

Guliyev v Shore Parkway Invs. Corp.

2021 NY Slip Op 32124(U)

October 29, 2021

Supreme Court, Kings County

Docket Number: Index No. 517614/2020

Judge: Lillian Wan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

Index No.: 517614/2020
Motion Date: 10/20/21
Motion Seq.: 01 & 02

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VIDADI GULIYEV,

Plaintiff,

- against -

DECISION AND ORDER

SHORE PARKWAY INVESTORS CORP.,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 01) 6-17, 36 and (Motion 02) 20-31 were read on these motions.

The plaintiff, Vidadi Guliyev,¹ seeks summary judgment (Motion 01), pursuant to CPLR §3212, and dismissal of the defendant’s counterclaims; and for an order directing the Kings County Register to strike/vacate/discharge the February 28, 2011 deed to Defendant recorded under CRFN 2011000082380. The defendant cross-moves (Motion 02), seeking dismissal pursuant to CPLR §213(8), asserting that the statute of limitations based on fraud has expired. The defendant also claims that the plaintiff is not a proper party to this action.

This action arises from a deed conveyance by the plaintiff to the defendant, allegedly under false pretenses, based on a fraudulent foreclosure scheme. The complaint sets forth three causes of action. The first cause of action seeks a declaratory judgment finding that the February 28, 2011 deed transfer is void as a matter of law. The second cause of action seeks to quiet title to the premises, pursuant to Article 15 of RPAPL, and the third cause of action is based on unjust enrichment.

The plaintiff became the owner of the premises on April 27, 2006. The plaintiff executed two mortgages in connection with the purchase of the premises; a primary lien in the amount of \$373,200 and a secondary lien in the amount of \$93,300. At the end of 2006, the plaintiff took another mortgage on the premises. In mid-2007, the plaintiff lost his job and began experiencing financial difficulties, causing him to fall behind on the mortgages payments. The plaintiff defaulted on the mortgage payments, and a foreclosure action was commenced against him on or about November 19, 2007. After the commencement of the foreclosure, the plaintiff alleges he began to receive telephone calls from brokers and investors regarding the premises, and fell victim to a mortgage foreclosure scheme.

¹ According to the plaintiff, his name was incorrectly spelled on the initial mortgage and deed as Vida Quliyev, which went unnoticed until these motions were submitted. The plaintiff has attached a copy of his redacted New York State driver’s license which indicates the true spelling to be Vidadi Guliyev.

The plaintiff alleges that in early 2011 he met with attorney Sanford Solny, who provided the plaintiff with a check for the sum of \$8,000 as an inducement to sign the deed transfer papers over to the defendant. The plaintiff asserts that the defendant told him the funds were for relocation assistance for him and his family, and that the plaintiff would be relieved of his mortgage indebtedness. He contends that he did not understand that he was signing away title to the premises. The plaintiff claims that as a Russian immigrant, he had little understanding of the English language at the time. Thereafter, the defendant commenced eviction proceedings against the plaintiff, and the plaintiff and his family were forced to relocate to the home of a family member. Apparently, the mortgages were never satisfied by the defendant, and a foreclosure action was commenced against the plaintiff and the defendant in 2015. The plaintiff claims that he would not have conveyed title to the defendant for such a nominal amount if he had known that the defendant did not intend to satisfy the mortgages.

Apparently, the conveyance documents on ACRIS list the consideration paid by the defendant as \$652,170. In its counterclaim, the defendant admits paying \$8,000 to the plaintiff for the purchase of the property, and also admits that the value of the premises at the time was \$400,000. There are four counterclaims asserted by the defendant. The first counterclaim alleges that the plaintiff has secretly entered into an agreement with an investor to sell the property for a larger profit, and that the plaintiff is a mere "straw plaintiff" acting in the interest of the other party. The second counterclaim alleges that the property was in a dilapidated condition at the time of the 2011 sale, and that if the deed is returned to the plaintiff the defendant is entitled to \$78,000 as reimbursement of the consideration, costs and expenses of repairs made to the premises. The third counterclaim alleges that the defendant has restored the premises and greatly increased its value. The defendant alleges that the plaintiff would be unjustly enriched if the property was returned to him, and therefore the defendant would be entitled to the sum of \$500,000, which reflects its current value. The fourth counterclaim alleges that the plaintiff's action is frivolous, and that the defendant is entitled to costs, expenses, damages and punitive damages in the amount of \$100,000.

In opposition to the plaintiff's motion, Sanford Solny submitted a "solemn affirmation" on the defendant's behalf in his capacity as an officer of the corporation. Mr. Solny signed the subject deed on behalf of the defendant corporation, and his nephew notarized the signature. Mr. Solny was suspended from the practice of law approximately nine years ago, and was indicted in Queens County in 2017, and again in Kings County in 2020, for defrauding homeowners in financial distress into signing over their properties. Mr. Solny's nephew was also indicted in the scheme. According to the plaintiff, Mr. Solny has pled guilty to an E felony, which will likely result in his disbarment from the practice of law. In support of his motion, the plaintiff attaches a copy of a decision by Judge Silber in *Stewart v Weldon Realty Inc.*, Index No. 525172/2018, which acknowledges Mr. Solny's suspension from the practice of law, his indictment in a vast

mortgage fraud scheme, and subsequent plea to an “E” felony. Judge Silber granted the plaintiff’s summary judgment motion for return of the property in that case.

Mr. Solny’s affirmation alleges that the plaintiff and his attorney are the individuals actually engaging in fraud and that this was a bona fide purchase. Curiously, attached to the defendant’s submissions is a copy of an indictment and a press release, which the defendant claims demonstrates that the plaintiff and his attorney are engaging in fraud with the individuals named in the documents. Neither document supports that claim, and neither the plaintiff nor his attorney are mentioned in them. Clearly, as argued by the plaintiff, the defendant’s cross-motion and opposition are based on nothing more than conjecture and speculation, and fail to raise issues of fact sufficient to preclude a grant of summary judgment.

With respect to the defendant’s claim that the plaintiff’s action is barred by the six-year statute of limitations for fraud, the plaintiff points out that the complaint does not contain a fraud cause of action, and therefore the six year statute of limitations is inapplicable. The gravamen of the plaintiff’s complaint is the second cause of action which seeks to quiet title to the premises, and is governed by a ten-year statute of limitations pursuant to CPLR § 212(a). The plaintiff asserts that this action was timely commenced within the ten years statute of limitations. The plaintiff also contends that deeds that are forged or executed under false pretenses are void *ab initio*, citing to *GMAC Mtge. Corp. v Chan*, 56 AD3d 521 (2d Dept 2008).

The plaintiff has demonstrated his prima facie entitlement to summary judgment through his submissions, which include the initial deed, dated April 27, 2006, conveying title to the premises to the plaintiff, the subsequent deed conveying title to the defendant dated February 28, 2011, the mortgage and foreclosure documents, and the plaintiff’s affidavit, in which he avers that he was told by the defendant that he would be relieved of the mortgage debt and foreclosure in exchange for receiving a check for \$8,000. The plaintiff further avers that he was never informed by the defendant that the documents he signed conveyed title to the premises to the defendant, and that the mortgage debt was never satisfied by the defendant, leaving him liable in the pending foreclosure action. In opposition, the defendant has failed to submit admissible evidence that raises a triable issue of fact. *See Zuckerman v City of New York*, 49 NY2d 557 (1980). The affirmation of Mr. Solny, which asserts facts unsupported by evidence, makes conclusory allegations, and is insufficient to defeat a motion for summary judgment motion. *See Fields v S & W Realty Assoc.*, 301 AD2d 625 (2d Dept 2003). As such, the plaintiff’s motion for summary judgment is granted as to the plaintiff’s first and second causes of action, and for dismissal of the defendant’s counterclaims.

The defendant’s cross-motion seeking dismissal based on CPLR § 213(8), is denied. Contrary to the defendant’s argument, the complaint does not allege fraud. The complaint seeks a declaratory judgment and to quiet title to the premises, pursuant to Article 15 of RPAPL. The

cause of action seeking to quiet title accrued in 2011, when the plaintiff conveyed the property to the defendant, and was timely commenced in 2020, within the ten-year statute of limitations. *See Elam v Altered Ego Realty Holding Corp.*, 114 AD3d 901 (2d Dept 2014); *see also Matter of Marini*, 119 AD3d 584 (2d Dept 2014).

The remaining contentions are without merit.

Accordingly, it is hereby

ORDERED, that the plaintiff's motion for summary judgment (Motion 01) is granted as to the first and second causes of action, and for dismissal of the defendant's counterclaims; and it is further

ORDERED, that the defendant's motion seeking dismissal of the complaint (Motion 02) is denied; and it is further

ORDERED, ADJUDGED AND DECLARED, that the deed dated February 28, 2011, and recorded in the Office of the City Register of the City of New York on March 7, 2011, CRFN 2011000082380, is declared null and void and of no force and effect, and it is further

ORDERED, ADJUDGED AND DECLARED, that Vidadi Guliyev, referred to on the deed of February 28, 2011 as Vida Quliyev, is the rightful owner in fee absolute of the property located at 3302 Shore Parkway, Brooklyn New York 11235, Block 8769, Lot 111, by virtue of a deed dated April 27, 2006, recorded in the Office of the City Register of the City of New York on July 6, 2006, CRFN 2006000383450; and it is further

ORDERED, ADJUDGED AND DECLARED, that the Office of the City Register of the City of New York, upon being served with a certified copy of this Order and Judgment with Notice of Entry is hereby directed to cancel the deed dated February 28, 2011, and recorded in the Office of the City Register of the City of New York on March 7, 2011, CRFN 2011000082380, and to enter upon the margin of the record of the deed referring to this judgment.

This constitutes the decision, order and judgment of the Court.

Dated: October 29, 2021



HON. LILLIAN WAN, J.S.C.
Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.