

Weingrad v 24035 Owners Corp.

2015 NY Slip Op 30624(U)

April 17, 2015

Supreme Court, New York County

Docket Number: 156828/2014

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 43

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STEPHEN A. WEINGRAD,

DECISION/ORDER

Plaintiff,

-against-

Index No.: 156828/2014

24035 OWNERS CORP., et ano.,

Defendants,

-----X

ROBERT R. REED, J.:

Plaintiff, claiming an interest in a cooperative apartment unit, moves, pursuant to CPLR 6301 *et seq.*, to enjoin defendants, the cooperative corporation and the corporation’s current managing agent, from interfering with plaintiff’s occupancy (or the occupancy by plaintiff’s tenants) of the particular apartment unit, or from interfering with plaintiff’s right to enter into a sublease agreement regarding such unit. Plaintiff claims to have lost the stock certificate evidencing his ownership shares in the apartment cooperative and his entitlement to the unit. Notably, plaintiff claims that he took his ownership interest in the apartment under the name of a friend of his, one “Irwin Simon,” purportedly as a deception to thwart would-be future subleasing tenants from contacting plaintiff regarding the said unit. Plaintiff attaches as an exhibit to the motion what he states is the original proprietary lease for the unit, dated June 5, 1984, and which identifies “Irwin Simon” as lessee. Plaintiff’s name appears nowhere on the proprietary lease. In any event, it is plaintiff’s contention that he qualifies as a “holder of unsold shares” under the terms of the proprietary lease, allowing him the right to sublease the apartment unit without obtaining the consent of defendants. Plaintiff brings this suit, ultimately, to quiet title with respect to his claimed interest in the apartment unit

Defendants oppose the motion. While defendants assumed for years that plaintiff's interest in the subject unit was valid and further that plaintiff was a holder of unsold shares and thereby entitled to specific rights, their review of records in 2013 cast both assumptions into serious doubt. That review showed only "Irwin Simon" as having an interest in the subject unit and showed that only the corporation itself was the holder of unsold shares – meaning plaintiff had no formal legal right in the unit and further had no right to sublease the unit without board approval. Plaintiff, when requested to do so before this litigation began, failed to provide defendants proof of his ownership interest in the subject unit or proof that his status was that of a holder of unsold shares.

The decision to grant or deny a preliminary injunction rests within the sound discretion of the Court (*Merscorp. Inc. v. Romaine*, 295 AD 2d 431). In exercising that discretion, the Court must consider whether the moving party has established that (1) a likelihood of success on the merits of his claim, (2) irreparable harm will result if preliminary relief is denied, and (3) the balance of the equities weigh in his favor (*id.*). Importantly, a preliminary injunction is considered a drastic remedy, and will only be granted if the movant establishes a clear right to it under the law and the undisputed facts found in the moving papers (*Koultukis v. Phillips*, 285 AD 2d 433). In addition, it is settled that, absent extraordinary circumstances, a preliminary injunction will not be granted if it provides the ultimate relief that the movant would gain via a final judgment (*SHA Raistov LLC v. Ros Land Inc.*, 18 AD 3d 727).

Plaintiff seeks judicial intervention here because, according to his account, 30 years ago he obtained an interest in a cooperative apartment unit in someone else's name and now he has no formal proof of his claimed interest in such unit. Whether plaintiff's rendering of his actions 30 years ago is classified as an institution of a legal fiction or an exercise of an act of false pretense, plaintiff's account does not inspire any level of confidence in the likelihood of his success on the merits. And, of course, defendants do not accept plaintiff's version of the facts. Indeed, defendants assert that plaintiff's friend, Mr. Simon, actually lived in the subject apartment unit, presumably negating the qualification for the status as "holder of unsold shares." Plaintiff, for his part, has presented nothing in his moving papers – beyond his mere word – to support his claim to still be a holder of unsold shares, which seems to underlie much of the parties' actual dispute. In this Court's view, plaintiff has not carried his burden of establishing on this motion a likelihood of success on the merits.

Additionally, it appears that plaintiff's damages are quite easily calculable. Indeed, the threat that plaintiff sees from defendants' alleged actions is to plaintiff's collection of rent, or more precisely, to his timely and undiminished collection of rent. That plaintiff may feel burdened by a delay in collection of rent does not make such potential harm irreparable. Such delays in litigation are why interest is provided by statute.

Finally, the Court would add that, however plaintiff may couch his request for preliminary relief, his motion really does seek in effect to "quiet title" – inasmuch as it seeks to prevent defendants from hindering his ability to exercise what he believes to be his unfettered rights as owner of the

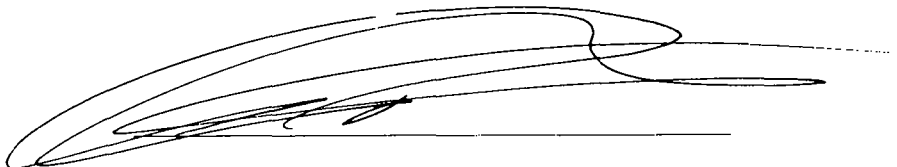
subject apartment unit. Thus, in that respect, the relief requested on this motion is also inappropriate because it would provide the ultimate relief that the movant would gain by a final judgment.

According, it is ORDERED as follows:

1. Plaintiff's motion, pursuant to CPLR 6301 *et seq.*, is denied in all respects; and it is further
2. ORDERED that counsel for the parties or any parties planning to appear *pro se* shall appear for a compliance conference in Part 43, located in Room 581 at 111 Centre Street, New York, New York on June 18, 2015, at 2:30 p.m.

Dated: April 17, 2015

ENTER

A handwritten signature in black ink, appearing to read 'ROBERT R. REED', written over a horizontal line.

ROBERT R. REED

J.S.C.

HON. ROBERT R. REED

J.S.C.