

NYCTL 1998-2 Trust v Ackerman

2009 NY Slip Op 32309(U)

October 5, 2009

Supreme Court, New York County

Docket Number: 115924/2001

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN

PART 12

Index Number : 115924/2001

NYCTL 1998-2 TRUST

vs

ACKERMAN, NORMAN

Sequence Number : 017

OTHER

INDEX NO.

115924/2001

MOTION DATE

MOTION SEQ. NO.

017

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1

Answering Affidavits — Exhibits _____

2

Replying Affidavits _____

3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ANNEXED DECISION AND ORDER.**

FILED
OCT 07 2009
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/5/09

CAF
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X
NYCTL 1998-2 TRUST and the BANK OF NEW
YORK as Collateral Agent and Custodian,
Plaintiff,

Index Number 115924/2001

- against -

Mot. Seq. No. 017

NORMAN ACKERMAN, THE URBAN
PARTNERSHIP, NYC DEPARTMENT OF FINANCE,
NYS DEPARTMENT OF TAXATION AND FINANCE,
NYC ENVIRONMENTAL CONTROL BOARD,
PEOPLE OF THE STATE OF NEW YORK, THE CITY
OF NEW YORK,

DECISION AND ORDER

Defendants.

-----X

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Papers considered in review of this motion to set aside tax lien discharges and proceed with foreclosure:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answer in Opposition	2
Reply Affirmation	3

FILED
OCT 07 2009
COUNTY CLERK'S OFFICE
NEW YORK

PAUL G. FEINMAN, J.:

By judgment dated November 14, 2007 and filed with the County Clerk on December 27, 2007, plaintiff's motion for a judgment of foreclosure and sale was granted (Mot. Ex. A). Plaintiff now moves to vacate the tax lien discharges that were subsequently filed on the subject premises, alleging that they were forged, and to proceed with the sale of the foreclosed premises. Defendant Ackerman opposes in part. The other defendants have not submitted papers in opposition or support. For the reasons set forth below, the motion is granted in its entirety.

Background

The premises in question was formerly owned by defendant Norman Ackerman. In approximately 1999, a lien was placed on the premises because of delinquencies in paying property taxes and a foreclosure action commenced in 2001 (Ackerman Opp. ¶ 5). On November 14, 2007, this court granted plaintiff's motion for a judgment of foreclosure and sale of the premises (Mot. Ex. A). On July 15, 2008, six Tax Lien Discharges, which were dated June 23, 2008, were recorded with the New York City Department of Finance City Register ("DOF") (Mot. Exs. B, C, D, E, F, G, I). These documents, purportedly executed by Henry Baez, Assistant Treasurer of Plaintiff Bank of New York, and notarized by Tamara L. Wolbers, one of plaintiff's employees, purported to discharge each of the six tax liens owned by plaintiff (Mot. Exs. B, C, D, E, F, G). On August 5, 2008, a deed purporting to transfer the premises from defendant Norman Ackerman to World Holdings, Inc. was recorded with the DOF City Registrar (Mot. Ex. I).

Plaintiff asserts that the Tax Lien Discharges were forged and offers the following evidence in support thereof: (1) a copy of the six allegedly fraudulent Tax Lien Discharges (Mot. Exs. B, C, D, E, F, G); (2) the February 17, 2009 affidavit of Baez who denies ever executing any of the tax lien discharges (Mot. Baez Aff. ¶ 6); (3) the February 18, 2009 affidavit of Wolbers who denies ever notarizing any of the tax lien discharges (Mot. Wolbers Aff. ¶¶ 4-5); (4) the September 25, 2008 affidavit of Dara Jafee, Assistant Commissioner of the New York City Department of Finance who attests that the Tax Lien Discharges "are invalid [and that t]he six tax liens have NOT been paid and are still owned by [plaintiff]" (Mot. Ex. H); (5) a copy of the deed purporting to transfer the premises from defendant Norman Ackerman to World Holdings,

Inc., recorded with the DOF City Register on August 5, 2008 (Mot. Ex. I).

At the time the motion was made, plaintiff was under the belief that the discharges “were filed in an effort to clear and transfer marketable title to the [p]remises [from defendant Ackerman] to World Holdings, Inc.” (Mot. Baez Aff. ¶ 10). However, defendant Ackerman’s opposition asserts that the New York County District Attorney’s Office had informed him that the purported sale of the premises was the subject of a criminal investigation and that he himself “had no relationship in any manner to the swindlers, nor had [he] filed any false papers with the City Regist[er]” (Ans. in Opp. ¶ 12). Plaintiff’s reply affirmation indicates that an Assistant District Attorney confirmed that “although specific details could not be disclosed as the investigation was on-going, certain individuals had been apprehended and plead[ed] guilty to fraud involving the transfers of real property in New York County [and that] that although [d]efendant [Ackerman] was not directly involved there was no question the satisfaction/discharges were in fact fraudulent” (Reply Aff. ¶¶ 6-7).

Motion to Set Aside Tax Lien Discharges

CPLR 5015 (a) lists the several grounds upon which a motion for vacatur of a judgment or order may be granted, among them being “fraud, misrepresentation, or other misconduct” (CPLR 5015 [a] [3]). There is some dispute as to whether this provision is applicable to vacatur of a satisfaction (*compare Matter of New York Diet Drug Litig.*, 47 AD3d 586, 586 [1st Dept 2008], quoting *St. Clement v Londa*, 8 AD3d 89, 90 [1st Dept 2004] [“The remedy for fraud allegedly committed during the course of a legal proceeding must be exercised in that lawsuit by moving to vacate the civil judgment (CPLR 5015 [a] [3]), and not by another plenary action collaterally attacking that judgment”]) *with Chester Hous. Auth. v Mobley*, 6 Misc 3d 32 [App

Term, 2d Dept 2004] and 155 Siegel Practice Review, *Plaintiff's Inadvertent Filing of Satisfaction of Unpaid Judgment Can't be Vacated on Motion*, at 3 [Nov. 2004]). Given “inherent discretionary power in situations that warrant[] vacatur” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]; see *Brownstone Publs. v New York City Dept. of Fin.*, 167 AD2d 166, 167 [1st Dept 1990]; *McMahon v City of New York*, 105 AD2d 101, 106 [1st Dept 1984]; 1959 NY Legis Doc No. 17, at 204), this court holds that because the “procure[ment of a] decree by fraud, misrepresentation, or other misconduct” warrants vacatur (*Matter of Tellez*, 56 AD3d 678, 679 [2d Dept 2008]), it clearly follows that a satisfaction of such a decree procured by fraud also warrants vacatur.

Defendant Ackerman raises several arguments including, among other things, that the premises was erroneously classified as a hospital during the years 1990 and 1991 (Ans. in Opp. ¶¶ 15-17). These arguments have been made before this court, as defendant himself readily concedes, and found unavailing (Ans. in Opp. ¶¶ 15-17). Thus, what is relevant on this motion is that “[i]t is undisputed that [he] failed to pay the balance of the tax lien by its due date” and “[o]nly the tender of the full amount due made before the foreclosure sale would have been effective to extinguish the lien and prevent the sale” (*NYCTL 1997-1 Trust v Vila*, 19 AD3d 382, 382 [2d Dept 2005]). Therefore, it is

ORDERED that plaintiff's motion is granted in its entirety; and the New York City Department of Finance City Register is directed vacate the six Tax Lien Discharges having City Register File Numbers 2008000280032, 2008000280026, 2008000280036, 2008000279880, 2008000279871, and 2008000279862, and it is further

ORDERED that the plaintiff may proceed with the sale of the premises in accordance

with this court's prior judgment of foreclosure and sale dated November 4, 2007 and filed in the County Clerk's office on December 27, 2007.

This constitutes the decision and order of the court.

Dated: October 5, 2009
New York, New York



J.S.C.

FILED
OCT 07 2009
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NEW YORK