

Chrispin v Leon

2020 NY Slip Op 33238(U)

September 28, 2020

Supreme Court, Kings County

Docket Number: 502377/18

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of September, 2020.

PRESENT:

HON. LAWRENCE KNIPEL,

Justice.

-----X
CARL CHRISPIN,

Plaintiff,

- against -

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EVENER LEON; GLOBAL MULTIPLE SERVICES, INC.; UNITED STATES OF AMERICA; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; PEOPLE OF THE STATE OF NEW YORK; CITY OF NEW YORK; GLOBAL SERVICES; AUTOTECH DRIVING SCHOOL; RALPH MYRTIL; DIALINE BOISNORD,

Defendants.

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

51-57 64-66

Opposing Affidavits (Affirmations) _____

64-66

Upon the foregoing papers in this action to foreclose a second mortgage on the residential property at 1776 Nostrand Avenue in Brooklyn (Property), plaintiff Carl Chrispin (Chrispin) moves (in motion sequence [mot. seq.] two) for an order awarding him a judgment of foreclosure and sale and confirming the referee's report.

Defendant Evener Leon (Leon) opposes Chrispin's motion and cross-moves (in mot. seq. three) for an order, pursuant to CPLR 5015 (a), vacating the October 16, 2019

order, pursuant to which the court (Vaughan, J.) granted Chrispin's motion for summary judgment and an order of reference on default.

Defense counsel affirms that Leon's prior counsel caused Leon to default in failing to oppose Chrispin's motion for summary judgment and failing to appear for oral argument, "even after representing to [Leon] that opposition was filed." Defense counsel affirms that Leon's default was not deliberate, Leon "was under the impression that his then-attorney had filed the necessary opposition papers" and Leon "has since sought to rectify [his default] by hiring another attorney."

Defense counsel further affirms that Leon has a meritorious defense to this foreclosure action based on fraud because Leon, "an illiterate purchaser [who was] not adequately represented by counsel was informed that he was purchasing the property" and "[a]t no point did Defendant Leon agree to have a [second] mortgage placed on the property." Defense counsel contends that "[t]he transaction between the parties was an executed contract of sale for which consideration was fully paid." In addition to the alleged fraud, defense counsel asserts that Chrispin's failure to join US National Bank, the successor to Lend America, the first mortgagee on the Property, "is fatal to the case" because US National Bank is a necessary party to this foreclosure action.

Leon submits an affidavit attesting that his prior counsel, Naomi Zeltser, Esq., never consulted him about Chrispin's motion for summary judgment and an order of reference. Leon explains that he was a tenant of the Property since July 1984, and that in 2006, he was approached by Chrispin, his landlord, to purchase the Property. Leon

further attests that on September 29, 2006, he purchased the Property to live in with his family, but he never agreed to take out a second mortgage on the Property. Leon describes the alleged fraud as follows:

“I arrived at the closing and was bombarded with hundreds of papers to sign.

“My attorney, Robert Savitsky, Esq., at the closing was someone I only met a few times, who was recommended by the [] Mortgage Broker. English is not my first language so I trusted both Carl Chrispin and Mr. Savitsky. Mr. Savitsky is currently disbarred due to bank fraud.

“I sat at the table and closed the transaction. I took a first mortgage with Lend America in the amount of \$460,363.00. The purchase price was \$464,000. . . .

“I was not advised that I would be taking a second mortgage with the Plaintiff, Carl Chrispin. It is unconscionable that I would purchase the premises for full market value and still now owe Carl Chrispin who was the seller. I do not owe him any money. That contract of sale was the full agreement and there was no other valid agreement between Chrispin and I.

Chrispin now moves for a judgment of foreclosure and sale and an order confirming the referee's report. Notably, Chrispin does not oppose Leon's cross motion to vacate the October 16, 2019 order.

“In order to vacate a default in opposing a motion pursuant to CPLR 5015 (a) (1), the moving party is required to demonstrate a reasonable excuse for his or her default and a potentially meritorious opposition to the motion” (*Rocco v Family Center*, 94 AD3d 1077, 1079 [2012]). Here, Leon has established a reasonable excuse for his default because he inadvertently failed to oppose Chrispin's motion for summary judgment and

an order of reference due to ineffective assistance of his prior counsel. Leon has demonstrated that his default was neither willful nor deliberate, and he promptly retained new defense counsel. In addition, Leon has demonstrated a potentially meritorious defense based on Chrispin's alleged fraud regarding the origination of the second mortgage and Chrispin's failure to name US Bank National, a necessary party to this foreclosure action.

Given the merits of Leon's cross motion to vacate the October 16, 2019 order granting Chrispin summary judgment and an order of reference, Chrispin's motion for a judgment of foreclosure and sale and to confirm the referee's report is rendered moot. Accordingly, it is hereby

ORDERED that Chrispin's motion (in mot. seq. two) is denied; and it is further

ORDERED that Leon's cross motion (in mot. seq. three) is granted without opposition, and the October 16, 2019 order granting Chrispin summary judgment and an order of reference on default is hereby vacated.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

Justice Lawrence Knipel

