Robinson v Crawford
2012 NY Slip Op 33456(U)
April 16, 2012
Supreme Court, Bronx County
Docket Number: 1158/2006
Judge: Mary Ann Brigantti-Hughes
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti-Hughes

X

GLORIA ROBINSON,

DECISION/ORDER

Plaintiff,

-against- Index No.: 1158/2006

MOSES CRAWFORD, ET ALS.,

Defendants.

X

The following papers numbered 1 to 4 read on the below motions noticed on **November 21, 2011** and duly submitted on the Part IA15 Motion calendar of **December 15, 2011**:

Papers Submitted	Numbered
Def.'s Affirmation in support of motion, exhibits, memorandum of law	1,2
Pl.'s Memo of Law in Opposition	3
Def.'s Affirmation in Reply	4

In an action involving an allegedly fraudulent mortgage-related scheme, defendant Phoung Quoc Tran (hereinafter "Tran") moves to dismiss the complaint of the plaintiff Gloria Robinsion (hereinafter "Plaintiff") pursuant to CPLR 3211(a)(10), CPLR 1001, and CPLR 1003 for failure to join necessary parties. Plaintiff opposes the motion.

I. Factual and Procedural History

According to the verified complaint, the relevant facts of this matter are as follows: In 1996, Plaintiff purchased a home located at 2639 Davidson Avenue, Bronx, New York. In 2001, Plaintiff was forced to stop working due to heart disease and back problems. Consequently, she fell behind in her mortgage payments. Plaintiff answered a flyer in her mail which allegedly promised a "pilot" program to help people keep their homes. Plaintiff called the number on the flyer and spoke with defendant Moses Crawford ("Crawford"), who promised to help lower her mortgage payments. Crawford allegedly explained to Plaintiff that she would need a "sponsor"

to get a new mortgage. Crawford said he would provide the sponsor and that the sponsor would be on her deed for about six months to help Plaintiff secure the new mortgage. On January 31, 2003, Plaintiff attended a closing believing that she was refinancing her home. Instead, she was signing documents transferring her property in its entirety to defendant James Polite ("Polite").

In July 2004, Polite put the house on the market. In or about August 2004, Tran came to the house as a prospective purchaser. Plaintiff allegedly told Tran that her house had been stolen from her and that he should not deal with the broker or seller because they were crooks. Despite this warning, Tran purchased the property from Polite. In May 2005, Tran evicted Plaintiff from the premises.

On April 14, 2006, Plaintiff filed a lis pendens on the property. In May 2006, Plaintiff commenced this action seeking to quiet title in the subject property. Plaintiff alleged that the principal orchestrators of the fraud were Polite and Crawford. The first cause of action in the complaint seeks an equitable mortgage on the premises. The second and ninth causes of action seek to rescind Plaintiff's conveyance to Polite and restore title to Plaintiff, and a declaration that the deed to Polite and his mortgage are void. The seventh cause of action against Tran seeks to quiet title to the premises in Plaintiff's name. The remaining causes of action alleging fraud, conversion, negligence, deceptive practices and truth in lending are not alleged against Tran.

Tran and other defendants answered the summons and complaint. Defendants JP Morgan Chase Bank and Christopher Finger, Esq. have been dismissed from the action. Defendants Crawford and Polite never answered the complaint. Plaintiff did not move for a default judgment against Crawford or Polite. Over five (5) years have passed since those defendants defaulted. Pursuant to CPLR 3215(c), Tran argues that Plaintiff's claims against these necessary parties are thus deemed dismissed.

Tran argues that since the claims against Crawford and Polite are dismissed, any claims against Tran should likewise be dismissed for failure join necessary parties. Tran argues that Polite and Crawford, as the alleged fraudulent perpetrators and/or prior title holders, are necessary parties. This action seeks to vacate the deed to Polite who, in turn, vested title in Tran. Tran asserts that any of Plaintiff's claims against him arise only if Plaintiff first proves her case against Polite and Crawford, thus establishing that those defendants defrauded Plaintiff out of her

property. Plaintiff seeks to invalidate the deed from herself to Polite. Tran argues that this is not a situation were Plaintiff is suing "joint tort-feasors." Rather, Tran was an innocent party whose title is being attacked derivatively through the alleged wrong doing of persons who have now been dismissed from the case. Moreover, Tran would be prejudiced if this case were to continue without Crawford or Polite, since he was not a party to the transactions that gave rise to Plaintiff's claims. Thus, full relief cannot be granted without Polite and Crawford.

In opposition, Plaintiff argues that since Polite no longer claims any interest in the Premises, complete relief can be afforded between Plaintiff and Tran. Plaintiff argues that this situation is analogous to a defendant's motion to dismiss where a plaintiff has not joined all joint tort-feasors. The Court of Appeals has held that joint-tortfeasors are not necessary parties "even though the factual basis for each party's liability is identical." *Hecht v. City of New York*, 60 N.Y.2d 57 (1983).

II. Analysis

Dismissal as to defendants Crawford and Polite

Where plaintiffs fail to pursue a default judgment within one year of the default in answering, and fail to set forth a viable excuse for the delay and demonstrate a meritorious cause of action, the dismissal of the underlying action as abandoned is required. *Hoppenfeld v. Hoppenfeld*, 220 A.D.2d 320 (1st Dept. 1995), CPLR 3215(c). Such a dismissal does not constitute an adjudication on the merits and does not bar a new action between the parties on the same cause of action. *Shepard v. St. Agnes Hospital*, 86 A.D.2d 628 (2nd Dept. 1982).

In this matter, Crawford and Polite defaulted some time in 2007, and Plaintiff did not thereafter move for default judgment against those parties. Since Plaintiff has not offered a viable excuse for the delay in so moving, her action against these parties must be dismissed as abandoned.

Dismissal for failure to Join Necessary Parties

The court should grant a 3211(a)(10) motion to dismiss only when the unnamed party is not subject to the jurisdiction of the court and will not appear voluntarily, no remedy is available

under CPLR 1001(b) and the party which is not named is so essential to the litigation that the action cannot proceed in the absence of the party. Siegel, Practice Commentaries C3211:34; (McKinney's 2005); 1 New York Civil Practice: CPLR 1003.04 and 1 New York Civil Practice: CPLR 3211.39.

Under CPLR 1001(a), persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants. CPLR 1001(a) mandates joinder of a party in two situations: (1) where that party is necessary if complete relief is to be accorded between the persons who are parties to the action; or (2) where the unnamed party might be inequitably affected by a judgment in the action (*Castaways Motel v. CVR Schuyler*, 24 N.Y.2d 120 [1969] [non-parties are "indispensable" where the determination of the court will adversely affect their rights]). As to the latter requirement, "[t]he possibility that a judgment rendered without [the omitted party] could have an adverse practical effect [on that party] is enough to indicate joinder." *Id.* The primary reason for compulsory joinder is to "avoid a multiplicity of actions and to protect the non-parties whose rights should not be jeopardized if they have a material interest in the subject matter." (*Joanne S. v.. Carey*, 115 A.D.2d 4, 7 [1st Dept 1986]).

If the court concludes that continued prosecution of the action will irreparably prejudice either the absentee or one of the existing parties, the case should be dismissed, without prejudice. *See* CPLR 1003. Under prior New York statutes, the term "indispensable party" was applied to a person who was so critical to the case that nothing short of dismissal would suffice if his or her joinder was not feasible. *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 2003, 100 N.Y.2d 801.

Generally, predecessors in title who claim no interest in the property are neither necessary nor proper parties to an action to quiet title. *McGahey v. Topping*, 255 A.D.2d 562 (2nd Dept. 1998), citing *Berman v. Golden*, 131 A.D.2d 416 (2nd Dept. 1987). In this matter, however, the basis for which Plaintiff seeks to quiet title is the alleged fraudulent practices of defendants Crawford and Polite. This is, therefore, not a typical "quiet title" action whereby a previous owner committed no alleged wrongdoing.

Plaintiff argues that, regardless of the outcome of this action, defendant Polite's interest

in the premises is unaffected, since he has none. Plaintiff asserts that, if she prevail, she owns the property. If Tran prevails, he owns the property. There is no scenario whereby Polite will have an interest in the property. Plaintiff, however, does not specify what it will take for her to "prevail" against the moving defendant. The instant action seeks to divest Tran's interest in the property. In order to accomplish this relief, Plaintiff must demonstrate that her transfer of the property to Polite was fraudulently induced. The summons and complaint alleges that the fraudulent activity took place at and before a January 31, 2003 meeting. According to the complaint, Tran had no involvement with this meeting or actions that took place beforehand. The summons and complaint also requests "a declaration that the January 31, 2003 deed transfer is a mortgage and that plaintiff is entitled to all the rights and remedies accorded to mortgagors under state and federal law..." and seeks to quiet title to the subject property "by declaring as void the fraudulent deed from plaintiff Gloria Robinson to defendant James Polite..." The relevant inquiry to dispose of this motion is whether the action, as is, can accord complete relief or whether non-parties might be inequitably affected by a judgment in the action. *Ferrando v. New York City Board of Standards and Appeals*, 12 AD3d 287 (1st Dept.2004). In this matter, complete relief cannot be afforded to Plaintiff without a declaration that the January 31, 2003 transfer between Plaintiff and Polite was fraudulent.

The necessary parties, Crawford and Polite, have been administratively dismissed from this action for failure to prosecute. This court cannot therefore compel Plaintiff to summon the defaulting necessary defendants in accordance with CPLR 1001(a). To determine whether this action may proceed at all without those defendants, this court must now consider whether "... (1) the plaintiff has another effective remedy if the action is dismissed for nonjoinder, (2) prejudice to the defendants or the person not joined, (3) whether and by whom prejudice might have been avoided, (4) feasibility of protective orders, and (5) whether an effective judgment may be rendered in the absence of the person not joined. CPLR 1001(b). This court already determined that an effective judgment cannot be rendered without the defaulting defendants, and Tran would suffer prejudice in the ability to defend an action which is threatening his right to property to which he is allegedly a bona fide purchaser. CPLR 1001(b)(2) and (5). An order holding the determination of Crawford and Polite's indispensability until after trial or judgment is not

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feasible. CPLR 1001(b)(4). The failure to proceed for a default judgment at any point after Crawford and Polite's actual default some time in 2007, approximately five (5) years ago, was entirely the fault of Plaintiff. Moreover, Plaintiff had not, and still does not, offer any excuse whatsoever for failing to move for a default judgment within the requisite time. CPLR 1001(b)(3). Any dismissal of Plaintiff's action pursuant to CPLR 3211(a)(10) is without prejudice, as is dismissal pursuant to CPLR 3215(c). Accordingly, Plaintiff is free to bring a new action joining all necessary parties should her claims still be viable under the applicable statute of limitations. CPLR 1001(b)(1). *See, e.g., Windy Ridge Farm v. Assessor of Town of Shandaken*, 11 N.Y.3d 725 (2008).

IV. Conclusion

Accordingly, it is hereby

ORDERED, that plaintiff's claims against defendants Moses Crawford and James Polite are dismissed for failure to prosecute in accordance with CPLR 3215(a)(c), and it is further,

ORDERED, that Tran's motion to dismiss is granted, and it is further,

ORDERED, that plaintiff's claims against Tran are dismissed without prejudice pursuant to CPLR 3211(a)(10).

This constitutes the Decision and Order of this Court.

Dated: April 16, 2012

Hon. Mary Ann Brigantti-Hughes, J.S.C.