

Fletcher v Cafferty

2011 NY Slip Op 30795(U)

April 4, 2011

Supreme Court, Broome County

Docket Number: 2010-2808

Judge: Ferris D. Lebus

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, 92 Court Street, Binghamton, New York, on the 18th day of March, 2011.

PRESENT: HON. FERRIS D. LEBOUS
Justice, Supreme Court.

STATE OF NEW YORK
SUPREME COURT : : BROOME COUNTY

William R. Fletcher,

Plaintiff,

-vs-

Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, and all others claiming under Peter Cafferty,

Defendants.

DECISION AND ORDER

Index No. 2010-2808
RJI No. 2010-1600-M

APPEARANCES:

PLAINTIFF:

POPE & SCHRADER, LLP
BY: KURT D. SCHRADER, ESQ., OF
COUNSEL
2 COURT STREET
BINGHAMTON, NY 13901

DEFENDANTS:

MARTHA CAFFERTY, PRO SE
219 GAF LAKE ROAD
WINDSOR, NY 13865

FERRIS D. LEBOUS, J.S.C.

Plaintiff William Robert Fletcher moves for summary judgment returning certain real property, directing defendants to remove themselves from the premises, and awarding plaintiff the fair rental value of defendants' term of occupancy.

Defendants Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, and Martha Cafferty on behalf of all others claiming under Peter Cafferty, oppose the motion (hereinafter collectively "defendant").¹

This action was commenced on October 21, 2010 by the filing of a summons and complaint. On or about November 19, 2010, defendant interposed an answer.

BACKGROUND

The property at issue is known as 180 GAF Lake Road located in Windsor, New York consisting of 59.0 acres of land and a house located on the east side of said road (hereinafter "the Property").

Defendant became the record owner of said Property by Deed dated November 5, 1986, from GAF Corporation to defendant. Thereafter, defendant resided with his family in the house located on said Property.

¹By Order dated February 23, 2011, the caption was amended to reflect the substitution of Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, pursuant to CPLR § 1021.

At some point in time, Mr. Cafferty failed to pay his taxes.² In 2003, Broome County commenced an RPTL Article 11 in rem foreclosure proceeding to satisfy the outstanding real property taxes owed by defendant. On October 28, 2003, an Order and Judgment of Foreclosure was signed by the Hon. Martin E. Smith, Broome County Court, granting said application and foreclosing defendant's rights, title and interest in said Property (*In the Matter of County of Broome*, County Ct, Broome County, October 28, 2003, Smith, J., Index No. 1998-0462). Defendant apparently appealed from said Judgment but never perfected the appeal.

On November 17, 2003, plaintiff purchased the Property at a tax foreclosure sale, together with an adjoining piece of property, for \$231,000.³ After the sale was approved by the County Legislature, said Property was transferred by Deed from Broome County to plaintiff dated December 9, 2003.

Soon after the tax sale, defendant asked plaintiff if he and his family could remain in the house until June 2004 until his son graduated from high school. Plaintiff agreed. However, in June 2004, defendant refused to vacate the premises as previously agreed.

²The court will not recite the foreclosure history which is sufficiently outlined in the moving papers. Suffice it to say that this Property was contained in the 1998 List of Delinquent Taxes, but withdrawn after defendant entered into an installment agreement. Upon further default, the parties entered into a supplemental installment agreement. After defendant defaulted yet again, the County entered a Certificate of Reinstatement and the matter proceeded to foreclosure.

³On the west side of the road is a separate piece of property identified as 219 GAF Lake Road with 31.1 acres of vacant land.

In 2005, defendant commenced an action to set aside the foreclosure and sale on various grounds including but not limited to that the County fraudulently concealed information and that the foreclosure court did not have jurisdiction to grant the judgment. By Decision & Order dated March 28, 2007, the Hon. Phillip R. Rumsey found that defendant's arguments were barred by the doctrines of res judicata and collateral estoppel because they were "[i]ssues of law that could have been raised in a motion for reargument or renewal, in County Court; by a motion to vacate the judgment, in County Court; or on appeal from County Court's judgment of foreclosure" (*Cafferty v Cahill, et al.*, 27 Misc3d 1215[A], 2007 NY Slip Op 52669[U] [2007]).

On July 31, 2008, the Third Department affirmed Justice Rumsey's Decision. More specifically, the Third Department found that defendant's "[c]laims were or should have been raised in the context of the earlier foreclosure proceeding.... Accordingly, Supreme Court properly determined that the doctrines of res judicata and/or collateral estoppel precluded the relitigation of those claims [citations omitted]" (*Cafferty v Cahill*, 53 AD3d 1007 [3rd Dept 2008]).

On December 2, 2008, the Court of Appeals issued a memorandum in which the appeal was denied in part and dismissed in part (*Cafferty v Cahill*, 11 NY3d 861 [2008]).

Notwithstanding the foregoing, defendant continued to make applications to the Broome County Court seeking to vacate the underlying Judgment dated October 28, 2003. Said applications were all denied by Decisions & Orders dated December 18, 2008 (*In the Matter of*

County of Broome, County Ct, Broome County December 12, 2008, Smith, J., Index No. 1998-0462).

Then in July 2010, plaintiff entered into a contract to sell the Property to a third party for \$179,000. As part of the preparation for the sale, the prospective buyers sent a land surveyor to the Property, but defendant would not allow the surveyor on the Property.

On October 21, 2010, plaintiff commenced this action by the filing of a summons and complaint seeking the return of said Property, directing defendants to remove themselves from the premises, and awarding plaintiff the fair rental value of defendant's occupancy. Defendant interposed an Answer on or about November 19, 2010.

On November 19, 2010, the parties appeared before this court on plaintiff's application for a preliminary injunction enjoining defendant from interfering with plaintiff's actions to complete the sale of property not occupied by defendant. At the conclusion of oral argument, it was agreed that the matter would be adjourned pending plaintiff's filing of a motion for summary judgment.⁴

⁴Plaintiff's initial motion for summary judgment was returnable December 17, 2010, but was withdrawn due to the failure to attach the pleadings. Plaintiff refiled the motion for summary judgment which was made returnable on January 14, 2011. Due to Mr. Cafferty's unfortunate passing on January 8, 2011, all matters were automatically stayed pursuant to CPLR § 1021. Upon Mrs. Cafferty's prompt application, this court issued an Order dated February 23, 2011, substituting Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased. Thereafter, plaintiff's motion for summary judgment was returned to the court's calendar and deemed submitted as of March 18, 2011.

DISCUSSION

Defendant's affidavit in opposition to this motion for summary judgment argues, among other things, that the foreclosure court lacked jurisdiction, that the County failed to comply with proper foreclosure procedures as required by RPTL Article 11, and that the Property was not a part of the foreclosure proceeding.

The court finds that all of defendant's arguments are barred by the doctrines of res judicata and/or collateral estoppel. Res judicata, also known as claim preclusion, holds that, as to parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action and forecloses the parties from relitigating those issues or from raising issues or defenses that might have been litigated in the first suit (*Gramatan Home Invs. Corp. v Lopez*, 46 NY2d 481, 485 [1979]).

Collateral estoppel is a species of res judicata, but it has its own distinguishing characteristics. Unlike res judicata, collateral estoppel does not require a showing that the issue arose from the same cause of action or the same transaction as the prior litigation. All that is necessary is that the identical issue was necessarily raised and decided in the earlier action (*D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 [1990]). Generally speaking, the application of collateral estoppel against a particular party requires proof that the identical issue was necessarily decided in the prior action, that the party was also a party to the prior proceeding or was in some way in privity with the party against whom the prior finding was

made, and that the party to be precluded from relitigating the issue had a full and fair opportunity to litigate the matter in the earlier action (*Id.*).

Here, for the reasons previously outlined in Justice Rumsey's Decision & Order dated March 28, 2007, the Third Department's Decision dated July 31, 2008, and the Court of Appeals on December 2, 2008, all of the issues raised by defendant were or should have been raised in the context of the earlier foreclosure proceeding.

The court has considered defendant's remaining arguments and finds them to be without merit.

CONCLUSION

In view of the foregoing, plaintiff's motion for summary judgment is GRANTED in its entirety declaring that: (1) plaintiff William R. Fletcher is the rightful owner of said Property by virtue of his deed from Broome County and that defendant Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, and Martha Cafferty on behalf of all others claiming under Peter Cafferty, have no ownership or possessory rights in said Property; (2) that defendant Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, and Martha Cafferty on behalf of all others claiming under Peter Cafferty shall remove themselves from the Property within a reasonable time; (3) that defendant Martha Cafferty, as Executor of the Estate of Peter Cafferty, deceased, and Martha Cafferty on behalf of all others claiming under Peter Cafferty, are restrained from interfering with any existing and/or future contract of sale and/or the marketing

and selling of said Property and any beneficial use of said Property that plaintiff may choose; and
(4) awarding plaintiff the fair rental value of defendant's occupancy of the Property since July 1, 2004 after an inquest to be scheduled by the court on notice to the parties. No counsel fees, sanctions, and/or motion costs are awarded.

This constitutes the decision and order of the court.

Dated: April 4, 2011
Binghamton, New York

s/ Ferris D. Lebous
Hon. Ferris D. Lebous
Justice, Supreme Court