

Tinkel v Parkin

2001 NY Slip Op 30069(U)

October 15, 2001

Supreme Court, Kings County

Docket Number: 37156/98

Judge: Joseph J. Dowd

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At an IAS Part 18 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 15th day of October, 2001

P R E S E N T:

HON. JOSEPH J. DOWD,
Justice.

-----X

LYNN TINKEL,

Plaintiff(s),

-against-

Index No. 37156/98

THOMAS PARKIN, ARLENE JASINSKI and
AMERICAN BUSINESS CREDIT, INC.,

Defendant(s).

-----X

The following papers numbered 1 to 3 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1 _____
Opposing Affidavits (Affirmations) _____	2 _____
Reply Affidavits (Affirmations) _____	3 _____
_____ Affidavit (Affirmation) _____	_____
Other papers _____	_____
_____	_____

Upon the foregoing papers, plaintiff moves *in limine* for a directed verdict on her first cause of action for a judgment declaring that a deed dated September 10, 1996, conveying real property located at 519 6th Avenue, Brooklyn, New York ("the premises) from plaintiff

LYNN TINKEL to THOMAS PARKIN, is void as a matter of law as such deed is forged, and further declaring that a mortgage dated March 24, 1998, encumbering the premises is also void and that plaintiff LYNN TINKEL is the owner of the premises free of any liens or encumbrances, on the ground that the defendant is collaterally estopped on the issue of the fraudulent nature of the deed due to a finding of an Administrative Law Judge to the effect that such deed was forged.

This action was commenced to obtain a judgment declaring that a deed conveying the premises at 519 6th Avenue, Brooklyn, New York, and a mortgage encumbering the premises are void as fraudulent, for an accounting of the rents and profits of the premises, and to recover compensatory damages stemming from fraud and conspiracy of the defendants in creating and recording the forged deed. Defendant THOMAS PARKIN, formerly a real estate broker, is alleged to have forged Ms. TINKEL's signature on a deed dated September 10, 1996, conveying the premises from plaintiff to himself and thereafter recording the deed in the Office of the Register of Kings County. Defendant ARLENE JASINKI is alleged to have fraudulently notarized Ms. TINKEL's forged signature. Thereafter, in or about March 24, 1998, defendant AMERICAN BUSINESS CREDIT INC. gave a mortgage loan to defendant PARKIN which encumbered the premises.

This case came on for trial on March 21, 2001 and the matter was adjourned pending the determination in a CPLR article 78 proceeding seeking to annul as arbitrary and capricious a decision of the Secretary of State of the State of New York, Department of State, Division of Licensing Services, dated January 17, 2001, revoking and denying a real estate brokers license to defendant PARKIN. By Order of the Supreme Court, Albany County (Kane, J.), the respondent Secretary of State's motion to dismiss the petition for failure to exhaust administrative remedies

was granted and the petition was dismissed. Plaintiff now seeks a determination on her motion *in limine* for a directed verdict on her first cause of action for a judgment declaring the deed dated September 10, 1996, and the mortgage encumbering the premises are void as a matter of law on the ground that defendants are collaterally estopped from relitigating the issue that the deed is forged.

The doctrine of collateral estoppel is invoked in a subsequent action to preclude a party from relitigating an issue decided against that party in an earlier action (*see*, Staatsburg Water Co. v Staatsburg Fire Dist., 72 NY2d 147, 152; Kaufman v Eli Lilly & Co., 65 NY2d 449, 455). It is well settled that the doctrine of collateral estoppel “ [is] applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies” (Ryan v New York Tel. Co., 62 NY2d 494, 499; *see*, David v Biondo, 92 NY2d 318; Staatsburg Water Co. v Staatsburg Fire Dist., *supra*). Two requirements must be met in order for collateral estoppel to be applicable. First, the identical issue must have been decided in the prior action and be decisive of the present action, and, second, the party to be precluded from relitigating an issue must have had a full and fair opportunity to contest the determination now said to be controlling (*see*, Gilberg v Barbieri, 53 NY2d 285, 291; Schwartz v Public Adm’r of County of Bronx, 24 NY2d 65, 71).

However, the doctrine of collateral estoppel is not rigidly applied. With respect to the issue of whether the prior action or proceeding provided a full and fair opportunity to litigate the dispositive claim, such question “is not answered simply by reference to the procedural benefits available in the first forum or by a conclusion that the requirements of due process were satisfied [citation omitted]. Instead, the analysis requires consideration of ‘the realities of

litigation', such as recognition that if the first proceeding involved trivial stakes, it may not have been litigated vigorously [citation omitted]". Moreover, if an issue has been determined but that determination is not essential to the judgment, relitigation is not precluded (*see*, D'Arata v New York Cent. Mut. Fire Ins. Co., 76 NY2d 659; Giordano v Patel, 177 AD2d 468).

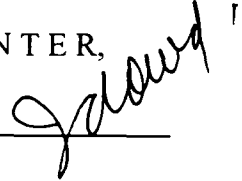
Guided by these principles, the court finds that fundamental fairness dictates that defendants be afforded an opportunity to litigate their defense on the issue of fraud on the merits and that they not be collaterally estopped on this issue. Although the Administrative Law Judge held that the deed in question was forged, such determination was not necessarily central to the determination. The question of forgery was not fully litigated in the administrative proceeding (*e.g.*, by expert testimony as to the authenticity of the signature on the deed) because it appears that such claim may have been withdrawn before the hearing was conducted. At the very least, the record developed before the administrative agency is confusing in this regard. Consequently, the finding of the Administrative Law Judge that the deed was forged may be regarded to be an advisory opinion which should not be given preclusive effect in the present action.

In addition, the stakes in the license revocation proceeding may be considered trivial compared to what is involved in this action for equitable relief as well as to recover compensatory damages. The defendants did not have the same opportunity to contest the issue of fraud in the administrative proceeding as they will have in this action, and, thus, they should have the opportunity to fully defend this action on the merits in a manner consistent with the magnitude of the potential liability (*see generally*, Staatsburg Water Co. v Staatsburg Fire Dist., 72 NY2d 147, *supra*; Iossa v Marcone, 281 AD2d 235; Wender v Gilberg Agency, 276 AD2d 311). Given the fundamental substantive and procedural differences between the license

revocation hearing and the instant action, the court finds that the doctrine of collateral estoppel is inapplicable to this case.

Accordingly, plaintiff's motion *in limine* for a directed verdict on the first cause of action alleged in the complaint seeking a declaratory judgment is denied.

The foregoing shall constitute the decision and order of the court.

ENTER,


J. S. C.