

Parsram v Parsram

2016 NY Slip Op 32072(U)

September 23, 2016

Supreme Court, Queens County

Docket Number: 2919/16

Judge: Allan B. Weiss

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M E M O R A N D U M

SUPREME COURT QUEENS COUNTY
CIVIL TERM PART 2

HON. ALLAN B. WEISS

LEELAWATTI PARSRAM and CHARLESTON
PARSRAM,

Plaintiffs.

-against-

LALEETA PARSRAM,

Defendant.

Index No: 2919/16

Motion Date: 5/11/16

Motion Seq. No.: 1

This is an action for, among other things, imposition of a constructive trust upon real property located at 174-18 Foch Blvd., Jamaica, NY (subject property). Simultaneously with commencement of this action, the plaintiffs move for a preliminary injunction enjoining the defendant from selling, transferring, assigning, mortgaging or disposing of the subject property until the final resolution of this action; and cross-motion by defendant for summary judgment dismissing the complaint.

As an initial matter, the defendant's motion for summary judgment is denied as being premature. Pursuant to CPLR 3212 a motion for summary judgment may be made at any time after issue has been joined. The defendant has failed demonstrate that issue was joined.

In order to obtain a preliminary injunction the plaintiff has the burden of showing a (1) likelihood of success on the

merits, (2) irreparable injury if the requested relief is not granted; and (3) a balance of the equities in her favor (see Aetna Ins. Co. v Capasso, 75 NY2d 860 [1990], 962; W.T. Grant v Srogi, 52 NY2d 496, 517 [1981]; Hairman v Jhawarer, 122 AD3d 570, 571 [2014]). The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual (see Ying Fung Moy v Hohi Umeki, 10 AD3d 604 [2004]).

The plaintiffs allege the following in their verified complaint. The plaintiffs desired to purchase certain real property, but could not obtain a mortgage loan in their name. The parties allegedly agreed that the defendant, their daughter-in-law at the time, would take the title and the mortgage in her name and the plaintiffs would provide the down payment to purchase the property, and pay the mortgage and all expenses of the upkeep. Further it is alleged that the defendant agreed to transfer title to the property to the plaintiffs when the plaintiffs asked. The property was purchased on April 9, 2012 by deed dated the same day. Plaintiffs claim that the \$11,000.00 closing costs and the \$25,000.00 down payment came from plaintiffs' funds except fo \$10,000.00 which was provided by one of their sons and none of defendants funds was used to purchase the subject property, or to pay for maintenance, upkeep and taxes after the purchase. Plaintiffs further assert that neither

plaintiffs nor defendant, except for one or two months during her marriage to their son Besham, resided in the subject property which was rented, the rent was collected by plaintiffs and used to pay the mortgage and all bills. Finally, plaintiffs assert that once defendant and their son were divorced, the defendant refused to abide by her promise to transfer the property to plaintiffs although they have duly demanded that she do so.

In opposition to the motion, the defendant submitted her affidavit asserting that she and her husband, Besham, the plaintiffs' son, purchased the property in 2012 at foreclosure and title and mortgage was taken in her name because her husband already had a mortgage in his name and could not obtain another. She further asserts that the \$40,000.00 down payment was paid with \$10,000.00 coming from her joint account with her husband and a \$30,000.00 gift from plaintiffs to her and her husband. She further claims that the plaintiffs are collecting the rent and making a substantial profit which rightfully belongs to her and her ex-husband and should be equitably divided between them, if he so desires. She claims that plaintiffs have nothing to do with the property which was the marital home.

Here, the plaintiffs established their entitlement to a preliminary injunction. First, they demonstrated a likelihood of ultimate success on the merits on the cause of action for the imposition of a constructive trust. "A constructive trust is an

equitable remedy and its purpose is to prevent unjust enrichment" (Henning v Henning, 103 AD3d 778, 280 [2013] quoting Marini v Lombardo, 79 AD3d 932, 933 [2010]). The elements of a cause of action for a constructive trust are: (1) the existence of a confidential or fiduciary relationship between the parties; (2) a promise; (3) a transfer in reliance on the promise; and (4) unjust enrichment (see Bodden v Kean, 86 AD3d 524, 526 [2011]; Nastasi v Nastasi, 26 AD3d 32, 37 [2005]). These elements, however, serve only as a guideline and a constructive trust may still be imposed even if all four elements are not established (see Simonds v Simonds, 45 NY2d 233, 241 [1978]; Henning v Henning, supra; Marini v Lombardo, supra at 933).

The existence of a confidential relationship between the plaintiffs and defendant at the time of the purchase of the subject property, their former daughter-in-law, is undisputed. The plaintiffs also sufficiently established that they provided a substantial portion of the down payment, that they agreed to pay and have been paying the mortgage loan and maintenance of the property. The element of a "transfer in reliance" is not limited to instances in which the plaintiff has actually transferred title to the property to the defendant, but may also include instances where an equitable interest developed through the expenditure of money, labor and time in the property (see Marini v Lombardo, 39 AD3d 824, 826 [2007]; Ruiz v Meloney, 26 AD3d 485,

486 [2006]; Nastasi v Nastasi, supra at 39).

While the defendant denies, inter alia, that she promised to transfer ownership to the plaintiffs and claims that the \$30,000.00 for the down payment was a gift to her and her husband, the plaintiffs' son, issues of fact do not preclude a finding of likelihood of success on the merits because conclusive evidence is not required at this stage of the litigation (see Ruiz v Meloney, supra; Ying Fung Moy v Hohi Umeki, supra at 605; Terrell v Terrell, 279 AD2d 301, 303 [2001]).

Moreover, in view of the fact that the defendant has listed the property for sale, plaintiffs have also established the likelihood of irreparable injury in the event the preliminary injunction were not granted, and that the balance of the equities was in their favor.

Accordingly, the motion is granted. The injunction is conditioned upon plaintiffs filing an undertaking pursuant to CPLR 6312, the amount of such undertaking, in compliance with CPLR Article 25, is to be fixed in the order to be entered hereon. Upon submission of the Order, the parties may submit proof and recommendations as to the amount of the undertaking.

Settle order.

Dated: August 23, 2016
D# 54

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J.S.C.