

POONAM ENTERPRISES, INC.

v.

KIRAN ENTERPRISES, LLC

No. 06-00462-32-5

Common Pleas Court of Bucks County, Pennsylvania

January 5, 2007

Kenneth D. Federman, Esquire, Melvin C. McDowell, Esquire, Rothberg & Federman, Bensalem, PA, Attorneys for Plaintiff.

Ethan N. Halberstadt, Esquire, Scott M. Rothman, Esquire, Halberstadt Curley, Conshohocken, PA, Attorneys for Defendant.

OPINION

CIVIL ACTION - LAW

FACTUAL AND PROCEDURAL HISTORY

On January 20, 2006, Kiran Enterprises, LLC ("Kiran"), the tenant in this matter, filed a Complaint against Poonam Enterprises, Inc. ("Poonam"), the landlord. In its Complaint, Kiran alleged that Poonam breached a lease purchase agreement for the sale of certain real estate to Kiran. Poonam filed a Counterclaim to Kiran's Complaint, asserting the following: breach of lease, ejectment, breach of promissory note (two counts), breach of oral contract, conversion, unjust enrichment, and fraudulent conveyance ("Prior Pending Action"). On February 21, 2006, Poonam filed a landlord-tenant action against Kiran in Magisterial District No. 07-1-03, seeking possession of the real estate as well as alleged rental arrearage ("District Court Action"). Judgment was entered in favor of Poonam in the District Court Action, and Kiran appealed to the Court of Common Pleas. On April 3, 2006, Poonam filed a Complaint in the Bucks County Court of Common Pleas (the "Present Action"), again asserting breach of lease and ejectment.

Three pretrial matters were filed before the Trial Court: Kiran filed Preliminary Objections to Poonam's Complaint in the Present Action, asserting the defense of *lis pendens*, and a Motion for Release of Escrowed Funds. Poonam filed its own Motion for Release of Escrowed Funds. Kiran's Motion and Preliminary Objections were denied. Poonam's Motion was granted.

In Kiran's Motion, it argued that the defense of *lis pendens* was applicable to both the Present Action and the District Court Action. Kiran further argued that the District Court Action should have been dismissed, and any monies deposited into the escrow account, as per the District Court rules, should have been released to Kiran.

The Trial Court held that the defense of *lis pendens* was inapplicable to the District Court Action. District Court Rule 1008 provides for the obtaining of monthly escrowed rent payments to compensate the landlord for the period the tenant remains in possession of the property; relief which is not available in the Present Action or the Prior Pending Action. The Trial Court therefore held that the District Court Action should not be dismissed, and that any monies deposited into the escrow account, as per the District Court rules, shall not be released to Kiran pending the appeal. Kiran's Motion for Release of the Escrowed Funds was denied.

The Trial Court did find, however, that the Present Action and the Counterclaim in the Prior Pending Action requested the same relief. The Trial Court consolidated the two matters, holding it would be an appropriate remedy and would not act as an impediment on the relief specifically authorized by District Court Rule 1008. Kiran's Preliminary Objections to Poonam's Complaint in the Present Action were therefore denied, and the two matters were to be consolidated.

Lastly, the Trial Court, relying on the Pennsylvania Rules of Civil Procedure Governing Proceedings before Magisterial District Judges, granted Poonam's Motion for Release of Escrowed Funds. Rule 1008 states, "[u]pon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal," PA. R. CIV. P. M. D. J. 1008 (emphasis added). This rule is absolute and does not give the Trial Court discretion. Therefore, Poonam's Motion for Release of Escrowed Funds was granted. The present appeal is based on the Trial Court's granting of Poonam's Motion for Release of Escrowed Funds.

ISSUES RAISED ON APPEAL

Appellant Kiran, in its Concise Statement of Matters Complained Of Upon Appeal, raises the following issues:

1. The Trial Court erred in granting Poonam's Motion for Release of Escrowed Funds where:

a. At the time the District Justice Action was filed by Poonam seeking possession of real property held by Kiran, there was already a counterclaim pending against Kiran in the Trial Court at Docket No. 06-00462-31-5 ("Prior Pending Action") seeking possession of the real property; and

b. Kiran should never have been required to escrow funds with the Prothonotary in accordance with PA. R. CIV. P. D. J. 1008,B upon appealing the District Justice judgment for possession of the real property in light of the Prior Pending Action; and

c. Poonam's Complaint in this Court at No. 06-02104-32-1 should have been dismissed by the Trial Court pursuant to PA. R. CIV. P. 1028(a)(6), where all three criteria for sustaining the preliminary objections were met - *i.e.*, there was a complete identity of parties, identity of subject matter, and identity of relief sought.

The first two issues collectively argue that the Trial Court erred when it held that the defense of *lis pendens* was not applicable to the District Court Action. The Trial Court, as a result of this finding, did not dismiss the District Court Action, and it denied Kiran's Motion for Release of Escrowed Funds. Further, the Trial Court granted Poonam's Motion for Release of Escrowed Funds. Therefore, the Trial Court will address its reasoning behind finding that the defense of *lis pendens* was inapplicable to the District Court Action.

The third issue argues that the Trial Court should have dismissed the Present Action under the doctrine of *lis pendens*. The Trial Court will therefore address its reasoning behind its decision to consolidate the Present Action and the Prior Pending Action.

DISCUSSION

The Trial Court Acted Appropriately When it Found that the Defense of *lis pendens* was Not Applicable to the District Court Action

To successfully plead the defense of *lis pendens*, the party asserting the defense must show that the prior case is the same, the parties are the same, and the relief requested is the same. *Crutchfield v. Eaton Corp.*, 2002 PA Super 286, 806 A.2d 1259, 1262 (Pa. S.Ct. 2002).

Here, there were three actions which were commenced at different times: (1) the Prior Pending Action; (2) the District Court Action; and (3) the Present Action. For the purposes of Appellant's first two arguments, the Trial Court will discuss only the Prior Pending Action and the District Court Action. In both actions, the cases were the same - they involved a breach of the lease agreement. Both actions involved the same parties - Poonam and Kiran. If the

analysis stopped here, the defense of *lis pendens* would be applicable, and the District Court Action would have been dismissed. The analysis did not stop at this point, however. The relief sought in the two actions must have also been the same. The relief sought in the District Court Action differed from that sought in the Prior Pending Action. District Court Rule 1008 provides for the obtaining of monthly escrowed rent payments to compensate the landlord for the period the tenant remains in possession of the property. Such relief is not available in the Prior Pending Action (or the Present Action). The defense of *lis pendens* is therefore inapplicable to the District Court Action. The Trial Court did not err in holding that the District Court Action should not be dismissed and that any monies deposited into the escrow account, as per the District Court rules, shall not be released to Kiran pending this appeal. Therefore, the Trial Court did not err in denying Kiran's Motion for Release of Escrowed Funds.

The Trial Court acted appropriately when it granted Poonam's Motion for Release of Escrowed Funds. Since the District Court Action was not dismissed, the Trial Court was bound by the District Court rules pertaining to the release of escrowed funds pending an appeal. Specifically, rule 1008 states, "[u]pon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal," PA. R. CIV. P. M. D. J. 1008 (emphasis added). The Trial Court did not have discretion to deny Poonam's request for the release of the escrowed funds. Therefore, the Trial Court appropriately granted Poonam's Motion for Release of Escrowed Funds.

The Trial Court Acted Appropriately and Within its Discretion When it Consolidated the Present Action and the Prior Pending Action

The Trial Court acted appropriately when it consolidated the Present Action and the Prior Pending Action. The decision to consolidate actions is within the discretion of the court. Pennsylvania Rules of Civil Procedure provide,

In actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court on its own motion or on the motion of any party may order a joint hearing or trial of any matter in issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay.

PA. R. CIV. P. 213(a).

The Trial Court found that the Present Action and the Prior Pending Action involved the same case, parties, and

requested the same relief. Consolidating the two matters was an appropriate remedy, and doing so will not act as an impediment on the relief specifically authorized by District Court Rule 1008. The Trial Court acted appropriately and within its discretion when it denied Kiran's Preliminary Objections to Poonam's Complaint in the Present Action.

CONCLUSION

The defense of *lis pendens* was not applicable to the District Court Action, as the relief sought by Poonam in the District Court Action was different from that sought in the Prior Pending Action. The Trial Court acted appropriately when it did not dismiss the District Court Action. The District Court rules were therefore applicable during the pendency of the appeal, and Kiran did not have a right to the release of the escrowed funds. The Trial Court, being bound by the District Court rules pertaining to the release of escrowed funds, was required to release the escrowed funds to Poonam upon its request. The Trial Court acted appropriately when it denied Kiran's Motion for Release of Escrowed Funds, and it appropriately granted Poonam's Motion for Release of Escrowed Funds. Lastly, the Trial Court acted appropriately when it denied Kiran's Preliminary Objections to Poonam's Complaint in the Present Action, as it was within the discretion of the Trial Court to consolidate the Present Action with the Prior Pending Action. The decision of the Trial Court should therefore be affirmed.

Respectfully Submitted,

Jeffrey L. Finley, J.