

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

INDEX NO.: 62514/14

COPY

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JKJ MARINE, LLC and P&L MARBLE, INC.,

Plaintiff,

-against-

1320 ENTERTAINMENT INC.,

Defendant.
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Decision after Hearing

PLAINTIFFS' ATTORNEY:
JASPAN SCHLESINGER, LLP
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Garden City, New York 11530

DEFENDANT'S ATTORNEY:
ESSEKS, HEFTER & ANGEL, LLP
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Plaintiffs JKJ Marine, LLC ("JKJ") and P&L Marble, Inc. are the lessee and sublessee, respectively, of commercial property to which the lessor Town of Babylon Industrial Development Agency (the "IDA") holds legal title pursuant to a "straight lease" (sale-leaseback) transaction between the former property owner JKJ and the IDA. Defendant 1320 Entertainment, Inc. owns the adjacent property. Plaintiffs commenced this action for trespass and ejectment predicated on defendant's allegedly unauthorized use of plaintiffs' parking lot and the alleged encroachment of defendant's loading dock onto plaintiffs' property. Defendant filed a verified answer to plaintiffs' complaint in which, *inter alia*, it admits the encroachment of its loading dock and that defendant's vehicles park on and travel across plaintiffs' property. Defendant alleges, however, by way of affirmative defense, that it has acquired title to the loading dock by adverse possession and/or that it has a prescriptive easement or easement of necessity for continued use of the loading dock and plaintiff's parking area for parking and ingress and egress.¹ Defendant's answer also asserted numerous additional affirmative defenses, including, as relevant here, the defense that as the record owner of the subject property, the IDA is a necessary party to the action. Shortly after issue was joined, plaintiffs moved for summary judgment on its claims for an order of ejectment and money damages for the alleged trespass.

The July 30, 2015 order of this Court (BAISLEY, J.) granted plaintiffs' motion for summary judgment only to the extent of directing a hearing for the purpose of determining the threshold matter of whether the IDA is a necessary party herein, and otherwise denied the motion without prejudice to timely renewal. Pursuant to the order, a hearing was held before the undersigned on September 24, 2015. The Court heard the opening statements of counsel for the parties, who had previously stipulated to the admission into evidence of a total of seven exhibits, including copies of the lease agreement dated November 13, 2012 between the IDA and JKJ, a series of three photographs depicting the subject property and the alleged encroachments, the bargain and sale deed dated November 13, 2012 between JKJ as grantor and the IDA as grantee, a memorandum of lease between the IDA as lessor and JKJ as lessee recorded on December 6, 2012, a mortgage given by JKJ and the IDA to JPMorgan Chase Bank, N.A., a title insurance policy issued to the IDA, and the affidavit of John Braslow, Esq., counsel to the IDA, sworn to November 13, 2012.

¹ Defendant has not asserted any counterclaims with respect to any of its alleged defenses.

The only witness called to testify at the hearing was Mr. Braslow, who testified, in substance, that the sole purpose of the transfer of title from JKJ to the IDA was to provide a tax abatement to the business by taking the property off the tax rolls and allowing JKJ to make payments in lieu of taxes during the 15-year term of the straight lease transaction, after which title to the property would revert to JKJ. He testified that the IDA is the nominal or record owner of the property but that JKJ is the beneficial owner and that the IDA has not taken on any of the rights or obligations of an owner. He noted that the IDA signed the mortgage, but only as an accommodation signer and that the mortgagee does not have any recourse against the IDA. He testified that the IDA does not have any interest in the instant litigation or in the outcome.

On cross-examination, Mr. Braslow conceded that the IDA is the record owner and that all of the documents admitted into evidence reflect that the IDA is the owner of the property and the named insured in the title policy issued with respect to the property. Upon the conclusion of the hearing the Court reserved decision pending the submission by the parties of post-hearing memoranda of law and a certified transcript of the hearing. The matter was finally submitted before the undersigned on November 2, 2015.

The Court has carefully reviewed the transcript, the exhibits, and the parties' submissions as well as the cases cited therein, and renders the following determination:

The seminal questions to be considered in determining whether a person or entity is a "necessary party" to litigation are whether "complete relief [may] be accorded between the persons who are parties to the action or whether the person or entity alleged to be a necessary party "might be inequitably affected by a judgment in the action" (CPLR §1001(a)). As noted by the Court of Appeals, the general policy of the CPLR is to limit the scope of "indispensable parties" only to those cases where the determination of the court will adversely affect the rights of nonparties (*Castaways Motel v C.V.R. Schuyler*, 24 NY2d 120 [1969]). Where determination of the action would affect a person or entity but would not affect it "inequitably," that person or entity is not an indispensable party (*id.*).

Here, the claims asserted by plaintiffs sounding in trespass and seeking ejectment of defendants from the property are predicated on JKJ's beneficial ownership of the property and the exclusive possessory interest therein of JKJ and P&L Marble, Inc. (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]). Such claims do not implicate the title interests of the IDA in and to the subject property. Plaintiffs thus were not required to join the IDA as a plaintiff in the action they commenced against defendant (*Castaways Motel v C.V.R. Schuyler*, 24 NY2d 120 [1969]).

In response to plaintiff's complaint, however, defendants have asserted defenses that do directly implicate the title of the property, including adverse possession and easement by prescription or necessity or implication. It is well established that where an action affects the title to property, the title owner of the property is a necessary party to the action (*Dunkin Donuts of New York, Inc. v Mid-Valley Oil Co.*, 14 AD3d 590 [2d Dept 2005]). Here, if it were ultimately determined that defendant had acquired title to some portion of the subject property, the IDA as titleholder *qua* titleholder would be adversely affected by the diminishment or impairment of its title – whether or not it feels *aggrieved* by any such diminishment or impairment of title.

Accordingly, the Court is constrained to conclude that the Town of Babylon Industrial Development Agency is a necessary party to this action. In light of the foregoing, and in accordance with CPLR §1001(a), the Court directs plaintiffs to join the IDA forthwith in this action as a plaintiff or, if it refuses to do so, that it be made a defendant.

Upon such joinder, the parties are directed to appear before the undersigned for a status conference on June 30, 2016 at 9:30 a.m. to discuss, *inter alia*, the conditions for renewal of plaintiffs' motion for summary judgment as provided for in the Court's prior order.

The foregoing constitutes the decision and order of the Court.

Dated: April 25, 2016

PAUL J. BAISLEY, JR.

J.S.C.