

Mottley v Elizabeth L. Calvin and Newtown Jets LLC
2015 NY Slip Op 31269(U)
July 21, 2015
Supreme Court, Kings County
Docket Number: 504271/15
Judge: Larry D. Martin
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At an IAS Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of July, 2015

P R E S E N T:

HON. LARRY D. MARTIN,

Justice.

-----X
PERCY E. MOTTLEY, JR., as sole heir-at-law of
PETER E. MOTTLEY,

Plaintiff,

- against -

Index No. 504271/15

ELIZABETH L. CALVIN and NEWTOWN JETS LLC,

Defendants.
-----X

The following papers numbered 1 to 5 read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1- 2
Opposing Affidavits (Affirmations) _____	3, 4
Reply Affidavits (Affirmations) _____	_____
Memorandum of Law _____	5

Upon the foregoing papers, plaintiff Percy E. Mottley, Jr., as sole heir-at-law of Percy E. Mottley (“plaintiff”) moves, by order to show cause, for an order: (1) pursuant to CPLR 6311, enjoining defendant Newtown Jets LLC (“Newtown”) from entering the premises located at 20 Lefferts Place in Brooklyn, New York, and from interfering with plaintiff’s relationship with the occupants at the subject premises; and (2) pursuant to CPLR 602, consolidating the instant action with an action (the “prior action”) entitled *Percy E. Mottley, Jr., as sole heir-at-law of Peter E. Mottley v Kevin Walker Sr., Elizabeth L. Calvin, Wells*

Fargo Bank, N.A. and Sovereign Bank, Index # 4444/11, currently pending in the Kings County Supreme Court.

It is well settled that the purpose of a preliminary injunction is to maintain the status quo pending the determination of an action (*see Board of Managers of Britton Condominium v C.H.P.Y. Realty Assoc.*, 101 AD3d 917, 919 [2d Dept 2012]). The court may grant a preliminary injunction when the moving party demonstrates: (1) a likelihood of ultimate success on the merits; (2) irreparable injury if the court withholds provisional relief; and (3) a balance of the equities tipping in the moving party's favor (*see Doe v Axelrod*, 73 NY2d 748, 750 [1998]; *see also Omakashie Sushi Restaurant v Ngan Kam Lee*, 57 AD3d 497, 497 [2d Dept 2008]). Preliminary injunctions are a drastic remedy and therefore, as a general rule, the court issues them cautiously (*see Uniformed Firefighters Assn. of Greater New York v City of New York*, 79 NY2d 236, 241 [1992]). A preliminary injunction will only be granted if the movant establishes a clear right to it under the law and the undisputed facts found in the moving papers (*see Koultuki v Phillips*, 285 AD2d 433 [2d Dept 2001]).

Based upon a review of the record presently before it, the Court finds that plaintiff has failed to demonstrate a clear right to the relief requested herein. In the instant action, plaintiff is seeking, among other things, damages for Newtown's trespass of the subject premises. However, no notice of pendency had been filed with respect to the subject premises at the time of defendant Elizabeth L. Calvin's transfer of the subject premises to it so as to put Newtown on notice of plaintiff's claims with respect to the subject premises (*see Matter of Sakow*, 97 NY2d 436, 440-41 [2002]). The Court notes that Newtown currently rents two of the units at the subject premises to its tenants. As such, plaintiff has failed to demonstrate a likelihood of ultimate success on the merits on his causes of action in the complaint or that he would suffer irreparable injury in the event that a preliminary injunction is not granted.

With respect to that branch of plaintiff's motion for consolidation of the instant action with the prior action, upon no opposition to this relief by Newtown, that branch of plaintiff's motion is hereby granted.

Accordingly, it is

ORDERED that the branch of plaintiff's motion for a preliminary injunction is denied; and it is further

ORDERED that the branch of plaintiff's motion for the consolidation of the instant action, Index # 504271/15, with the prior action, Index # 4444/11, is granted and the instant action and the prior action are consolidated for all purposes; and it is further,

ORDERED that the Clerk of Kings County is directed to consolidate the file of Index # 504271/15 into Index # 4444/11; and it is further

ORDERED that the pleadings in each action shall stand as pleadings in the consolidated action; and it is further

ORDERED that a copy of this order with notice of entry shall be served upon all parties to the consolidated action; and it is further

ORDERED that the caption shall hereinafter read as follows:

-----X
PERCY E. MOTTLEY, JR., as sole heir-at-law of
PETER E. MOTTLEY, PERCY E. MOTTLEY, JR.,
as sole heir-at-law of PERCEY E. MOTTLEY,

Plaintiff,

- against -

Index No. 4444/11

KEVIN WALKER, SR., ELIZABETH L. CALVIN,
WELLS FARGO BANK, N.A., SOVEREIGN BANK
and NEWTOWN JETS LLC,

Defendants.

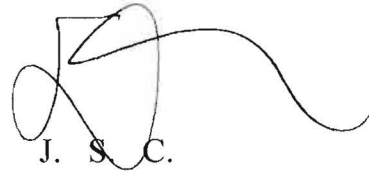
-----X
and it is further

ORDERED that the parties shall appear for a preliminary conference in the **Preliminary Conference Part** on **September 9, 2015**; and it is further

ORDERED that the plaintiff shall file the **note of issue** on or before **March 9, 2016**.

The foregoing constitutes the decision and order of the court.

E N T E R,


J. S. C.

JUL 07 2015

ALAN LARRY MARTIN
JUDGE OF THE SUPREME COURT


FILED
KINGS COUNTY CLERK
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