

Casale v Londa

2012 NY Slip Op 31028(U)

April 11, 2012

Supreme Court, New York County

Docket Number: 400291/12

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 15

CASALE, GERALD
- v -
ERNEST LONDA

INDEX NO. 400291/12
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...
Answering Affidavits -- Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED
<u>1</u>
<u>2</u>
<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion


MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

APR 17 2012

NEW YORK COUNTY CLERK'S OFFICE

Dated: 4/11/12


HON. EILEEN A. RAKOW, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
GERALD CASALE,

Index No.
400291/12

Plaintiff,
FILED

**DECISION
and ORDER**

- against -

APR 17 2012

ERNEST LONDA,

Mot. Seq.
001

NEW YORK
COUNTY CLERK'S OFFICE
Defendant.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Gerald Casale ("Plaintiff") seeks an order staying a landlord-tenant proceeding brought by Ernest Londa ("Defendant") and a judgment declaring that Defendant has no right to evict Plaintiff from Apartment #9A at 30 East 37th Street in New York County ("the Apartment"), which Plaintiff characterizes as their "marital residence." Plaintiff states that he and Defendant are "life-partners", and that "[their] current relationship is a 'marriage.'" According to Plaintiff, he and Defendant met in 1991 and entered into a loving relationship shortly thereafter. They moved into the Apartment months later. Plaintiff and Defendant split the rent and household expenses. In 1993, Plaintiff and Defendant registered as Domestic Partners.

Plaintiff states that in 1995, he and Defendant discussed the idea of starting a family. Initially, Defendant was going to have a child through a surrogate mother. However, after having reservations, he decided to "back[] out of the deal." Plaintiff then decided to have a child through a surrogate mother, and his son Taylor was born on September 20, 1997. After Taylor's birth, his biological mother commenced legal proceedings to gain custody of Taylor. Plaintiff states that these proceedings have been ongoing for the past 14 years and have depleted his life's savings.

In 2005 the owners of the building Plaintiff and Defendant lived in announced a plan for a condominium conversion. Plaintiff and Defendant together bought the Apartment in 2007. Plaintiff states that he and Defendant paid their mortgage and common charges equally, in the same manner as they had previously shared

responsibility for rent and other expenses. However, due to the legal expenses of the legal action brought by Taylor's mother, Plaintiff ultimately starting having financial difficulties. By 2010, he was unable to pay his half of mortgage payments and expenses, and Defendant began to pay all mortgage payments and common charges for the Apartment.

Plaintiff and Defendant refinanced their mortgage in 2009. In so doing, Plaintiff settled a tax lien with the State of New York of approximately \$18,000 by having the bank pay that amount and add it to their mortgage.

In 2011, Defendant, an attorney, suggested that they again refinance their mortgage in order to lower monthly payments. At this point, however, Plaintiff's credit rating had "fallen through the floor." Accordingly Defendant proposed that Plaintiff sign over his half of the Apartment to Defendant. Plaintiff states that, although he was initially hesitant, "after being alternately pestered and cajoled for a few weeks, [he] signed the letter that [Defendant] had prepared."

Defendant submits an affirmation in opposition. Defendant states that Plaintiff "voluntarily and willfully deeded his one-half ownership interest in the Unit to [him] on the 15th of April, 2010 in exchange for the payment of debts due and owed to [him]." Defendant further states that he and Plaintiff were never married. While they were at one time Domestic Partners, Defendant states that he terminated the domestic partnership, and he provides a receipt from the City Clerk evidencing termination on September 1, 2011. Defendant also notes that he is not Taylor's biological or adoptive parent. Defendant further notes that, "[i]f plaintiff believes that he is entitled to unpaid proceeds from the transfer or any additional unpaid monies owed by the defendant then plaintiff is entitled to bring suit against the defendant in another action."

The court finds that Plaintiff's motion must be denied. It is undisputed that Plaintiff deeded his interest in the subject condominium to Defendant. While Plaintiff argues, both in his reply affidavit and on the record at oral argument on March 13, 2012, that he deeded his interest to Defendant through fraud and duress, he fails to allege any facts which state viable causes of action under either theory. The elements of fraud are material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff, and damages (*see Pramer S.C.A. v. Abaplus, Intl. Corp.*, 76 A.D.3d 89 [1st Dept. 2010]). Plaintiff's assertion that he

did not carefully read the documents that he signed, and only “after being alternately pestered and cajoled for a few weeks” is unavailing. It is well settled that “[a]n individual who signs or accepts a written contract, in the absence of fraud or other wrongful act on the part of the other contracting party, is conclusively presumed to know its contents and to assent to them” (*Imero Fiorentino Associates, Inc. v. Green*, 85 A.D.2d 419, 420 [1st Dept. 1982]). Similarly, “[a] contract may be voided on the ground of economic duress where the complaining party was compelled to agree to its terms by means of a wrongful threat which precluded the exercise of its free will” (*767 Third Ave. LLC v. Orix Capital Mkts., LLC*, 26 A.D.3d 216, 218 [1st Dept. 2006]). Plaintiff does not allege any such action on the part of Defendant.

Moreover, while Plaintiff states that he views the personal bonds of affection shared between himself and Defendant over the course of over twenty years as tantamount to a marital relationship, it is undisputed that Plaintiff and Defendant were never officially married at any point. Indeed, while Plaintiff and Defendant were domestic partners, Defendant terminated that domestic partnership in September of 2011 (after passage of the Marriage Equality Act in New York State). The Court of Appeals has observed that “cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation” (*Morone v. Morone*, 50 N.Y.2d 481, 486 [1980]). While some courts have held that certain members of a household cannot be evicted from a premises by way of a summary proceeding, the court’s research has uncovered no authority in support of the proposition that a former domestic partner, without more, is exempted from a summary proceeding pursuant to RPAPL §713 (*see Piotrowski v. Little*, 30 Misc.3d 609 [Middletown City Ct., 2010]) (after engaging in an in-depth analysis of case law concerning whether former domestic parties are exempt from summary proceedings, holding that former same-sex partner was subject to removal via summary proceeding).

As Defendant notes, Plaintiff is not foreclosed from asserting claims against Defendant “[i]f plaintiff believes that he is entitled to unpaid proceeds from the transfer or any additional unpaid monies owed by the defendant” when the Apartment is ultimately sold. However, Plaintiff has failed to demonstrate entitlement to the relief sought herein.

Wherefore it is hereby

ORDERED that Plaintiff's motion for a stay of the Housing Court proceeding is denied; and it is further

ORDERED that Plaintiff's request for sanctions is denied; and it is further

ORDERED that Plaintiff's request for an order directing Defendant "to change the deed back to the way it was" is denied; and it is further

ORDERED that Plaintiff's request for an order directing defense counsel to "show [Plaintiff] a copy of his retainer agreement with [Defendant]" is denied; and it is further

ORDERED that Plaintiff's request for an order directing Defendant to "present a true statement of his net worth" is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: April 11, 2012



EILEEN A. RAKOWER, J.S.C.

FILED

APR 17 2012

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COUNTY CLERK'S OFFICE