J.S.C) delay in ruling on defendants' motion (seq. no. 001)

resulted in a stay of discovery, which remains in its infancy, and significantly delayed the adjudication of the action (see SAI Contr. Corp, 182 AD3d at 438 [finding that "a large part of the delay in this case was attributable to circumstances outside the control of either party"])).

Further, defendants' arguments in opposition to plaintiff's motion (seq. no. 004) are duplicative of the arguments that defendants proffered on its unsuccessful motion to cancel the notice of pendency and therefore, are barred by the law of the case (see Chanice v Fed. Exp. Corp., 118 AD3d 634 [1st Dept 2014] [finding that the doctrine of the law of the case applies to legal determinations that were necessarily resolved on the merits in a prior decision, and to the same questions presented in the same case]). Notwithstanding, the arguments are also wholly irrelevant on a motion to extend the notice of pendency (see 551 W. Chelsea Partners LLC v 556 Holding LLC, 40 AD3d 546 [1st Dept 2007] [providing that "plaintiff's likelihood of success on the merits is irrelevant" on a motion to cancel or extend a notice of pendency]).

Accordingly, it is hereby

ORDERED that plaintiff VICDANIA GOMEZ's motion (seq. no. 004) is granted entirely; it is further

ORDERED that the Notice of Pendency, scheduled to expire on September 23, 2025, is extended for an additional three-year period, through September 23, 2028; it is further

ORDERED that plaintiff shall serve a copy of this decision and order upon the County Clerk, who is directed to extend the subject Notice of Pendency, filed on September 23, 2022, for an additional three-year period, ending September 23, 2028.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

04/26/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE