

Santillan v Santillan
2015 NY Slip Op 31532(U)
August 4, 2015
Supreme Court, Queens County
Docket Number: 12836/2012
Judge: Robert J. McDonald
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SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. ROBERT J. McDONALD IAS PART 34
Justice

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CRISTOBAL SANTILLAN,	Index No.:	
	12836/2012	
Plaintiff,	Motion Date. Seq. 5,	
	5/14/15	
- against -	Motion Date: Seq. 6,	
	7/27/15	
SANDRA SANTILLAN,	Motion No.:	145 & 102
Defendant.	Motion Seq. Nos.:	5 and 6

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The following papers numbered 1 to 25 in a motion by plaintiff to renew plaintiff's motion to strike the answer the defendant which was denied with leave to renew pursuant to this Court's order dated October 2, 2014; granting leave to plaintiff to enter a default judgment against the defendant; and granting plaintiff leave to amend the complaint and serve a supplemental summons by adding Eden Rock Owners, Inc., Halstead Management Company, LLC and Gerard J. Picaso Division as party defendants. Defendant moves by notice of cross-motion for an order of the Court, dismissing the complaint pursuant to CPLR 3211(a)(10). In a subsequent motion, plaintiff seeks to serve a supplemental summons and amended complaint and upon Pepita Santillan and amending the caption adding her as a party defendant.

<u>Sequence No. 5</u>	<u>Papers Numbered</u>
Plaintiff's Notice of Motion-Affirmation-Affidavit(s)-Service-Exhibit(s)	1-5
Defendant's Affirmation in Opposition and Notice of Cross-Motion-Exhibits-Service	6-11
Plaintiff's Affirmation in Opposition to Cross-Motion-and Reply Exhibits-Service	12-18
Defendant's Reply to Plaintiff's Affirmation in Opposition to Cross-Motion	19-20

Sequence No. 6

Plaintiff's Notice of Motion-Affirmation-Affidavit(s)-Service-Exhibit(s)

1-5

In this partition action, Plaintiff's previous motion was denied with leave to renew pursuant to this Court's order dated October 2, 2014 which granted a 30 day stay allowing defendant, Sandra Santillan to seek new counsel. Plaintiff now moves to renew that motion for an order striking the answer of the defendant; granting plaintiff leave to enter a default judgment against the defendant; and, granting plaintiff leave to amend the complaint and serve a supplemental summons and verified complaint by adding Eden Rock Owners, Inc., Halstead Management Company, LLC and Gerard J. Picaso Division as party defendants.

On December 20, 1993, a propriety lease was entered into by non-party Eden Rock Owners, Inc. and plaintiff Christobel Santillan and his daughter, defendant Sandra Santillan acquiring Unit 603 at 84-01 Main Street, Kew Gardens, N.Y. for \$85,000.00. Plaintiff seeks a partition and sale and distribution of the proceeds of the sale in accordance with the parties' ownership interests, or alternatively a judgment in the amount of one-half the appraised value and one half of the reasonable charge for full usage of the cooperative apartment for the period from January, 2012 to the date of the sale of the property as a result defendant being prevented from returning to the property pursuant to an order of protection obtained by Petita Santillan on February 2, 2012 which remained in effect until February 2, 2015.

The summons and complaint were filed on June 19, 2012. A preliminary conference was held on September 19, 2012 and a compliance conference was held on March 6, 2013. The Note of Issue was filed on August 9, 2013. The examination before trial of plaintiff, Cristobal Santillan was held on September 10, 2013 and the examination before trial of Sandra Santillan was held on October 10, 2013. On April 3, 2014, pursuant to a Stipulation between the parties and So Ordered by Richard Lazarus, Court Attorney Referee, defendant was directed to respond to plaintiff's October 21, 2013 Notice for Discovery and Inspection request for checks or banking documentation on or before June 10, 2014 or provide an affidavit that those items do not exist. On

September 11, 2014, the Note of Issue was vacated in the Trial Scheduling Part. Defendant's counsel, David J. Hernandez, Esq. was relieved as counsel for defendant pursuant to this Court's order dated October 2, 2014. Pursuant to this Court's prior decision dated October 2, 2014, plaintiff's motion, inter alia to strike defendant's answer was denied without prejudice with leave to renew following the expiration of the 30 day stay or at such time as defendant retained new counsel. Defendant has subsequently retained new counsel.

In this motion to reargue, plaintiff seeks to strike the answer of defendant and grant plaintiff leave to enter a default judgment based upon the wilful and contumacious failure of the defendant to provide discovery in response to numerous court orders, specifically a preliminary conference order and compliance conference order; and, plaintiff's notice for discovery and inspection dated August 12, 2012 and October 21, 2013 (extended to July 11, 2014 pursuant to a stipulation between by the parties on April 3, 2014); and to provide plaintiff with a copy of the entire tenant file for the property in question.

A branch of plaintiff's motion seeks to amend the complaint and serve a supplemental summons seeks to add Eden Rock Owners, Inc., as the lessor and owner of the cooperative unit as party defendants. Halstead Managing Company, LLC, Gerard J. Picaso Division is the managing agent for Eden Rock Owners, Inc. Plaintiff maintains that since the sale of the cooperative unit is sought, both the lessor and managing agent should be placed on notice and named as nominal defendants. Plaintiff also seeks in a subsequent separate motion to add Pepita Santillan as a party defendant. Defendant's cross-motion seeks an order pursuant to CPLR § 1001(a), that Pepita Santillan should be added as a party defendant as she resides at the residence has a possessory and marital interest and would be effected by the judgment to partition or sale of the property.

Defendant submits an affirmation in opposition to plaintiff's motion and cross-moves to dismiss the complaint pursuant to CPLR § 3211(a)(10).

Defendant maintains that in 1993 she was a minor and was awarded a monetary settlement due to a medical malpractice suit in the amount of \$223,334.00. Plaintiff Cristobal Santillan was appointed Guardian of Ms. Santillan

and the settlement funds were released to the plaintiff solely in his capacity as Guardian for the benefit of defendant until she became of age. Defendant maintains that the plaintiff gained access to her funds and used them for his own personal gain, i.e., the purchase of the subject property. Defendant states that she alone purchased the property from the proceeds of her medical malpractice settlement fund; that the maintenance payments were paid as well from the malpractice settlement fund. Currently, defendant and her mother, Pepita Santillan are in possession of the residence.

Defendant further maintains that plaintiff was verbally, emotionally abusive with threats of violence toward defendant and defendant's mother, Pepita Santillan. Pursuant to an order of protection issued in favor of Pepita Santillan by the Family Court of Queens County dated February 2, 2012 and expiring February 2, 2015, plaintiff was ordered to stay away from the home of Pepita Santillan.

Defendant contends that pursuant to RPAPL § 901(1), Pepita Santillan, the wife of Cristobal Santillan, has a possessory and marital interest in the premises and is a permanent occupant.

Leave to amend the pleadings is to be freely given unless the proposed amendment will prejudice or surprise the opposing party or is palpably insufficient or patently devoid of merit. McKinney's CPLR 3025(b); Santori v. Met Life, 11 AD3d 597, 784 NYS2d 117 (2d Dep't 2004).

In accordance with the foregoing, plaintiff's motion to reargue is granted and upon consideration, the branch of plaintiff's motion to strike defendant's answer and entering a default judgment in favor of plaintiff and against defendant is denied. Defendant's cross-motion is denied.

The branch of plaintiff's motion adding Eden Rock Owners, Inc., Halstead Management Company, LLC and Gerard J. Picaso Division as party defendants is granted. The branch of defendant's cross-motion and plaintiff's subsequent motion adding Pepita Santillan as a party defendant is granted.

The caption of the action shall be as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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CRISTOBAL SANTILLAN,

Plaintiff,

Index No. 12836/12

- against -

SANDRA SANTILLAN, PEPITA SANTILLAN,
EDEN ROCK OWNERS and HALSTEAD MANAGEMENT
COMPANY, LLC, GERARD J. PICASO DIVISION,

Defendants.

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and, it is further

ORDERED, that the supplemental summons and amended
verified complaint in the proposed form annexed to the
moving papers shall be deemed served upon service of a copy
of this order with notice of entry in conformance with the
rules of service; and, it is further

ORDERED, that the defendants shall serve an answer to
the amended complaint within 20 days from the date of said
service.

Dated: Long Island City, NY
August 4, 2015

ROBERT J. McDONALD
J.S.C.