

1986 Amsterdam Holdings, LLC v Onestone Lending LLC
2020 NY Slip Op 30419(U)
January 31, 2020
Supreme Court, New York County
Docket Number: 159060/2019
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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1986 AMSTERDAM HOLDINGS, LLC, ALEJO
SANCHEZ, SANTIAGO CONTRERAS, and JAVIER
FLORES,

Index No. 159060/2019

Plaintiffs

- against -

DECISION AND ORDER

ONESTONE LENDING LLC, 1986 AMSTERDAM
AVENUE LLC, SOHANYC LLC, CHOICE
MARKETING SOLUTIONS, INC., MARCO
CASELLA, ERIC VALCICH, ANGEL M. GARCIA,
RICK STEINER FELL & BENOWITZ, LLP, ADAM
STEINER, ESQ., TARTER KRINSKY & DROGIN
LLP, MICHAEL CAMPOREALE, ESQ., and
GEORGE HAMBOUSSI JR., ESQ.,

Defendants

-----X
LUCY BILLINGS, J.S.C.:

Plaintiffs, tenants of premises owned and managed by
defendants at 1986 Amsterdam Avenue, New York County, move to
remove to this court and consolidate with this action two New
York City Civil Court proceedings in New York County commenced by
defendant Onestone Lending LLC against plaintiff Sanchez's
business, Jase Tax LLC, and his father who resides in the
premises. C.P.L.R. §§ 325(b), 602(b). Alternatively, plaintiffs
move to stay the Civil Court holdover proceedings. C.P.L.R. §
2201.

I. THIS ACTION

Plaintiffs claim Onestone Lending is not the rightful owner
of the premises and in this action seek to void the deed to
Onestone Lending, void the prior mortgages on the premises and

underlying promissory notes held by Onestone Lending, and restore ownership to plaintiff 1986 Amsterdam Holdings, LLC. The parties do not dispute that, before Onestone Lending assumed ownership in 2019, 1986 Amsterdam Holdings owned the premises, and its predecessor owners were plaintiffs Contreras and Flores.

Plaintiffs allege that in 2018 they refinanced the premises by giving a promissory note and mortgage to defendant 1986 Amsterdam Avenue LLC based on the promise by defendant Casella, who owned or controlled Onestone Lending, that the refinancing would yield \$450,000 in proceeds that Sanchez needed to fund his business. His business in turn would have enabled plaintiffs to make the refinanced mortgage payments. Defendant Steiner, an attorney, represented plaintiffs in this transaction, which in fact yielded only about 25% of the promised proceeds. 1986 Amsterdam Avenue then assigned the promissory note and mortgage to Onestone Lending, which commenced a foreclosure action against plaintiffs when they fell behind in their mortgage payments. To settle that action, plaintiffs, again represented by an attorney, this time defendant Hamboussi, transferred the premises to Onestone Lending in exchange for a release from liability for the mortgage debt. Plaintiffs further claim that Contreras executed the deed as a member of 1986 Amsterdam Holdings when he was not a member and that 1986 Amsterdam Holdings' resolution authorizing him to sign the deed was invalid.

II. THE CIVIL COURT PROCEEDINGS

The Civil Court is not empowered to grant the equitable relief voiding the deed or other transactions leading up to it or awarding ownership of the premises to 1986 Amsterdam Holdings, which is not even a party in the Civil Court proceedings. Nevertheless, to award possession of the premises to Onestone Lending as it seeks in the Civil Court holdover proceedings, the Civil Court necessarily must determine that Onestone Lending is the valid owner and thus may not determine Onestone Lending's claim for possession of the premises without adjudicating the tenants' defense that Onestone Lending is not the premises' owner. Therefore, in defending those proceedings, Sanchez's business and family may present all plaintiffs' evidence showing that Onestone Lending is not the valid owner and that 1986 Amsterdam Holdings is the valid owner, and the tenants may obtain complete relief on the merits of their claim regarding the premises' ownership. Simens v. Darwish, 105 A.D.3d 686, 686 (1st Dep't 2013); Brecker v. 295 Cent. Park W., Inc., 71 A.D.3d 564, 565 (1st Dep't 2010). Then the parties here may use the Civil Court's determination regarding ownership to preclude a contrary determination here. Pinnacle Consultants v. Leucadia Natl. Corp., 94 N.Y.2d 426, 432-33 (2000); Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 349 (1999); Simmons-Grant v. Quinn Emanuel Urquhart & Sullivan, LLP, 116 A.D.3d 134, 139 (1st Dep't 2014); Sanders v. Grenadier Realty, Inc., 102 A.D.3d 460, 461 (1st Dep't 2013).

III. THE RELIEF NOW REQUESTED

Thus, although there are overlapping issues in the Civil Court proceedings and this action, the issues in the holdover proceedings are not so inextricably intertwined that dual litigation is unfeasible or inefficient. Nor does any reason of judicial efficiency or avoidance of inconsistent dispositions dictate a stay of the Civil Court proceedings. C.P.L.R. § 2201; Wachovia Bank, N.A. v. Silverman, 84 A.D.3d 611, 612 (1st Dep't 2011); Handwerker v. Ensley, 261 A.D.2d 190, 191 (1st Dep't 1999); Dun-Donnelly Publ. Corp. v. Kenvic Assoc., 225 A.D.2d 373, 374 (1st Dep't 1996). See Fewer v. GFI Inc., 59 A.D.3d 271, 271-72 (1st Dep't 2009); Somoza v. Pechnik, 3 A.D.3d 394, 394 (1st Dep't 2004); Lessard v. Architectural Group, P.C. v. X & Y Dev. Group, LLC, 88 A.D.3d 768, 770 (2d Dep't 2011). As long as the tenants show that Onestone Lending is not the rightful owner of the premises as plaintiffs contend, no one will suffer the irreparable harm of eviction from the premises by Onestone Lending. Plaintiff's notice of pendency has resolved the potential irreparable harm from Onestone Lending transferring the premises pending a determination regarding ownership. C.P.L.R. § 6501. If plaintiffs believe the evidence supports their claims, they also may move for summary judgment in this action before a determination of ownership in the Civil Court proceedings. C.P.L.R. § 3212(b).

The procedural stage of the Civil Court summary proceedings, in contrast to this action, which is far from ready for trial,

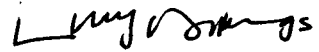
and where the parties need disclosure before proceeding to trial, also precludes consolidation. McGinty v. Structure-Tone, 140 A.D.3d 465, 466 (1st Dep't 2016); Wachovia Bank, N.A. v. Silverman, 84 A.D.3d at 612; Suckishvili v. Visiting Nurse Serv. of N.Y., 74 A.D.3d 432, 433 (1st Dep't 2010); Ahmed v. C.D. Kobsons, Inc., 73 A.D.3d 440, 441 (1st Dep't 2010). The fact that plaintiffs have not immediately moved for summary judgment indicates that they are not prepared to proceed to an immediate disposition in this action.

In fact, the dubious merit of plaintiffs' claims as now presented militates against granting them any relief in this action at this juncture or interfering with the Civil Court proceedings. In both the refinancing of the premises and in the settlement of the foreclosure action, plaintiffs were represented by attorneys. 1986 Amsterdam Holdings' Operating Agreement, which determines the members of the limited liability company (LLC), provides that both Contreras and Flores were the LLC's two members and is signed by both of them. Plaintiffs do not claim that these signatures are invalid. The LLC's resolution authorizing its members to transfer the premises, which Contreras admits he signed, thus is validly signed by its two members, Contreras and Flores. Plaintiffs further admitted that Contreras was a member of 1986 Amsterdam Holdings and authorized to execute transactions on its behalf by his notarized signature on the stipulation settling the foreclosure action.

Consequently, the court denies plaintiffs' motion to

consolidate two New York City Civil Court holdover proceedings in New York County with this action or to stay those proceedings. C.P.L.R. §§ 325(b), 602(b), 2201. This decision constitutes the court's order.

DATED: January 31, 2020



LUCY BILLINGS, J.S.C.

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