

Progressive Cas. Ins. Co. v Hill
2018 NY Slip Op 33810(U)
May 24, 2018
Supreme Court, Cortland County
Docket Number: EF17-1210
Judge: Jeffrey A. Tait
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At a Term of the Supreme Court
of the State of New York, held in and
for the Sixth Judicial District, at the
Broome County Courthouse, in the
City of Binghamton, New York on the
21st day of May 2018.

PRESENT: HONORABLE JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CORTLAND

Hillcrest Meadow, LLC,

Plaintiff,

DECISION AND ORDER

-against-

Index No. EF17-1210
RJI No. 2017-0867-M

Lawrence G. Hill, III,

Defendant.

APPEARANCES:

Jesse P. Ryder, Esq.
Ryder Law Firm
Attorneys for Plaintiff
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East Syracuse, NY 13057

Lawrence G. Hill, III
Self-Represented Litigant
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DECISION + ORDER ON MOTION
Elizabeth Larkin, County Clerk

HON. JEFFREY A. TAIT, J.S.C.

This matter is before the Court on the plaintiff Hillcrest Meadow, LLC's motion to dismiss the first counterclaim seeking a declaratory judgment, the second counterclaim alleging trespass, and the "fifth" counterclaim¹ seeking punitive damages. The defendant Lawrence G. Hill, III opposes the motion.

In support of the motion, Hillcrest submitted the affidavit of its attorney with exhibits, including the complaint, the answer, emails, and affidavits. In opposition, Mr. Hill submitted a letter sworn to on May 16, 2018 in which he asks that his claims remain pending while Hillcrest's claim against James Stevens (Cortland County Supreme Court EFCA 16-640) is resolved.

The motion was heard on May 21, 2018. Mr. Ryder appeared in support of the motion. Mr. Hill did not appear at that time.

This action arises out of a purported sale of real estate by Mr. Stevens to Mr. Hill which occurred while Hillcrest's action seeking specific performance of a purchase of real estate from Mr. Stevens was pending. In short, Hillcrest alleges it is entitled to ownership of the disputed property. Despite that litigation, Mr. Stevens signed a deed transferring title to the property to Mr. Hill. Mr. Hill thereafter took some self-help steps to assert control over the property and attempting to remove Hillcrest from possession of it.

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It is apparently mislabeled, as it is actually the third counterclaim.

At this point, a detailed recitation of the events that led the parties to where they are today and the claims that each has pending is not necessary. The motion is directed to three specific counterclaims. Regardless of the outcome of this motion, both the Hillcrest action against Mr. Stevens and this action against Mr. Hill will remain pending.

Law

On a motion to dismiss, a court must “construe the pleadings liberally, accept the allegations in the complaint to be true, give [the plaintiff] the benefit of any favorable inferences and determine only whether the facts as alleged fit within any cognizable legal theory” (*Maldonado v. DiBre*, 140 AD3d 1501, 1505 [3d Dept 2016] [internal quotation marks and citation omitted]). “The liberal construction and favorable inferences to which a plaintiff is entitled will nevertheless fail to save claims that are conclusively refuted by documentary evidence . . . or based on indisputably incredible factual allegations” (*Vestal v. Pontillo*, 158 AD3d 1036, 1038 [3d Dept 2018] [citations omitted]).

Analysis

The declaratory judgment counterclaim

Mr. Hill’s counterclaim for a declaratory judgment seeks a declaration regarding ownership of the land. The complaint in this action alleges claims of tortious interference, fraud, and civil conspiracy. The origin of these claims is Hillcrest’s assertion that Mr. Hill is wrongfully claiming title to the property and interfering with Hillcrest’s purchase of it from Mr. Stevens.

Part of a determination of the Hillcrest claims will include a determination of the parties' respective rights, if any, to the property in dispute. The first counterclaim also seeks a determination of the ownership rights to the property. As this essentially mirrors what Hillcrest seeks, it states a claim that is appropriate for adjudication.

The trespass counterclaim

Mr. Hill asserts he is the rightful owner of the disputed property and that Hillcrest is occupying the property without the lawful right to do so. This states a claim.

The punitive damage counterclaim

There is no separate cause of action for punitive damages (*see Rocanova v. Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616-7 [1994]). This is true even when the underlying claim is based on trespass (*see Ruddy v. Citibank*, 224 AD2d 509, 510 [2d Dept 1996]).

Conclusion

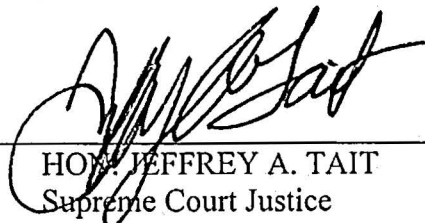
Based on the foregoing, the "fifth" counterclaim is dismissed and the motion is denied in all other respects. This establishes that, at this point, the first and second counterclaims state a cause of action. This does not mean that Mr. Hill will prevail on his claims. The determination of whether his claims will be dismissed or he will prevail will await future proceedings either by motion or trial.

The parties may engage in discovery and disclosure as they deem appropriate. Any disputes in that regard will be addressed in a conference at the request of either party or by motion.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date

below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: May 24, 2018
Binghamton, New York



HON. JEFFREY A. TAIT
Supreme Court Justice

Most or all of the documents upon which this Decision and Order is based were received by Chambers in a scanned electronic format from the Cortland County Clerk's Office and the originals remain filed with the Cortland County Clerk. Therefore, except as noted below, now documents have been forwarded to the Cortland County Clerk with this Decision and Order.

Documents forwarded to the Cortland County Clerk with this Decision and Order:

None