

**Sanjines v Cruz**

2023 NY Slip Op 31006(U)

March 31, 2023

Supreme Court, New York County

Docket Number: Index No. 160079/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

-----X

MARIA CRUZ SANJINES, CARLOS P. CRUZ,

Plaintiff,

- v -

DIANA CRUZ, 123 EAST 101ST STREET HOUSING  
DEVELOPMENT FUND CORPORATION, YOLANDA  
BROWN, TK REAL ESTATE GROUP INC.

Defendant.

-----X

**INDEX NO.** 160079/2022

**MOTION DATE** N/A

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 54, 55, 56, 57, 59, 60

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Plaintiffs’ motion to consolidate this action with a currently pending proceeding in landlord-tenant court and to stay that landlord-tenant matter is denied. Defendant Diana Cruz’s cross-motion to dismiss and for sanctions is granted in part and denied in part.

**Background**

Plaintiff Maria Cruz Sanjines (“Maria”) contends that she, along with Carlos Cruz, has lived in a coop apartment for 15 years. She claims that shares in that apartment were owned by her now-deceased partner, Jose Cruz. Maria insists that she was the common law wife of Jose Cruz, but also admits that defendant Diana Cruz was the “legal spouse” of Jose Cruz. Plaintiffs allege that Diana and Jose purchased the apartment (via shares in this HDFC) in 2005. They insist that Diana and Jose separated in 2005 and that Jose lived in the apartment until his untimely death in 2017.

Maria contends that her relationship with Jose started in 2007 and they started living together, in the subject apartment, in 2008. She insists that she made many financial contributions to the household over the years, including maintenance payments as well as paying for utilities, electric and gas. Maria estimates she paid about \$250,000 towards the apartment.

Maria argues that Jose made it clear that the apartment should go to Maria and their son. She insists that after his death, she continued to live in the apartment with plaintiff Carlos Cruz (Jose's brother). But in July 2022, Diana served a ten-day notice of termination upon plaintiffs and then started a holdover proceeding in August 2022. Plaintiffs bring nine causes of action: declaratory relief, constructive trust, quiet title, equitable estoppel, compensatory damages, consequential damages, punitive damages, emotional distress, and legal fees. Plaintiffs now bring this motion to consolidate and stay the holdover proceeding so that her claims can be resolved.

Diana cross-moves to dismiss and points out that she was married to Jose in 2001, they bought the shares in 2005 and they were never officially divorced; she was still legally married to him at the time of his death and was listed as surviving spouse on his death certificate. Diana also points out that Jose never executed a will. She claims that she is now the sole shareholder with respect to the apartment by operation of law. Diana claims she only found out that plaintiffs were living there in 2021 and that plaintiffs have never paid her any use or occupancy. She insists that a tenancy by the entirety was created when she purchased the apartment shares with Jose and that the shares are now in her sole possession.

In opposition to the cross-motion, plaintiffs insist that Diana did not attach the proprietary lease and that the documentary evidence submitted by Diana should not compel the Court to dismiss the case. Plaintiffs argue that Diana is not a shareholder in good standing because the

apartment has not been her primary residence for more than a decade, as required by the cooperative conversion documents nor has she paid anything towards maintenance in many, many years. They insist that they established a cognizable cause of action for constructive trust.

### **Discussion**

The Court must begin its analysis with the undisputed facts, of which there are many. It is undisputed that Diana and Jose were married when they bought the shares, they were still married at the time of Jose's death, Jose died without a will and the stock certificate for the apartment lists both Jose and Diana (NYSCEF Doc. No. 42). It is also undisputed that Jose did not execute any documents that purport to give plaintiffs an interest in the subject shares.

“A disposition of real property to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in common. A surviving tenant in a tenancy by the entirety receives the fee interest in its entirety, free and clear of any debts, claims, liens or other encumbrances as against the deceased spouse” (*Cormack v Burks*, 150 AD3d 1198, 1199, 56 NYS3d 202 [2d Dept 2017] [internal quotations and citation omitted]). “Tenancies by the entirety [are] different from both tenancies in common and a joint tenancy in that it remains fixed and cannot be destroyed without the consent of both parties for as long as the marriage remains legally intact, with both parties continuing to be seized of the whole, and the death of one merely results in the defeasance of the deceased spouse's coextensive interest in the property” (*In re Estate of Que*, 26 Misc 3d 1227(A), 907 NYS2d 440 [Sur Ct, Bronx County 2010]).

The relevant statute, EPTL 6-2.2(b), along with the fact that Diana's name is on the stock certificate, and the fact that they were still married when he died, clearly requires that the shares of stock passed to Diana. Plaintiffs' causes of action regarding declaratory relief, a constructive

trust, quiet title, and equitable estoppel are therefore all without merit. There is no basis upon which this Court can transfer title to plaintiffs based on this record. An oral promise made by Jose at some point before he died is not sufficient to overcome the EPTL or the stock certificate. While the Court recognizes that Maria may think she was, in nearly every way, Jose's "wife", the fact is that he was legally married to Diana and bought the shares to the apartment with Diana. Once her husband died, Diana became the sole owner of the shares.

That Maria has made payments related to the apartment over the years might be the basis for some sort of claim against Diana (although no such cause of action is expressly contained in the instant complaint), but it does not require this Court to take away title from Diana and give it to plaintiffs. Plaintiffs' arguments about Diana potentially not being a shareholder in good standing are not claims upon which plaintiffs can seek relief or seek title to the shares related to the apartment. The building could certainly seek relief if Diana has violated any rules, but that, again, does not create any rights upon which plaintiffs can seek relief.

The Court also observes that the HDFC's president, Yolanda Brown, claims that there is no proprietary lease for the subject apartment in the HDFC's records. Setting aside how that could be possible in a co-op, that is another issue to be sorted out by the HDFC. It does not change the fact that Diana established her right to the apartment, at least with respect to plaintiffs' meritless ownership claims.

Plaintiffs' other causes of action are similarly without merit. It is unclear on what basis they seek the fifth and sixth causes of action for compensatory and consequential damages. Nor is this a case where punitive damages (the seventh cause of action) or a claim for emotional distress are appropriate. To the extent that these claims are based upon Diana's effort to remove plaintiffs from the property (Diana commenced a holdover proceeding in landlord-tenant court),

that does not state cognizable causes of action. Diana is entitled to seek plaintiffs' removal from an apartment where she alone owns the related shares. And plaintiffs did not state a basis upon which they could recover legal fees (the ninth cause of action).

### **Summary**

The Court denies the branch of the cross-motion that seeks sanctions. It is undisputed that plaintiffs were living in the apartment for many years (both prior to, and after, Jose's death), and apparently paying the maintenance, until Diana got around to asserting her right to the apartment. Her claim that she did not find out that plaintiffs were living there until 2021 raises questions about what she thought was happening to the apartment. Certainly, she must have known that maintenance has to be paid or she might lose the apartment.

But these issues (along with how Diana found out about plaintiffs' residence in the apartment) are irrelevant to the claims here. Here, plaintiffs ask this Court to overlook unambiguous caselaw and statutes, and award them a property right as well as extinguish Diana's rights based solely on principles of equity. To do so would require this Court to ignore the EPTL, the undisputed fact that Diana was Jose's wife at the time of his death and the documentary evidence submitted on this motion. The Court cannot do that. For whatever reason (and there may have been good reasons), Jose never divorced Diana and he never worked something out with her in order to have her give up her right to the apartment or to give Maria an interest. When he died, the shares passed to Diana. The Court is unable to give plaintiffs the apartment simply because they believe they are entitled to it.

Accordingly, it is hereby

ORDERED that defendants' cross-motion to dismiss is granted to the extent that the complaint is dismissed and denied to the extent the cross-motion sought sanctions, and the Clerk is directed to enter judgment in favor of defendants and against plaintiffs along with costs and disbursements upon presentation of proper papers therefor.



3/31/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE