

Grehan v National Asset Loan Mgt. Ltd.

2014 NY Slip Op 31131(U)

April 10, 2014

Supreme Court, New York County

Docket Number: 157380/2013

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

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GERALDINE GREHAN,

Petitioner

Index No. 157380/2013

- against -

DECISION AND ORDER

NATIONAL ASSET LOAN MANAGEMENT LIMITED,

Respondent
-----X

LUCY BILLINGS, J.:

I. BACKGROUND

Pursuant to C.P.L.R. § 5239, petitioner sought to enjoin the sale of Unit 19E at 18 West 48th Street, New York County, claiming a 50% ownership interest in the unit. Petitioner alleges she and her now estranged husband, Ray Grehan, purchased the unit in April 2007 as an investment, using funds held in their joint account to pay part of the purchase price and to repay the mortgage loan they obtained to finance the remainder of the purchase price. Although the unit was recorded under her husband's name, on May 16, 2007, her husband executed a Declaration of Trust and Power of Attorney, declaring himself the trustee of the unit, purchased as property in trust for himself and petitioner as trust beneficiaries, each entitled to a 50% interest in the trust property. Petitioner insists that this instrument confers joint ownership of the unit on her and her husband and that all their investment properties were under her husband's name simply for administrative efficiency.

Respondent effected a Sheriff's sale of the unit in satisfaction of respondent's judgment against Ray Grehan in a bankruptcy proceeding in Ireland, which was recognized, domesticated, and entered in New York County. Upon a stipulation of the parties in this proceeding, the sale occurred, and half of the proceeds, minus specified costs and fees, remained in escrow until the court's determination of petitioner's claim.

Respondent moves for summary judgment, claiming that petitioner holds no ownership or lien interest the unit, as the title was conveyed by a deed solely to Ray Grehan before May 16, 2007, recorded as such in the New York City Register on May 31, 2007, and the mortgage on the property was in his name only. C.P.L.R. § 3212(b). Respondent bases its motion on three grounds. (1) The Declaration of Trust is unrecorded, is not a valid conveyance of real property, and therefore does not confer on petitioner a 50% beneficiary interest in the unit. (2) Petitioner's lack of a recorded interest in the unit divests her of standing to seek relief under C.P.L.R. § 5239. (3) There is no fiduciary relationship between petitioner and her husband that would require a transfer to her of an ownership or lien interest in the unit.

II. SUMMARY JUDGMENT STANDARDS

Respondent, to obtain summary judgment, must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Vega v. Restani Constr. Corp., 18

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N.Y.3d 499, 503 (2012); Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005); Giuffrida v. Citibank Corp., 100 N.Y.2d 72, 81 (2003). Only if respondent satisfies this standard, does the burden shift to petitioner to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004).

If respondent fails to meet its initial burden, the court must deny summary judgment despite any insufficiency in the opposition. JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d at 384; Romero v. Morrisania Towers Hous. Co. Ltd. Partnership, 91 A.D.3d 507, 508 (1st Dep't 2012); Ruth B. v. Whitehall Apt. Co., LLC, 56 A.D.3d 273, 273-74 (1st Dep't 2008); Chubb Natl. Ins. Co. v. Platinum Customcraft Corp., 38 A.D.3d 244, 245 (1st Dep't 2007). If respondent makes a prima facie showing, however, and petitioner fails to raise material factual issues, the court must grant respondent summary judgment. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Morales v. D & A Food Serv., 10 N.Y.3d at 913; Romero v. Morrisania Towers Hous. Co. Ltd. Partnership, 91 A.D.3d at 508.

In evaluating the evidence for purposes of respondent's motion, the court construes the evidence in the light most favorable to petitioner. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4

N.Y.3d 35, 37 (2004). Although petitioner's affidavit supporting her petition lacks a certificate of conformity, C.P.L.R. § 2309(c); N.Y. Real Prop. Law § 299-a, respondent withdrew its original objection to her affidavit on this ground. Since her affidavit was duly notarized outside New York, the omission is not a fatal defect, but is a mere irregularity that she may remedy nunc pro tunc. Indemnity Ins. Corp., Risk Retention Group v. A 1 Entertainment LLC, 107 A.D.3d 562, 563 (1st Dep't 2013); Hall v. Elrac, Inc., 79 A.D.3d 427, 427-28 (1st Dep't 2010); Matapos Tech. Ltd. v. Campania Andina de Comercio Ltda, 68 A.D.3d 672, 673 (1st Dep't 2009). In fact respondent's motion necessarily relies on exhibits introduced through petitioner's affidavit and does not dispute their authenticity, but challenges only their meaning and effect. Therefore the court considers petitioner's affidavit and its exhibits to the extent necessary to determine respondent's motion.

III. THE GROUNDS FOR RESPONDENT'S MOTION

The gist of respondent's grounds for summary judgment is that the deed conveying the unit to Ray Grehan does not identify a trust, and the separate Declaration of Trust is not a valid conveyance of ownership of the unit, lacking the requisite terms of a conveyance and the requisite acknowledgment. Respondent's further claim of a lack of fiduciary relationship between Ray Grehan and petitioner necessarily relies on the terms in the Declaration of Trust, as petitioner claims no other source of Ray Grehan's fiduciary duty to her outside of their trust agreement.

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To support the absence of a conveyance, respondent points out that petitioner's interest is neither recorded nor recordable. Respondent, as a judgment creditor of Ray Grehan, however, is not a good faith purchaser entitled to protection under the New York recording statute. N.Y. Real Prop. Law § 291. Therefore the fact that the Declaration of Trust is unrecorded does not, in itself, defeat the validity of the conveyance petitioner claims through that instrument. Galetta v. Galetta, 21 N.Y.3d 186, 192 (2013); Matisoff v. Dobi, 90 N.Y.2d 127, 135 (1997); Yuzary v. WCP Wireless Lease Subsidiary LLC, 94 A.D.3d 679, 679-80 (1st Dep't 2012); Lucas v. J&W Realty & Constr. Mgt., Inc., 97 A.D.3d 642, 643 (2d Dep't 2012).

Respondent's claim that the deed conveyed the unit solely to Ray Grehan without referring to a trust is relevant only to the rights of a creditor who relied on a trustee's apparent ownership of trust property in extending credit. An express trust not declared in a disposition to the trustee is invalid against such a creditor's rights. N.Y. Est. Powers & Trusts Law § 7-3.2. Respondent makes no showing, however, that respondent extended credit to Ray Grehan in reliance on his sole ownership of the unit in his individual capacity. Whether the deed to Ray Grehan refers to the later trust, moreover, is not dispositive of the construction of the Declaration of Trust as a separate, later instrument of conveyance.

A conveyance of real property must be in writing, N.Y. Gen. Oblig. Law § 5-703(1); must be subscribed by the grantor; and

does not take effect against a subsequent purchaser or incumbrancer if the conveyance is not duly acknowledged before its delivery, unless a witness attests to its execution and delivery. N.Y. Real Prop. Law § 243. The Declaration of Trust declares that Ray Grehan purchased and holds the unit as a trustee of the beneficiaries and agrees to transfer, assign, or assure his interest in that property at the direction of and for the protection of the beneficiaries, himself and petitioner. Aff. of Geraldine Ex. B, at 2. Ray Grehan signed the instrument as both the trustee and a beneficiary; petitioner signed as a beneficiary; and Damien Maguire, an attorney, signed as a witness of its delivery and execution. Id. at 4. Maguire's signature as an attesting witness meets the requirement for a valid conveyance of the unit to the trust, as Real Property Law § 243 does not require a formal acknowledgment of the witness' attestation as required for recording of a conveyance.

Even if the instrument may not be recorded because it lacks an acknowledgment of the attestation by Ray Grehan or the subscribing witness, N.Y. Real Prop. Law § 291, the conveyance is still valid and enforceable between the parties to it, here Ray Grehan as the grantor and trustee and petitioner as a beneficiary of a 50% interest. Galetta v. Galetta, 21 N.Y.3d at 192. See Matisoff v. Dobi, 90 N.Y.2d at 134. As a judgment creditor of Ray Grehan, respondent does not dispute that it is subject to a claim of an ownership interest in accordance of the terms of a valid conveyance, if valid. See C.P.L.R. § 5239.

IV. THE VALIDITY OF THE TRUST'S CONVEYANCE

A lifetime trust must be in writing; be executed by the person establishing the trust and by at least one trustee, unless the grantor is the sole trustee; and be acknowledged in the manner required for recording a conveyance of real property or be executed in the presence of two witnesses who sign the trust instrument. N.Y. Est. Powers & Trusts Law § 7-1.17(a); Fasano v. DiGiacomo, 49 A.D.3d 683, 684-85 (2d Dep't 2008); Will of D'Elia, 40 Misc. 3d 355, 360 (Surr. Ct. N.Y. Co. 2013). See Orentreich v. Prudential Ins. Co. of Am., 275 A.D.2d 685, 685 (1st Dep't 2000). The Declaration of Trust does not include an acknowledgment of execution by either the grantor or the subscribing witness as required for recording of the conveyance. N.Y. Real Prop. Law §§ 291, 304. Nor does the Declaration of Trust include an acknowledgment of conformity to the law of New York or another jurisdiction where the instrument was executed. N.Y. Real Prop. Law §§ 301, 301-a(1). Finally, only one witness, Damien Maguire, signed the Declaration of Trust as a witness to its execution and delivery. Grehan Aff. Ex. B, at 4.

The Declaration of Trust, however, designates the laws of Ireland as the laws governing the instrument's construction. Id. at 3. Therefore its noncompliance with New York's procedural requirements for a creation of a lifetime trust may not be fatal. In fact respondent raises no objection to the validity of the declaration establishing the trust, but challenges only its validity as a conveyance of real property. Without evidence of

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the conveyance's nonconformity to the laws of the jurisdiction in which that instrument created the trust, however, respondent fails to establish that the Declaration of Trust is not a valid conveyance of real property. Therefore respondent does not sustain a prima facie showing of entitlement to summary judgment. See Ruiz v. RHQ Assoc., LLC, 92 A.D.3d 410 (1st Dep't 2012); Ruth B. v. Whitehall Apt. Co., LLC, 56 A.D.3d at 273-74; Perez v. Hilarion, 36 A.D.3d 536, 537-38 (1st Dep't 2007).

V. DISPOSITION

In sum, respondent fails to show that the Declaration of Trust is an invalid conveyance of the unit to the trust designating Raymond Grehan as the trustee and petitioner as a beneficiary of a 50% interest. As long as petitioner is a trust beneficiary, which respondent concedes, that status gives her an interest that confers standing to adjudicate her claim pursuant to C.P.L.R. § 5239. E.g., Cruz v. TD Bank, N.A., 22 N.Y.3d 61, 74-75 (2013). Based on respondent's failure to support any of its grounds for summary judgment, as explained above, the court denies respondent's motion for summary judgment. C.P.L.R. § 3212(b).

On the other hand, without evidence that the conveyance conforms to the laws of the jurisdiction in which the Declaration of Trust created the trust, petitioner has not shown that the Declaration of Trust is a valid conveyance of the unit to the trust. Although she maintains standing to pursue her claim in this proceeding, just as the current record precludes relief to

respondent dismissing the petition, this record equally precludes the court from granting the petition at this juncture. C.P.L.R. § 409(b).

Consequently, either party may move for permission, C.P.L.R. § 408, or the parties may stipulate, to conduct disclosure. Petitioner may move for summary judgment, C.P.L.R. §§ 409, 3212(b), but respondent must show sufficient cause for a second motion for summary judgment. Kobre v. United Jewish Appeal-Fedn. of Jewish Philanthropies of N.Y., Inc., 32 A.D.3d 218, 222 (1st Dep't 2006); Luna v. Hyundai Motor Am., 25 A.D.3d 321, 322 (1st Dep't 2006); Chemical Bank v. Equity Holding Corp., 254 A.D.2d 56, 56 (1st Dep't 1998); Romagnolo v. Pandolfini, 75 A.D.3d 632, 634 (2d Dep't 2010). Absent a motion, if no disclosure is sought or disclosure is concluded, either party may request a pretrial conference. C.P.L.R. § 410; 22 N.Y.C.R.R. § 202.26(b) and (c).

DATED: April 10, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.