Springstead v. Nees

109 N.Y.S. 148 (N.Y. App. Div. 1908)

Jenks, J.

This action was tried by stipulation as a common law action before the court without a jury. The parties are all of the surviving children of Nees, deceased, who died intestate, leaving them his sole heirs at law. Nees died the owner and seised of realty called the "Sackett Street Property" and the owner of realty, called the "Atlantic Avenue Property," which he held by deed to him as trustee for his children, Sophia and George. Shortly after Nees' death all of the parties, an attorney at law, and friends met in Nees' house. Nees' strong box was opened, and when the deed to the Atlantic avenue property was found therein the attorney handed it to Sophia, saying: "This is yours." The evidence for the plaintiffs is that they, or some of them, were surprised to learn that this deed was to their father in trust for two of the children; for theretofore they had believed that he was the owner and seised in fee.

The point is that Sophia and George own the Atlantic Avenue property, and the other three children have no claim on it what so ever.

They expressed their surprise, and there were murmurings. Thereupon Sophia spoke up, saying, "We will give you our share in the Sackett street property if you don't bother us about the Atlantic avenue property," and George assented. The Sackett street property was sold thereafter. This action is brought by the other three children against Sophia and George, upon that alleged promise of Sophia and George, to recover their proportionate share of the proceeds of that sale. Sophia and George testified that no such promise ever was made. The learned court gave judgment for the defendants, dismissing the complaint, with costs.

After finding the preliminary facts, which were not disputed, the court found that the defendants, after the death of their father, were seised in fee simple of the Atlantic avenue property and held indefeasible title thereto; that

the plaintiffs had no color of right in the Atlantic avenue property, and did not at any time threaten or attempt to assert any claim of right hostile to the defendants in that property; that there was no compromise, either wholly or partly executed, between the parties, affecting rights which the plaintiffs might have in that property; that the plaintiffs had given up no rights in that property, nor had they changed their position therein;

and that a promise (referring to which I have heretofore described as shown by the testimony for the plaintiffs) made by the defendants to the plaintiffs that, if the plaintiffs "would not 'molest,' or 'bother or 'make a fuss' about, the defendants' rights on the Atlantic avenue property, the defendants would give the plaintiffs their share in the Sackett street property, if made, would have been without consideration."

The plaintiffs appeal.

The record sustains the facts found.

Assuming that such promise was made, I am of opinion that there was no consideration shown. . . .

The consideration for the promise cannot be found in the fact that there was a compromise of a disputed claim, for there is no evidence thereof.

It must rest, then, upon the forbearance to exercise a legal right. Forbearance to assert either a legal or an equitable claim is sufficient consideration, as we have seen. . . . It seems unnecessary to consider the conflict over the question whether forbearance as to a claim without foundation can constitute good consideration. . . . It seems to be the rule with us that it is not essential that the claim should be valid; but it is enough if it could be regarded as doubtful or colorable. . . . But if the claim be not even doubtful, or colorable, or plausible, in that there is no reason for an honest belief that it has some foundation in law or in equity, then forbearance applied to it is not good consideration. . . .

In the case at bar the court, as I have said, found properly that the plaintiffs had no color of right in the Atlantic avenue property; nor did they at any time threaten or attempt to assert any claim. The evidence of the plaintiffs is that, when they were surprised to find that the deed to the Atlantic avenue property was in trust for but two of their number, thereupon and without any further reason, save that they expressed surprise and were dissatisfied, the defendants made the promise in question. The promise was not even in response to any suggestion of any possible claim then or thereafter against the deed, or despite it, or of any action adverse to it. There was no suggestion, then or at any time thereafter, made that the deed was invalid for any reason, or of any ground upon which it was open to attack. Indeed, I can discover no reason upon the evidence how any of the parties could seriously suppose that even a doubtful or a colorable claim could be asserted then or thereafter. It does not appear that anything was ever done, then or thereafter, in consequence of the alleged promise, or that the rights of the parties were in any way thereby changed or affected.

I think that the judgment must be affirmed, with costs. All concur, except Hooker, J., who dissents.