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Contracts of Sale / Time of the Essence

The seller sent a letter dated May 6, 2014 to the buyer of real property under a contract of sale, setting the closing at the office of the seller’s attorney on June 5, 2014 at 10 AM, “time of the essence.” The buyer failed to appear at the closing; the seller cancelled the contract and declared that the down payment was forfeited. In an Action by the buyer for specific performance, the Supreme Court, Kings County, granted the seller’s motion to dismiss and cancel the notice of pendency. The Appellate Division, Second Department, affirmed the lower court’s Order. According to the Appellate Division,

“[t]he seller showed that he properly set a law day for closing and indicated that time was of the essence, by providing a ‘clear, distinct, and unequivocal notice to that effect giving the other party a reasonable time in which to act’ [citations omitted]. The seller further established, prima facie, that the buyer was in default when it failed to appear, and was not ready, willing, and able to close on that date [citations omitted].”

Brickstone Group, Ltd. V. Randall, 2019 NY Slip Op 03313, decided May 1, 2019.



Constructive Trusts

The Plaintiff alleged that in 2006 the Defendant and he agreed that the Defendant would transfer title to property in Brooklyn to the Plaintiff when the Plaintiff obtained permanent residency status, achieved “good financial credit”, and if the Plaintiff, in the interim, made all payments on the mortgage and the property’s carrying costs. The Plaintiff claimed that in reliance on that promise he paid approximately \$550,000 toward the mortgage and for carrying costs for the property. The Plaintiff sued for the imposition of a constructive trust and to recover damages for unjust enrichment. The Supreme Court, Kings County, denied the Defendant’s motion to dismiss; the Appellate Division, Second Department, affirmed the lower court’s ruling.

The Appellate Division held that the allegations of the complaint sufficiently stated a cause of action for the imposition of a constructive trust. According to the Appellate Division,

“[t]he complaint, as amplified by the plaintiff’s affidavit in opposition to the defendant’s motion, alleged that the plaintiff made significant expenditures of time and money with respect to the subject property for more than 10 years in reliance upon the defendant’s promise, and that the defendant was unjustly enriched by the plaintiff’s payments toward, inter alia, the mortgage, electric, and water bills for the subject property.”

The Court noted that the statute of frauds was not a defense to a properly pleaded cause of action to impose a constructive trust. It further held that complaint sufficiently pleaded a cause of action for unjust enrichment.

Hernandez v. Florian, 2019 NY Slip Op 05111, decided June 26, 2019.

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Constructive Trusts

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In another decision of the Appellate Division, Second Department, dealing with the imposition of a constructive trust, the Plaintiff conveyed title to two parcels of real property in Kings County (the "Decatur and Clarkson parcels") to the Defendant, reserving a life estate to himself in each parcel. The Plaintiff and the Defendant agreed that the Defendant would not mortgage, sell, lease or otherwise transfer or encumber either property without the express consent of the Plaintiff. The Plaintiff alleged that the Defendant, without his consent, mortgaged the Decatur and Clarkson parcels and used the loan proceeds to purchase another parcel in Brooklyn (the "Putnam property"). The Plaintiff further alleged that the Defendant failed to account to the Plaintiff for income received from the Decatur and Clarkson properties. The Plaintiff sought an accounting with respect to the Decatur and Clarkson parcels and the imposition of constructive trusts on the Decatur and Clarkson parcels and the Putnam property.

The Supreme Court, Kings County, held that the Plaintiff was entitled to a constructive trust with respect to the Decatur and Clarkson parcels and directed the Defendant to reconvey them to the Plaintiff. The Court dismissed causes of action to impose a constructive trust on the Putnam property, for an accounting, and for punitive damages. The Appellate Division, Second Department, affirmed the lower court's ruling, holding that the Putnam property was not subject to a constructive trust "since the plaintiff never had any interest in that property", as modified to allow for an accounting. According to the Appellate Division,

"[t]he imposition of a constructive trust...without also granting an accounting to determine the amount to which the plaintiff is entitled, was not 'appropriate to the proof received (CPLR 3017[a]; [citation omitted]). The trial evidence established that the Decatur and Clarkson properties remaining encumbered by several mortgages improperly given by the defendant. An accounting to ascertain the values of the properties, the mortgages, and any rental or other income derived from the properties that was improperly withheld by the defendant was necessary to grant complete relief to the plaintiff in accordance with the equities of the case [citation omitted]."

The matter was remitted to the Supreme Court for further proceedings on the cause of action for an accounting.

Burns v. Burns, 2019 NY Slip Op 05513, decided July 10, 2019.

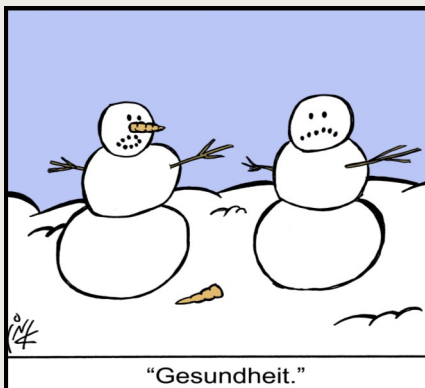
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