

Quality Ceramic Tile & Marble Co., Ltd. v Parker

2008 NY Slip Op 30753(U)

February 28, 2008

Supreme Court, Nassau County

Docket Number: 1616-93/a

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

QUALITY CERAMIC TILE & MARBLE CO., LTD.,

Plaintiff,

- against -

HAROLD PARKER,

Defendant.

TRIAL / IAS PART 32
NASSAU COUNTY

Index No. 21616/93

Motion Sequence No. 005

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2, 3</u>
Replying Affidavits	<u> </u>
Briefs: Plaintiff's / Petitioner's	<u> </u>
Defendant's / Respondent's	<u> </u>

The movant, Sandra Parker, the former wife of the defendant Harold Parker, seeks to intervene in this proceeding claims she stands to be irreparably harmed by a judgment obtained by the plaintiff solely against the defendant Harold Parker. The movant also moves for an order precluding the plaintiff from acting upon any garnishee notice and notice of levy issued by Edward Reilly, Sheriff of Nassau County, upon the judgment rendered in the underlying action, and solely against the defendant Harold Parker, for \$22,425.00 plus interest from July 27, 1997, which judgment was entered on July 27, 1997, and became a lien upon the subject property, to wit 790 Daniel Street, Woodmere, New York known as Section 19, Block 604, Lot 38, on the Nassau County Land and Tax

Map, and which property is currently scheduled for a Sheriff's sale on December 5, 2007, to satisfy the judgment. The movant also moves for an order requiring the plaintiff to forthwith remove and discharge any lien of record previously placed against the subject property in connection with the judgment entered on July 27, 1997, solely against the defendant Harold Parker, and to only be permitted to satisfy the judgment based upon assets owned individually by the defendant Harold Parker.

The movant states, in a supporting affidavit dated November 15, 2007, she was granted a judgment of divorce from the defendant Harold Parker on March 16, 1995, which involved a division of the marital assets, retirement plans, and real property. That judgment is annexed to these moving papers. The movant points out pursuant to the receiver's report dated May 20, 2003, all joint assets in the name of Sandra Parker and Harold Parker are transferred to Sandra Parker, including the subject real property. The movant claims, since the date of that order, the movant has been unable to obtain the cooperation of the defendant Harold Parker with respect to transferring the marital assets solely into her name. The movant asserts she retained new legal counsel to file a motion with the matrimonial branch of the Supreme Court in Nassau County for various relief, including transferring the marital assets, including the subject real property solely into her name. The movant avers, unknown to her, at some point, the defendant Harold Parker retained the plaintiff for certain services which the defendant Harold Parker failed to pay, and resulted in the judgment entered on July 27, 1997, more than two years after the

divorce judgment. The movant notes the amended order dated March 25, 2004 of the matrimonial branch of the Supreme Court in Nassau County states: "all liens and liabilities filed against marital assets in the name of Harold Parker are to satisfied and cured by Harold Parker and may not be deducted from the assets transferred to Sandra Parker, unless required by law." The movant contends the debt is owed by the defendant Harold Parker, and the movant bears no liability for it.

The attorney for the plaintiff states, in an affirmation dated December 2007, in opposition to this order to show cause by the nonparty, relief sought should be denied. The attorney for the plaintiff points out the action between the plaintiff and the defendant has been final for some time, to wit a money judgment was granted to the plaintiff in 1997, and the Court recently granted the plaintiff's application for an extension of the judgment against the debtor as a lien against real property. The attorney for the plaintiff states, during the past decade after the issuance of the money judgment against the defendant Harold Parker, the plaintiff took numerous steps to enforce the judgment without success. The attorney for the plaintiff reports the movant has communicated directly, from time to time as far back as 1998, and during the enforcement process, with the law office of the plaintiff's counsel in regard to the judgment against the defendant Harold Parker. The attorney for the plaintiff notes the movant also communicated with the Sheriff in 2004 about this situation. The attorney for the plaintiff asserts the movant's request to intervene in this litigation, presumably a motion seeking that relief as of right

under CPLR 1012, should be denied because, although intervention may be granted as of right when an action involves the distribution of or title to real property, and the person may be adversely affected by a judgment, the present case does not involved such distribution, rather it was for money owed under a contract. The attorney for the plaintiff notes there is presently no pending litigation, and the case has long ago proceeded to judgment seeking to enforce that judgment where the defendant is a title owner. The attorney for the plaintiff contends the movant does not meet the requirements for a permanent injunction here which necessitate the movant establish she will suffer irreparable harm, and she has a likelihood of success on the merits of the case under CPLR 6301, *et seq.* The attorney for the plaintiff avers the movant will not suffer irreparable harm because the plaintiff may satisfy the judgment form the movant's assets and seek monetary relief from the defendant Harold Parker in the pending post judgment matrimonial action. The attorney for the plaintiff claims, upon information and belief, the subject premises is substantial in value, and without a mortgage according to public records of the multiple listing service of Long Island. The attorney for the plaintiff submits the merits of the underlying action were determined long ago, and the basis of the movant's application for an injunction, to wit the March 25, 2004 of the matrimonial branch of the Supreme Court in Nassau County, is qualified by the language of the order, in pertinent part, indicating the satisfaction of liens and liabilities by the defendant Harold Parker is so ordered "and may not be deducted from the assets transferred to Sandra

Parker unless required by law.” The attorney for the plaintiff asserts that matrimonial order does not state the liens are satisfied of record, and it does not order the Clerk of Nassau County to discharge those liens, and a satisfaction piece for a judgment is required by CPLR 5021 (a).

The attorney for the movant states, in an affirmation dated December 12, 2007, in further support of the motion, the opposing papers do not include the plaintiff's prior order to show cause application for an extension of the underlying monetary judgment as a lien against the subject real property, so it is uncertain whether any extension of the judgment was granted by the Court. The attorney for the movant states, contrary to the opposing counsel assertions, the movant has adequately demonstrated a right to intervene in this matter. The attorney for the movant avers, with respect to this case, counsel does not dispute at the time the judgment was obtained against the defendant in July 1997, the movant was still lawfully married to the defendant. The attorney for the movant points out the opposing counsel does not dispute the fact that at the time it obtained a monetary judgment solely against the defendant the subject property, to wit 790 Daniel Street, Woodmere, New York known as Section 19, Block 604, Lot 38, on the Nassau County Land and Tax Map was owned jointly by the movant and the defendant. The attorney for the movant again asserts the subject property remains in both names due to the defendant's refusal to comply with a March 25, 2004 court order which required all joint assets be transferred to the movant, and as a result of the defendant's failure to comply

with that order, the movant have moved the Supreme Court, Matrimonial Part, for appropriate relief. The attorney for the movant contends, due to their prior relationship as husband and wife, and their continuing joint ownership of the subject property, privity exists between the defendant and the movant who stands to be bound by the judgment entered against the defendant due to the proposed sale of the subject property to satisfy the judgment. The attorney for the movant reiterates, upon information and belief, the defendant defaulted in the underlying action, and the movant was not named as a party in it, but her interests were not adequately protected. The attorney for the movant notes CPLR 1012 (a) (3) creates a right of intervention when an action concerns property in which a nonparty has an interest, and the nonparty may be adversely affected by the judgment, and contrary to what opposing counsel asserts, intervention is not limited to matters involving the disposition nor distribution of real property. The attorney for the movant submits the movant has demonstrated an entitlement to injunctive relief, as the movant stands to be irreparably harmed by the sale of her home if the plaintiff were permitted to satisfy a judgment entered solely against the defendant whose interest in the subject property was, for all intents and purposes, distinguished by the March 25, 2004 court order.

This Court has carefully reviewed and considered all of the papers submitted with respect to this motion. "Simply stated, defendant cannot seek to intervene in a proceeding that has come to its final conclusion; there must be a pending proceeding in which to

intervene (*see generally Matter of Greater N.Y. Health Care Facilities Assn. v DeBuono*, 91 NY2d 716, 720; *Matter of Elinor Homes Co. v St. Lawrence*, 113 AD2d 25, 28; Siegel, NY Prac § 178, at 295 [3d ed]; *cf. Agostino v Soufer*, 284 AD2d 147, 148).” (*Town Of Crown Point v. Cummings*, 300 A.D.2d 873, 874, 752 N.Y.S.2d 425 [3rd Dept., 2002]; *see also* CPLR 1012, 1013). This Court need not address the parties’ arguments regarding the March 25, 2004 court order which contentions are best addressed to the Supreme Court, Matrimonial Part. All matters not decided herein are hereby denied.

Accordingly, the motion is denied.

So ordered.

Dated: **February 28, 2008**

ENTER:

J.S.C.

ENTERED

FINAL DISPOSITION xxx

NON FINAL DISPOSITION

**MAR 07 2008
NASSAU COUNTY
COUNTY CLERKS OFFICE**