

Polite v 1st Am. Homes LLC

2018 NY Slip Op 30183(U)

February 5, 2018

Supreme Court, Queens County

Docket Number: 007028/2015

Judge: Cheree A. Buggs

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS
Justice

IA Part 30

LATOYA POLITE,

Plaintiff,

-against-

1ST AMERICAN HOMES LLC,

Defendants.

Index
Number 007028/ 2015

Motion
Dates: December 5, 2017 & January 18, 2018

Motion Seq. No. 6 & 7

The following papers numbered 1-7; 1-7 submitted and considered on this motion by defendant 1st American Homes LLC on the 2nd and 3rd causes of action seeking an Order vacating all stays previously issued by the Court, as a result of the plaintiff's willful and continuous violation of the "So-Ordered" Stipulation dated May 10, 2016 and enforcing the terms of said stipulation, compelling plaintiff Latoya Polite to immediately pay the sum of \$19,200.00 to Andrew M. Tilem, Esq. as the escrow agent for her continued use and occupancy of the subject premises as set forth in said stipulation and restoring the bond hearing and compelling the plaintiff to post a security bond due to plaintiff's failure to comply with the Court's Order dated May 10, 2016 (Seq. "6"), and the Order to Show Cause, of 1st American Homes LLC seeking an Order lifting the stay imposed in this matter pursuant to CPLR 2201, and pursuant to CPLR 2221(d) to reargue the undersigned's decision dated May 17, 2017, and upon reargument granting defendant's motion to dismiss or in the alternative summary judgment; staying the trial of this matter until after the determination of the instant motion to reargue; and staying the matter until movants appeal can be heard (or withdrawn) (Seq. "7").

<u>Motion Seq. 6</u>	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-5
Affidavits in Opposition - Exhibits.....	6-7

<u>Motion Seq. 7</u>	Papers <u>Numbered</u>
Order to Show Cause- Affidavits - Exhibits	1-5
Affidavits in Opposition - Exhibits.....	6-7

Upon the foregoing papers it is ordered that the motion and Order to Show Cause are determined as follows:

This is an action to quiet title to premises located at 114-25 210th Street, in Cambria Heights, New York 11411. Plaintiff, Latoya Polite asserted causes of action for fraudulent misrepresentation, declaratory judgment and constructive trust against defendant 1st American Homes, LLC. Plaintiff alleges that she never intended to convey her ownership interest in the subject premises to defendant and that defendant 1st American Homes, LLC, defrauded her into doing so. By Order of the undersigned dated May 17, 2017, defendant's motion pursuant to CPLR 3211 (a) (7) to dismiss the action for failure to state a cause of action and, alternatively, for summary judgment in its favor pursuant to CPLR 3212 was granted in part and denied in part. The branches of the motion which were to dismiss the fraudulent misrepresentation and declaratory judgment causes of action, were denied, however, the branch of the motion to dismiss the cause of action for a constructive trust was granted.

Now, 1st American Homes, counsel for defendant on the 2nd and 3rd causes of action, seeks an Order vacating all stays previously issued by the Court, as a result of the plaintiff's willful and continuous violation of the "So-Ordered" Stipulation dated May 10, 2016 and enforcing the terms of said stipulation, compelling plaintiff Latoya Polite to immediately pay the sum of \$19,200.00 to Andrew M. Tilem, Esq. as the escrow agent for her continued use and occupancy of the subject premises as set forth in said stipulation and restoring the bond hearing and compelling the plaintiff to post a security bond due to plaintiff's failure to comply with the Court's Order dated May 10, 2016. The parties stipulated that plaintiff would pay into escrow the amount of \$1200.00 per month beginning June 1, 2016, to continue until the case was settled or disposed at trial. According to movant, plaintiff made

one payment which was received on July 2016, however, plaintiff's check was dishonored and she failed to cure her default from July 2016 to present.

Defendant 1st American Homes, moves by Order to Show Cause, seeking an Order lifting the stay imposed in this matter pursuant to CPLR 2201, and pursuant to CPLR 2221(d) to reargue the undersigned's decision dated May 17, 2017, and upon reargument granting defendant's motion to dismiss or in the alternative summary judgment; staying the trial of this matter until after the determination of the instant motion to reargue; and staying the matter until movants appeal can be heard (or withdrawn).

Addressing first the merits of the defendant's motion seeking an Order lifting the stay and to enforce the So-Ordered Stipulation of Honorable Howard G. Lane dated May 10, 2016, and compelling the plaintiff to immediately pay the sum of \$19,200.00 to Andrew M. Tilem, Esq. as escrow agent, restoring the bond hearing and compelling the plaintiff to post a security bond due to her failure to comply with the Court's Order dated May 10, 2016, the motion is granted to the extent that this matter shall be restored to active status and set down for a bond hearing.


Addressing next the merits of the Order to Show Cause to reargue the undersigned's decision dated May 17, 2017, the motion is denied in its entirety. Pursuant to CPLR 2221 (d) (2), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." (*See generally HSBC Bank USA, N.A. v Halls*, 98 AD3d 718 [2d Dept 2012].) The Court has reviewed the papers, arguments of the parties and adheres to its prior determination. Therefore it is

ORDERED, that the motion of 1st American Homes' counsel for the 2nd and 3rd causes of action, seeking an Order vacating all stays previously issued by the Court, as a result of the plaintiff's willful and continuous violation of the "So-Ordered" Stipulation dated May 10, 2016 and enforcing the terms of said stipulation, compelling plaintiff Latoya Polite to immediately pay the sum of \$19,200.00 to Andrew M. Tilem, Esq. as the escrow agent for her continued use and occupancy of the subject premises as set forth in said stipulation and restoring the bond hearing and compelling the plaintiff to post a security bond due to plaintiff's failure to comply with the Court's Order dated May 10, 2016 is granted to the extent that this matter shall be restored to active status and set down for a bond hearing on **Thursday, March 22, 2018 at 10:00 A.M.** in Part 30, Courtroom 67 of the Supreme Court, Queens County, located at 88-11 Sutphin Boulevard, New York 11435 (Seq. "6"); and it is further

ORDERED, that the Order to Show Cause of 1st American Homes seeking an Order lifting the stay imposed in this matter pursuant to CPLR 2201, and pursuant to CPLR 2221(d) to reargue the undersigned's decision dated May 17, 2017, and upon reargument granting defendant's motion to dismiss or in the alternative summary judgment; staying the trial of this matter until after the determination of the instant motion to reargue; and staying the matter until movants appeal can be heard (or withdrawn) (Seq. "7") is granted to the extent that the stay in this matter is lifted, and the remaining portions of the Order to Show Cause are denied.

A copy of this Order shall be mailed to the parties.

Dated: February 5, 2018



Hon. Chereé A. Buggs, JSC