

**Norsen v Trunzo**

2019 NY Slip Op 30161(U)

January 17, 2019

Supreme Court, Wayne County

Docket Number: 83234

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 19<sup>th</sup> day of December, 2018.

PRESENT: Honorable Daniel G. Barrett  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

ALZINA C. NORSEN,

Plaintiff,

-vs-

SANDY TRUNZO,

Defendant.

DECISION  
Index No. 83234

The Plaintiff, Alzina C. Norsen, has filed an action regarding the proposed transfer of title of 2233 Ryder Road, Arcadia, New York. The Defendant, Sandy Trunzo, has filed an Answer to this action.

The Plaintiff has filed an Order to Show Cause with a Temporary Restraining Order regarding this matter and with a request that the Court grant a preliminary injunction preventing the transfer of the property during the pendency of the underlying action.

Many issues are raised in the papers submitted by the parties on this matter but this Decision deals solely with the request for a preliminary injunction.

In the underlying action, Plaintiff is seeking the establishment of a constructive trust regarding the subject property. The Defendant is the daughter of the Plaintiff and

has been appointed as attorney in fact by way of a durable Power of Attorney executed by the Plaintiff in 2008. On May 11, 2011, Plaintiff conveyed the subject property to the Defendant. This conveyance was undertaken with an understanding between the parties. The Plaintiff would be allowed to stay in the subject premises as long as she desired or as long as she was able. The Defendant paid no consideration for the transfer of the property and the Plaintiff has paid the taxes, utility expenses and improvements since the transfer occurred. The submitted papers indicate that the Defendant intends to sell the property to her niece. The Plaintiff is not agreeable to this transfer. The Plaintiff has expressed a concern that if she has a disagreement with her niece, she will be required to vacate the premises.

A party seeking a preliminary injunction must establish three separate elements:

1. A likelihood on the success on the merits;
2. The prospect of irreparable injury if the preliminary injunction is withheld;  
and
3. A balance of equities tipping in the moving party's favor. (See *Destiny USA Holdings, LLC v Citigroup Global Markets Realty Corp.*, 69 A.D. 3d 212 (4<sup>th</sup> Dep't 2009)).

#### **A LIKELIHOOD OF ULTIMATE SUCCESS ON THE MERITS**

Plaintiff is seeking, in part, the establishment of a constructive trust. In order to establish a constructive trust four elements are required:

1. A confidential relationship;
2. A promise;

3. A transfer in reliance on the premise;
4. Unjust enrichment (See Rossi v Morse, 153 A.D. 3d 1637 (4<sup>th</sup> Dep't 2017)).

Plaintiff and Defendant have a mother daughter relationship and the Defendant has been appointed attorney in fact. A confidential relationship has been established (Size v Size, 276 A.D. 2d 329 (1<sup>st</sup> Dep't 2000)).

A promise has been made, both parties concede that. There maybe other terms but the primary promise is that the Plaintiff be allowed to stay in the premises as long as she desires.

A transfer in reliance on the premise. The Plaintiff transferred the premise to the Defendant with the understanding that the Plaintiff be allowed to stay in the premises after the transfer.

Unjust enrichment - The Defendant will receive the proceeds of the sale of the property for which she paid nothing.

The first element to be examined in granting a preliminary injunction is satisfied in that the presented material indicates a likelihood of ultimate success on the merits.

### **PROSPECT OF IRREPARABLE INJURY**

The second element of the analysis regarding whether a preliminary injunction should be granted is whether irreparable injury will result if the preliminary injunction is not granted. Based on the submissions Plaintiff indicated she did not want to live with the proposed purchaser and she was told by the Defendant that she would have to find another place to live in that event. Therefore irreparable injury has been established.

## BALANCE OF EQUITIES

The third element is a balance of equities tipping in the moving party's favor. A discussion of the submissions is important at this point. The Verified Complaint pleads two causes of action:

1. A breach of a fiduciary duty; and
2. The imposition of a constructive trust.

The Answer denies the requested relief in the Verified Complaint and asserts five affirmative defenses. In the papers submitted regarding this application there is a discussion of the financial and physical well being of the Plaintiff being imperilled by the present co-occupants of the subject premises. However, there is nothing in the Complaint or Answer which pertains to the living conditions of the Plaintiff. Subpoenas have been issued by the Defendant to the Wayne County Sheriff's Department, the New York State Police, the Newark Police Department and the Wayne County Social Services Department. The Court has conducted an in-camera review of the records that have been provided pursuant to the Subpoenas. These records have no bearing on the issues raised in the Verified Complaint or the Answer.

Based on the relevant material submitted the Court finds that the equities tip toward the Plaintiff.

The Court is granting a preliminary injunction which prevents the transfer of the subject property during the pendency of this action. Plaintiff must provide an undertaking in the amount of \$750.00 cash or bond.

This constitutes the Decision of the Court. Counsel for Plaintiff to prepare an Order based on this Decision.

Dated: January 17, 2019  
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett  
Acting Supreme Court Justice