

Adrian v BSD 268 LLC
2017 NY Slip Op 30578(U)
March 28, 2017
Supreme Court, Kings County
Docket Number: 514291/16
Judge: Debra Silber
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9

-----X

BARRINGTON ADRIAN,

Plaintiff,

-against-

BSD 268 LLC,

Defendant.

DECISION/ORDER

Index No. 514291/16

Submitted: 3/2/17

Motion Seq. # 1

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Recitation as required by CPLR 2219(a), of the papers considered in the review of plaintiff's order to show cause to stay an eviction proceeding.

Papers	Numbered
Order to Show Cause, Affirmation and Exhibits Annexe.....	<u>1-6</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>7-13</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Plaintiff moves by Order to Show Cause for a preliminary injunction staying a Kings County Civil Court Landlord and Tenant proceeding related to the eviction of Errol Beadle (Index # 54560/2016) from the premises known as 469 East 25th Street, Brooklyn, N.Y. (Block 5212, Lot 69), as well as staying any future actions or proceedings against him until such time as there is a resolution of the plaintiff's instant action. The Order to Show Cause was signed by the Justice covering the *ex parte* part and contains a stay, granted, *ex parte*, pending "the outcome and final judgment in the within lawsuit."

Plaintiff's action includes claims for the violation of "The Home Equity Theft

Protection Act" [RPL § 265-a]; for rescission and cancellation of a deed pursuant to that law, and for conversion. The action was commenced September 30, 2016. These are the only causes of action in the complaint.

Plaintiff Barrington Adrian was the owner of the subject premises until he executed a deed (signed on January 21, 2015 and recorded on March 2, 2015 in CRFN #2015000069780) transferring the subject property to defendant BSD 268 LLC. The complaint alleges that defendant stole the property from plaintiff, "in the guise of foreclosure relief."

Simultaneously with the commencement of this action, plaintiff filed the instant Order to Show Cause. Supporting the Order to Show Cause is an affidavit from the plaintiff in which he states that his cousin, Errol Beadle, has been residing at the subject premises rent-free for almost ten years, since just after plaintiff took title to the premises. Plaintiff states that, when he bought the house, his cousin had no place to live and no money to pay rent; his cousin is unemployed. He says he let his cousin move in and that his cousin has been living there rent-free ever since.

Plaintiff further states that, shortly after he transferred title to the premises to the defendant, the current deed holder, defendant commenced an action to evict plaintiff's cousin. Eviction would render his cousin homeless. Plaintiff does not claim that he lives at the property in question. In fact, the court's computer indicates several recent foreclosure actions against the plaintiff herein, with regard to three different properties in Brooklyn. At the present time, there is no active foreclosure action pending against this property, although at the time plaintiff signed the deed to defendant, there was a pending foreclosure, which was subsequent dismissed by another judge in this court.

Plaintiff states that it was only at this point (the eviction matter) that he discovered that defendant was in violation of the Home Equity Theft Prevention Act ("HEFTA"). Plaintiff states "in light of my rights and accompanying desire to get my property back, I made numerous attempts to quietly and equitably arrange for a Deed to the Premises to be transferred back to my (sic) by BSD. Needless to say, my good faith efforts to settle this matter without resort to legal intervention was fruitless, hence the within lawsuit and attendant hassle and expense." Plaintiff does not otherwise address the merits of his underlying action in his affidavit.

Plaintiff avers that, should his rights be vindicated by the instant litigation, his cousin will be welcome to continue to live at the subject premises, rent free. He asks the court to stay the current eviction proceeding and any further eviction proceedings until such time as there is a decision in the instant matter. He claims that the eviction of his cousin will "cause irreparable harm."

In opposition, Joseph Katz, the managing member of defendant BSD 268 LLC, states in his affidavit that, prior to the eviction proceeding that plaintiff is asking the court to stay, there was a prior holdover proceeding between the same parties (BSD 268 LLC v John & Jane Doe –Index # 72253/15). In that action, Mr. Beadle provided the court with a copy of an executed lease dated October 1, 2014 between Errol Beadle as tenant and plaintiff Barrington Adrian as landlord (See Defendant's Exhibit #5). The lease was for a two-year term ending on September 30, 2016. Pursuant to that lease, Mr. Beadle was a tenant occupying the building's first floor and paying \$875 per month. After Mr. Beadle provided the lease, the parties executed a stipulation of settlement of the holdover action, which was so-ordered by Judge Avery in Housing Court (Exhibit 6).

The stipulation states that, based upon Mr. Beadle's representations and the lease he produced, the proceeding was discontinued. The stipulation also states that petitioner BSD accepted the lease as valid.

Mr. Katz further states that, following the settlement, Mr. Beadle did not pay the rent as required under the lease and the stipulation of settlement. As a result, defendant commenced the current eviction proceeding against Mr. Beadle.

The court notes that plaintiff has not produced any affidavit from Errol Beadle.

In order to prevail on a motion for a preliminary injunction, the movant must demonstrate, by clear and convincing evidence, (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of the equities favors the movant's position. See, *Blinds & Carpet Gallery, Inc v E.E.M. Realty, Inc.*, 82 AD3d 691, 691-692 [2d Dept 2011]; *Tatum v Newell Funding, LLC*, 63 AD3d 911, 912 [2d Dept 2009]; *Gluck v Hoary*, 55 AD3d 668 [2d Dept 2008]; *Apa Sec., Inc. v Apa*, 37 AD3d 502, 503 [2d Dept 2007]. The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court. See, *Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073 [2d Dept 2008]; *Ruiz v Meloney*, 26 AD3d 485, 486 [2d Dept 2006].

Plaintiff has failed to demonstrate by clear and convincing evidence that there is a likelihood of success on the merits with regard to his action or that he would suffer irreparable harm if the injunction were not granted. See, *Nassau Regional Off Track Betting Corp. v Gloria R. Keily Revocable Trust*, 86 AD3d 597, 598 [2d Dept 2011]; *Blinds & Carpet Gallery, Inc., v E.E.M. Realty, Inc.*, 82 AD3d 691, 692; *Liotta v Mattone*,

7 1AD3d 741 [2d Dept 2010]. A balancing of the equities does not weigh in favor of plaintiff either.

The complaint herein is devoid of any facts to support plaintiff's claim that his property was "equity theft" by defendant other than the mere stating of legal conclusions. As to irreparable harm, plaintiff has not shown how the eviction of Mr. Beadle will cause plaintiff irreparable harm. The documents from the prior Beadle holdover proceeding undermine any claim that Mr. Beadle was anything but a rent-paying tenant at the time plaintiff herein transferred the building to defendant. Moreover, whether the housing court proceeding is stayed or not will have no impact whatsoever upon plaintiff's success or failure in his action herein. Finally, plaintiff has not demonstrated that the balance of the equities is in his favor. He is not living at the premises, so he is not asking to stay his eviction, but one against a person he alleges is a cousin of his.

As such, plaintiff's Order to Show Cause is denied in its entirety. The temporary stay issued therein, *ex parte*, is hereby vacated, and the landlord and tenant proceeding in Civil Court may continue.

The foregoing constitutes the decision and order of this court.

Dated: Brooklyn, New York
March 28, 2017



Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court