

Josephs v Roberts

2007 NY Slip Op 34119(U)

December 11, 2007

Supreme Court, Nassau County

Docket Number: 9480-06/

Judge: James P. McCormack

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 51 NASSAU COUNTY**

PRESENT:

**Honorable James P. McCormack
Acting Justice of the Supreme Court**

_____x

BONNIE P. JOSEPHS,

Plaintiff(s),

Index No. 9480/06

-against-

Motion Seq. No.: 002 & 003

Motion Submitted: 11/26/07

**BERNARD B. ROBERTS, CLEOFOSTER B. ROBERTS,
ROSEMARY J. ROBERTS, DON ROBERTS,
BARBARA MOORE, KIRD AZEMAR, CHARLES C.
LIECHTUNG, U.S. CAPITAL FUNDING CORP.,
WALLY DUVAL, ARGENT MORTGAGE COMPANY,
LLC, ARGENT SECURITIES, INC., DWIGHT
GARDINER, DEUTSCHE BANK NATIONAL TRUST
COMPANY, "JOHN DOE" AND "JANE DOE" said
names being fictitious, it being the intention of
Plaintiff to designate any and all occupants of
premises subject to this action, jointly and severally,**

Defendant(s).

_____x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Notice of Cross Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Motion (seq. No. 2) by the attorney for defendant Barbara Moore for an order extending the time to answer is granted. Motion (seq. No. 3) by plaintiff Bonnie P. Josephs, Esq. *pro se* for an order pursuant to Debtor Creditor Law § 270 etc. and CPLR

3214(a) for a default judgment, setting aside various deeds and mortgages, and the appointment of a receiver is denied without prejudice.

In the within action, the plaintiff, Bonnie P. Josephs, Esq. is appearing *pro se*. She is attempting to collect a judgment against defendant Rosemary J. Roberts who is serving a prison sentence for her conviction on her plea of guilty of embezzling more than \$1,200,000.00 from the plaintiff. Defendant Rosemary Roberts confessed judgment in favor of plaintiff in the sum of \$1,200,000.00. Plaintiff also has a money judgment in the sum of \$2,500,000.00 against defendant Rosemary Roberts arising out of the embezzlement. The asset that the plaintiff seeks to recover against is real property known as 838 Eastfield Road, Westbury, N.Y. 11590 (Section 11; Block 402; Lot 51; Town of North Hempstead) (the subject property). Defendant Bernard B. Roberts a/k/a Cleofoster Roberts is the husband of defendant Rosemary J. Roberts. Defendant Don Roberts is the son of defendants Bernard B. and Rosemary J. Roberts. Defendant Rosemary J. Roberts is serving a prison sentence for her conviction on her plea of guilty for embezzlement of more than \$1,200,000. Plaintiff further alleges that the "Roberts defendants" conspired and aided and abetted one another in contriving and effecting the embezzlement.

Plaintiff alleges that the "Roberts defendants," defendant Moore and other named defendants engaged "in fraudulent transfers" of the subject property resulting in defendant Barbara Moore being the present title holder of the subject property.

In short, plaintiff contends the only reason that title was put in the name of the

defendant Moore is to prevent the plaintiff from satisfying her money judgments against the subject property.

Only defendants Barbara Moore, Argent Mortgage Company LLC and Argent Securities Inc. appeared and answered. By stipulation dated June 1, 2007, plaintiff discontinued the action against defendants Argent Mortgage Company and Argent Securities Inc.

The only opposition to the within motion is by defendant Moore. Moore's affidavit in opposition alleges she "was never served personally with the summons and complaint in this action although multiple copies were left at my premises." Defendant Moore further states she "purchased the property for valuable consideration and would lose her real property if plaintiff were successful in obtaining judgment." Defendant Moore, represented by counsel, did not serve or file a cross-motion for any affirmative relief. CPLR 8020 requires the payment of forty-five dollars to the Court Clerk upon the filing of each motion or cross-motion.

In the complaint, the plaintiff alleges a byzantine series of deed transfers of the subject property, "straw man" transactions involving the subject property and mortgages being put on the subject property with the intent to wrongfully prevent the plaintiff from satisfying her monetary judgment in whole or in part against the subject property. In short, the plaintiff wants this Court to vacate, set aside and declare "as fraudulent transactions the deeds and mortgages of the property given and received by the defendants herein." In a broad stroke without any reference to a specific section,

plaintiff requests an order "pursuant to Debtor and Creditor Law §§ 270 *et seq.*"

In its prior short form order dated August 22, 2007 in the within action, this Court stated: "Defendant Moore shall have until September 15, 2007 to serve a motion for leave to interpose an answer to the within action. See CPLR 8020.

No later than October 15, 2007 plaintiff may cross-move ; or if defendant Moore fails to herself move for leave to interpose an answer, plaintiff may bring a further motion to vacate the specific mortgages of record, any assignments of same, and set aside the conveyance to defendant Moore. At that time an application for legal fees pursuant to Debtor and Creditor Law § 276-a may be made."

Defendant Barbara Moore has moved for leave to file a late answer.

No later than 20 days from today's date plaintiff may serve an amended complaint.

Defendant Barbara Moore shall have 20 days from service on her attorney R. Thomas Masters of a copy of the Amended Complaint to serve a verified answer.

The plaintiff has submitted a copy of a title report for the subject premises. The title report shows the following "Exception:"

Mortgage made by Barbara Moore-to-Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as nominee for Accredited Home Lenders, Inc. in the amount of \$498,750.00 dated July 19, 2005 and recorded August 2, 2005 in Liber 29167 Mp. 977. (Mortgage Tax Paid: \$5,206.35).

The title report also lists "(7) Judgments of record against Rosemary J. Roberts and/or Cleofoster B. Roberts, prior owners of record, filed in the Nassau County Clerk's office" prior to the aforesaid Accredited Home Lender Inc. mortgage allegedly used by defendant Moore to finance her purchase of the subject property.

Plaintiff Bonnie P. Josephs, Esq. is charting a course of litigation with the intention of having the Court direct a sale of the subject premises and to use the proceeds to satisfy her outstanding judgment.

"RPAPL § 1311 which sets forth the necessary defendants in a mortgage foreclosure action, 'codifies the equitable principle that persons holding title to the premises or acquiring any right to or lien on the property should be made defendants.' " *NC Venture I, L.P. v Complete Analysis, Inc.*, 22 AD3d 540, quoting from *Polish Nat. Alliance of Brooklyn v White Eagle Hall Co.*, 98 AD2d 400, 402. "The rationale for joinder of these interests derives from the underlying objective of foreclosure actions—to extinguish the rights of redemption of all those who have a subordinate interest in the property and to vest complete title in the purchaser at the judicial sale." *NC Venture I, L.P. v Complete Analysis, Inc.*, *supra*, quoting from *Polish Nat. Alliance of Brooklyn v White Eagle Hall Co.*, *supra* at 404; see *6820 Ridge Realty LLC v Goldman*, 263 AD2d 22, 25-26.

"The absence of a necessary party in a mortgage foreclosure action leaves such party's rights unaffected by the judgment of foreclosure and sale and the foreclosure sale may be considered void as to the omitted party." *Mortgage Electronic Registration Systems, Inc. v Davis*, 9 Misc3d 1126(A), Slip Copy, 2005 WL 2934576 (Supreme Court,

Queens County 2005); see *Jemzura v Jemzura*, 36 NY2d 496 (1975). It may be advisable for Ms. Josephs to consult a real estate attorney and/or a representative at her title company to assist her in taking the necessary steps to extinguish the rights of redemption of all those who may have a subordinate interest in the property "and to vest complete title in the purchaser at the judicial sale."

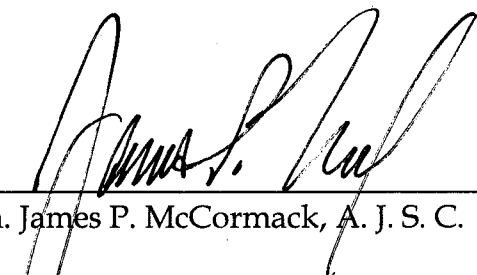
The Court notes that to date R. Thomas Masters, the attorney for defendant Moore has failed to comply with the certification requirement of 22 NYCRR 130-1.1 a and b. Failure to comply with 22 NYCRR 130-1.1 a and b in the future may result in the imposition of sanctions and the rejection of his papers.

A Preliminary Conference (see 22 NYCRR 202.12) shall be held at the Preliminary Conference part, located at the Nassau County Supreme Court on the 5th day of February, 2008 at 9:00 AM. This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require. The attorneys for the plaintiff shall serve a copy of this order on the Preliminary Conference Clerk and the attorneys for the plaintiffs.

This constitutes the Decision and Order of the Court.

Dated: December 11, 2007
Mineola, N.Y.

ENTERED
DEC 14 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. James P. McCormack, A. J. S. C.