

Crisafulli v Southbridge Towers, Inc.

2017 NY Slip Op 30947(U)

May 5, 2017

Supreme Court, New York County

Docket Number: 160450/2016

Judge: Erika M. Edwards

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

PAULINE CRISAFULLI,

Index No.: 160450/2016

Plaintiff,

DECISION/ORDER

-against-

SOUTHBRIDGE TOWERS, INC.,

Defendant.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to Show Cause and Affidavits/Affirmations/ Memos of Law annexed	<u>1</u>
Notice of Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed	<u>2</u>
Opposition to Cross-Motion	<u>3</u>
Reply to Cross-Motion	<u>4</u>

ERIKA M. EDWARDS, J.:

Plaintiff Pauline Crisafulli (“Plaintiff”) brought this action against Defendant Southbridge Towers, Inc. (“Defendant”) for a declaratory judgment for Defendant to honor the sale of an apartment through the terms of a participation agreement and proprietary lease and to recognize Plaintiff as the rightful owner of the premises, breach of contract, breach of covenant of good faith and fair dealing, attorney’s fees, and other injunctive and equitable relief.

Plaintiff’s claims relate to her efforts to be declared as the rightful owner of apartment 7H, located in Defendant’s building at 90 Beekman Street, New York, New York, and for the Defendant to be prohibited from evicting her from said premises.

By way of order to show cause, Plaintiff now moves for a preliminary injunction prohibiting Defendant and others acting on Defendant’s behalf from interfering with Plaintiff’s

use and enjoyment of the premises and a temporary restraining order staying the enforcement of an underlying judgment of possession and warrant of eviction; prohibiting Defendant from advertising or promoting the sale of the premises; from selling the premises through the issuance of a new stock certificate and proprietary lease; from harassing Plaintiff and from suspending any of Plaintiff's services, pending a hearing. Defendant opposes the order to show cause and cross-moves for dismissal of Plaintiff's complaint pursuant to CPLR 3211(a)(5), based on res judicata, collateral estoppel and the law of the case, and 3211(a)(7), for failure to state a cause of action. Plaintiff opposes Defendant's cross-motion. For the reasons set forth herein, the court DENIES Plaintiff's order to show cause in its entirety, DENIES Defendant's cross-motion to dismiss, pursuant to CPLR 3211(a)(5), but GRANTS Defendant's cross-motion to dismiss, pursuant to CPLR 3211(a)(7). As such, Plaintiff's complaint against Defendant is dismissed with prejudice.

Defendant previously filed holdover eviction proceedings against Plaintiff in Housing Court and, after Plaintiff's answer was stricken for failure to comply with discovery demands and an inquest was held, the court granted a final judgment of possession to Defendant and a warrant of eviction on October 16, 2014. The court determined that Defendant proved that Plaintiff no longer resided in the apartment, that Plaintiff attempted to illegally sublet the premises to her niece, in violation of the occupancy agreement, and that Plaintiff has no continued right to reside as a tenant in the apartment. Plaintiff's counsel filed a motion to renew or reargue, but the court denied it. Plaintiff's attorney filed a notice of appeal and was granted a stay of the eviction proceedings in the Appellate Term.

In the meantime, the building converted from a Mitchell-Lama coop to a private cooperative corporation and Defendant issued Plaintiff and over 1600 residents a proprietary

lease and stock certificate in or about September of 2015. On February 2, 2016, Defendant sent a letter to Plaintiff and notified Plaintiff that the proprietary lease and stock certificate were issued to Plaintiff in error, since the court had previously granted Defendant a final judgment of possession and Plaintiff had no right to remain in the premises.

Plaintiff's counsel failed to perfect the appeal and the Appellate Term lifted the stay on June 9, 2016. Defendant attempted to proceed with the eviction through the service of a Marshal's notice. On November 18, 2016, Plaintiff's new counsel filed an order to show cause in Housing Court seeking to vacate the judgment, stay enforcement of the judgment and warrant of eviction, stay collection and enforcement devices and for other relief. Plaintiff raised many of the same arguments that she raised in the instant order to show cause.

On December 15, 2016, the Housing Court denied Plaintiff's order to show cause and ruled in substance that the order to show cause was not timely since it was not filed within one year, Plaintiff failed to set forth a reasonable excuse for the default and that she was unaware of the judgment of possession. Additionally, and most notably, the court found that Plaintiff failed to demonstrate that she has a meritorious defense based on the inadvertent issuance of the stock certificate because Defendant demonstrated that it had mistakenly issued the stock certificate to Plaintiff. When Defendant realized that Plaintiff had previously lost her right to possession of the apartment because of the judgment and warrant of eviction, Defendant promptly sent a letter to Plaintiff in an effort to correct its error.

Based on the facts presented, this court denies Plaintiff's order to show cause in its entirety and agrees with the Housing Court's determination that the judgment of possession and warrant of eviction shall remain in effect; that Plaintiff lost her right to remain in possession of the apartment; that Defendant demonstrated that it inadvertently issued the stock certificate and

proprietary lease to Plaintiff; and that Defendant notified Plaintiff of its mistake and effectively rescinded the issuance of the documents within a reasonable time after realizing its error. As such, the court denies Plaintiff's order to show cause in its entirety.

In its cross-motion to dismiss, Defendant argues in substance that such Housing Court decision is the law of the case and that Plaintiff is precluded from re-litigating these same issues in this court since they evolved out of the same transaction or series of transactions and are barred by res judicata and collateral estoppel. Defendant argues that Plaintiff's complaint merely contains bare conclusory allegations which are insufficient to sustain any of her causes of action. Plaintiff opposes the cross-motion to dismiss and argues that the complaint is sufficient and that Plaintiff is not barred from bringing this action. Plaintiff further contends that the issues and arguments are different in both proceedings as there is different relief requested and the legal relationship of the parties changed from a landlord/tenant relationship to a contractual relationship since Plaintiff now owns the premises.

When considering Defendant's motion to dismiss for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the Plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994]). Normally, a court should not be concerned with the ultimate merits of the case (*Anguita v Koch*, 179 AD2d 454, 457, 579 NYS2d 335 [1st Dept 1992]). However, these considerations do not apply to allegations consisting of bare legal conclusions as well as factual claims which are flatly contradicted by documentary evidence (*Simkin v Blank*, 19 NY3d 46, 52, 945 NYS2d 222, [2012]).

When considering Defendant's motion to dismiss Plaintiff's complaint based on res judicata, collateral estoppel and the law of the case, the court agrees with Plaintiff that the issues and relief sought in both proceedings are sufficiently different and distinct. Additionally, here, Plaintiff seeks injunctive and equitable relief that she was unable to raise in Housing Court and the Housing Court order to show cause was primarily directed toward vacating the judgment and staying enforcement of the warrant of eviction. Therefore, Plaintiff is not precluded from bringing this action pursuant to the doctrine of res judicata.

In terms of collateral estoppel on the issues of whether the Defendant's issuance of the stock certificate and proprietary lease was inadvertent and subsequently effectively rescinded, or whether Plaintiff is the lawful owner of the premises, this court determines that the Housing Court did not necessarily have to decide these specific issues to determine whether to vacate or stay enforcement of the judgment. The Housing Court rendered its decision based on a number of reasons, including that Plaintiff's order to show cause was untimely. As such, this court denies Defendant's motion to dismiss based on res judicata, collateral estoppel or law of the case.

However, as discussed above, this court agrees with the Housing Court's determination that Defendant issued the stock certificate and proprietary lease in error and that the judgment and warrant of eviction stripped Plaintiff of her right to remain in possession of the apartment in any capacity. Additionally, the court agrees with many of Defendant's arguments in favor of dismissal for failure to state a cause of action and finds that Plaintiff failed to sufficiently set forth specific factual allegations to establish each element of any of the causes of action set forth in her complaint.

Additionally, the court finds Plaintiff's remaining arguments to be without merit.

As such, the court grants Defendant's motion to dismiss and dismisses Plaintiff's complaint against Defendant with prejudice.

Accordingly, it is hereby

ORDERED that Defendant Southbridge Towers, Inc.'s motion to dismiss Plaintiff Pauline Crisafulli's complaint herein is granted and the complaint is dismissed in its entirety as against Defendant without costs and the Clerk is directed to enter judgment accordingly in favor of Defendant.

This constitutes the decision and order of the court.

Date: May 5, 2017



HON. ERIKA M. EDWARDS