

Hawes v Lewis

2015 NY Slip Op 32617(U)

July 13, 2015

Supreme Court, Kings County

Docket Number: 5592/12

Judge: Loren Baily-Schiffman

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This opinion is uncorrected and not selected for official publication.



At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse located at 360 Adams Street, Brooklyn, New York on the 13th day of July, 2015.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

LAVERNE HAWES, as Guardian of the Person and Property of FRANCES WARD; and, LAVERNE HAWES and DWAYNE JOHNSON, as Joint Guardians of the Property of WILFRED WARD, and also Derivatively on Behalf of MADISON WARD REALTY, INC.,

Plaintiffs,

- against -

YASSER LEWIS, BASHEER JAMIL LEWIS, FULTON BROTHERS REALTY, LLC, 1289 FULTON STREET, LLC and the NEW YORK CITY DEPARTMENT OF FINANCE,

Defendants.

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DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion, to direct an inquest on damages and to amend the caption to reinstate Latuit Rashun Ward as a party defendant.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation and Exhibits.....	1
Affirmation in Opposition.....	2
Reply Affirmation and Exhibits.....	3

Plaintiffs move this court for an Order directing an inquest and assessment of damages pursuant to CPLR §3215 and to amend the caption to reinstate Latuit Rashun Ward as a party defendant, *nunc pro tunc* from June 17, 2013 pursuant to CPLR §3025(b) as he was inadvertently removed from the caption in a prior Order of this court. Defendants Yasser Lewis, Basheer Jamil Lewis, Fulton Brothers Realty LLC and 1289 Fulton Street LLC (hereinafter "the Lewis defendants") oppose the motion for an inquest, essentially arguing that plaintiffs at inquest are required to prove liability **and** damages. In reply, plaintiffs argue that liability has been established in this court's Order of February 21, 2014 in which the court granted plaintiffs' motion to strike the Answer of the

Lewis defendants and set the matter down for an inquest on damages.

BACKGROUND

In December 2013 Plaintiffs moved this court by Order to Show Cause for an Order striking the Answer of the Lewis defendants and setting this matter down for an inquest on damages. Plaintiffs argued and the court ruled by written Order dated February 21, 2014 that these defendants had deliberately failed to abide by this court's prior discovery orders. The court's February 21, 2014 Order¹ struck the Lewis defendants' Answer; granted Plaintiffs the relief requested in their Complaint; canceled *nunc pro tunc* any interest the defendants had or may have had in the premises 1289-1291 Fulton Street and 1775 Fulton Street, Brooklyn, New York; rescinded *nunc pro tunc* the recording of the deed to 1289-1291 Fulton Street, dated September 11, 2009 from Madison Ward Realty Co, Inc to Madison Ward Realty, Inc; rescinded *nunc pro tunc* the recording of the deed to 1289-1291 Fulton Street, from Madison Ward Realty, Inc to Fulton Street Brothers Realty, LLC, dated September 11, 2009; rescinded *nunc pro tunc* the recording of the deed to 1289-1291 Fulton Street from Fulton Street Brothers Realty, LLC, dated May 20, 2011; rescinded *nunc pro tunc* the recording of the deed to 1779 Fulton Street from Fulton Street Brothers Realty, LLC to 1289 Fulton Street, LLC, dated May 20, 2011; and rescinded *nunc pro tunc* the deed to 1779 Fulton Street from Latuit Rashun Ward and Basheer Jamil Lewis to Basheer Jamil Lewis, dated June 29, 2011. The court also continued to retain jurisdiction over this action and directed that a Note of Issue be filed within 30 days to place this matter on the inquest calendar for an assessment of damages. Defendant Latuit Rashun Ward had previously been found by this court to be in default by Order of

¹ This Order was affirmed by the Appellate Division, Second Department on April 15, 2015.

dated April 11, 2013 as a result of his failure to appear and answer the Complaint.

INQUEST ON DAMAGES

The Plaintiff and the Lewis defendants appear to disagree as to the effect of this court's striking of the Answer filed by the Lewis defendants and setting this matter down for an inquest on damages. Plaintiff takes the position that upon the court granting plaintiffs' motion for a default and setting the matter down for an inquest on damages, liability has been established. They cite ***Silberstein v. Presbyterian Hosp. In City of New York, 95 AD2d 773, 774 (2d Dept 1983)*** for the position that after the motion for a default has been granted, at the inquest, "all factual allegations of the complaint and all reasonable inferences therefrom" are admitted by the defaulting defendants. The Lewis defendants argue that at the inquest, plaintiffs are required to prove their entitlement to the relief requested, *i.e.* their *prima facie* case.

As the Second Department stated in ***Rawlings v. Gillert, 104 AD3d 929, 930 (2d Dept 2013)***:

"[A] defendant whose answer is stricken as a result of a default admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages' (Napolitano v Branks, 128 AD2d 686, 687 [1987], quoting Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see Abbas v Cole, 44 AD3d 31, 33 [2007]). Indeed, where an entry of a default judgment against a defendant is made after an application to the court, the defendant is entitled to a full opportunity to cross-examine witnesses, give testimony and offer proof in mitigation of damages' (Napolitano v Branks, 128 AD2d at 687, quoting Reynolds Sec. v Underwriters Bank & Trust Co., 44 NY2d 568, 572 [1978]; see Godwins v Coggins, 280 AD2d 582, 582 [2001])."

The court further stated that defendant in ***Gillert*** was properly precluded from introducing evidence at the inquest "tending to defeat the plaintiff's underlying claims". *Id.* Accordingly, at inquest, defendants may appear and cross-examine witnesses on the issue of damages. However,

Plaintiff will not be required to establish its *prima facie* case nor need they prove the incapacity of Wilfred Ward on the specific days when he executed disputed deeds, as this is part of plaintiff's case on liability which has already been established at the court's hearing on the motion for a default.

AMENDMENT OF CAPTION

In an Order dated June 14, 2012, Hon. Wayne Saitta granted Plaintiffs' motion for a default judgment against Latuit Rashun Ward with an inquest to be determined at the conclusion of this action. Thereafter, this court appointed Plaintiffs Laverne Hawes and Dwayne Johnson as guardians of the person and property of Frances Ward and of the property of Wilfred Ward and on application of plaintiff Laverne Hawes amended the caption of the instant action to substitute the guardians as plaintiffs. In that Order, dated June 17, 2013, the court inadvertently omitted the name of Latuit Rashun Ward as a defendant. Accordingly, the caption of the instant action is amended to reinstate Latuit Rashun Ward as a party defendant and the amended caption is to read as follows:

-----X
LAVERNE HAWES, as Guardian of the Person and
Property of FRANCES WARD and LAVERNE
HAWES and DWAYNE JOHNSON as joint
Guardians of the Property of WILFRED WARD and
also derivatively on behalf of MADISON WARD
REALTY, INC.,
Plaintiffs,
- against -
LATUIT RASHUN WARD, YASSER LEWIS,
BASHEER JAMEEL LEWIS, FULTON BROTHERS
REALTY, LLC, 1289 FULTON STREET, LLC, and
the NEW YORK CITY DEPARTMENT OF FINANCE,
Defendants
-----X

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SPECIAL PREFERENCE

Plaintiffs' motion also seeks a special preference pursuant to CPLR §3403(a)(4) due to the advanced ages of Frances Ward and Wilfred Ward who are 98 and 95 years of age, respectively. No opposition to this application has been made. Accordingly, the application for a special preference is granted and this matter is to be set down for an inquest on damages forthwith.

Accordingly, it is hereby ORDERED that an inquest on damages only is granted in accordance with the ruling above; and it is hereby ORDERED that the caption of the instant matter is amended as indicated above; and it is hereby ORDERED that a special preference is granted and this matter is to be set down for an inquest on damages forthwith.

This is the Decision and Order of this court.

ENTER



LOREN BAILY-SCHIFFMAN
JSC

HON. LOREN BAILY-SCHIFFMAN



FILED
KINGS COUNTY CLERK
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