

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-053929

05/12/2020

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT
A. Wood
Deputy

SKY BOLES

MARK W HORNE

v.

JASON TARRELL, et al.

MARY T HONE

EMILY H MANN
MARK ZINMAN
COMM. GARBARINO
JUDGE CAMPAGNOLO

MINUTE ENTRY

Prior to commencement, Defendant's exhibits 1-8 and Plaintiff's exhibits 9-21 were marked for identification.

Courtroom 102-NER

1:30 p.m. This is the time set for a Video Conference Evidentiary Hearing on Plaintiff's application for a preliminary injunction to enjoin the eviction proceeding before the Honorable David Garbarino in *Maricopoly, LLC v. Jason Tarrell and Sky Boles*, CV2019-014934. Plaintiff Sky Boles is represented by counsel, Mark W Horne. Defendant Northern Manor Townhouse Association is represented by counsel, Emily H Mann and Kathryn A Battock. Defendant Steve Villarreal, as representative for Maricopoly LLC, is represented by counsel, Mark Zinman.

A record of the proceedings is made digitally in lieu of a court reporter.

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The Rule of Exclusion of Witnesses is invoked and the following are sworn:

Dave Knapper, Jason Tarrell, Steve Villarreal, and Kristen Hoffman are sworn.

Discussion is held.

Opening arguments are presented.

Plaintiff's case:

Sky Boles, having been sworn, testifies.

Plaintiff's exhibit 9-13, 15 and 18-21 are received in evidence.

Plaintiff's exhibit 22 is marked for identification.

2:50 p.m. Due to technical difficulties, Defendants were urged to disconnect the video call and connect again.

2:52 p.m. Defendant Northern Manor Townhouse Association is represented by counsel, Emily H Mann and Kathryn A Battock. Defendant Steve Villarreal, as representative for Maricopoly LLC, is represented by counsel, Mark Zinman.

Defendant's case:

Kristen Hoffman, having been sworn, testifies.

Defendant's exhibit 1-7 are received in evidence.

Kristen Hoffman is excused.

Jason Tarrell, having been sworn, testifies.

Jason Tarrell is excused.

Steve Villarreal, having been sworn, testifies.

Steve Villarreal is excused.

Both sides rest.

Closing arguments presented.

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Based on the testimony and evidence presented in court, and the parties' oral arguments, the Court will not enjoin the eviction proceeding in CV 2019-014934. Pursuant to A.R.S. §12-1802(1), the Court has little discretion to enjoin the eviction proceeding, which was filed prior to Plaintiff's injunctive action in CV 2020-051900. Plaintiff's argument that she can take advantage of the 2018 filing date of the quiet title action in this consolidated case to make her 2020 lawsuit prior in time to the eviction proceeding is to no avail. A consolidation of actions only joins multiple cases involving common questions of law or facts for efficiency and economy of judicial resources. It does not modify the rights, deadlines or filing dates of each action, which remain as if the cases had not been consolidated.

THE COURT FINDS that Plaintiff has not shown a substantial likelihood of success on the merits, in regards to enjoining the eviction proceeding before Commissioner Garbarino. Based on the title chain of record, the foreclosure action in CV 2018-002470, the resulting Sheriff's sale, and Plaintiff's failure to challenge those actions on a timely basis, the evidence showed that Defendant Maricopoly has the right to assert a claim of possession in the eviction proceeding.

THE COURT FURTHER FINDS that Plaintiff failed to show sufficient evidence that she will suffer irreparable harm if the eviction proceeding goes forward. If Plaintiff is successful in the eviction proceeding, the only potential damage would be monetary. A claim for monetary damages does not amount to irreparable harm. Even if Plaintiff is unsuccessful in the eviction proceeding, she will still have a right to appeal that action, and to seek a stay of the Court's ruling pending appeal. Even if she is ultimately evicted prior to the conclusion of the instant case, Plaintiff failed to show how she would suffer irreparable harm. If she is successful in this quiet title action, her alleged damages would again be monetary.

THE COURT FURTHER FINDS that Plaintiff failed to present sufficient evidence that the balancing of hardships weighs in her favor. The issue of the right of possession in an eviction proceeding is separate from an action to quiet title. The balancing of hardships weighs in favor of Maricopoly, who would be stymied in a lawful eviction proceeding, in which it presented sufficient evidence that it has a legitimate claim of possession. The eviction proceeding was filed prior to Plaintiff's 2020 injunction action case, and A.R.S. §12-1802(1) generally precludes the injunctive relief requested in this case.

THE COURT FURTHER FINDS that Plaintiff failed to present sufficient evidence that public policy would weigh in favor of an injunction. The law allows for the speedy resolution of the eviction proceeding in this case that was filed prior in time to Plaintiff's 2020 lawsuit.

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THE COURT FINDS that Plaintiff's request for reconsideration under A.R.S. §12-1802(1) that the Court should exercise its discretion to enjoin the eviction proceeding to avoid a multiplicity of proceedings is not well-taken. The eviction action is not part of the quiet title action. Enjoining the former will not create a multiplicity of actions, because the actions already exist. Even if an injunction would create a multiplicity of actions, the Court believes that the evidence does not support the exercise of its discretion to enjoin the eviction proceeding.

IT IS THEREFORE ORDERED denying the Application for Preliminary Injunction.

IT IS FURTHER ORDERED that Plaintiff's request for reconsideration for the Court to exercise its discretion under A.R.S. §12-1802(1) to enjoin the eviction proceeding based on the avoidance of a multiplicity of proceedings is denied.

4:50 p.m. Matter concludes.