

Blanc-Kouassi v Carrington
2016 NY Slip Op 30570(U)
March 30, 2016
Supreme Court, New York County
Docket Number: 652374/2015
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ Justice

PART 13

JOCELYN BLANC-KOUASSI, Plaintiff, -against-

INDEX NO. 652374/2015 MOTION DATE 02/10/2016 MOTION SEQ. NO. 001 MOTION CAL. NO.

JOYCE A. CARRINGTON a/k/a JOYCE ROOKWOOD, Defendant.

The following papers, numbered 1 to 7 were read on this Motion for Summary Judgment.

Table with 2 columns: Description of papers and PAPERS NUMBERED. Includes rows for Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's motion for summary judgment to dismiss the Complaint in its entirety and declare Defendant the surviving widow of the decedent, is denied.

Plaintiff and Pierre Kouame Kouassi (herein the "Decedent") were married in New York in February of 1977. (see Aff. In Opp. P. 1). Plaintiff brought an action for divorce in the Superior Court of California, San Diego County, on March 18, 2005. (see Mot. Exh. G). The Decedent moved 1) to quash the summons asserting that the California Court lacked personal jurisdiction over him, and 2) that the California Court could not maintain jurisdiction over the dissolution of the marriage based on Res Judicata because he and Plaintiff had already been divorced in the Republic of the Ivory Coast in 1985. (see Mot. Exh. H). In a hearing of November 9, 2005, the California Superior Court granted Decedent's motion to quash (see Minutes of the Family Court Mot. Exh. G), but did not make reference as to how or why it came to that conclusion.

Plaintiff commenced this action on July 2, 2015, for declaratory judgment against defendant declaring Plaintiff the surviving spouse of Decedent. Defendant and Decedent were married in New York on December 4, 1999. (see Certificate of Marriage Mot. Exh. E). Plaintiff contends that she and the Decedent remained married and held themselves out to be husband and wife until 2004. (see Aff. In Opp PP 1-4 and exhibits attached

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

thereto including Exh. B- application for permanent residence).

Defendant now moves for summary judgment 1) dismissing the Complaint in its entirety, 2) declaring Defendant, rather than Plaintiff, as the surviving widow of Decedent, and 3) directing Plaintiff to pay Defendant financial sanctions, plus attorney's fees, statutory costs and disbursements. Defendant argues that collateral estoppel 1) precludes Plaintiff from relitigating the prior determination by the District Court of Abidjan in the Ivory Coast granting Plaintiff and Decedent a divorce, and 2) that the validity of the Ivory Coast divorce decree has already been established in the 2005 litigation in the California Superior Court wherefore New York is required to give full faith and credit to California's judgment. (see copy of Ivory Coast Divorce Decree Mot. Exh. F and Copy of California Superior Court grant of Decedent's Motion to Quash Mot. Exh. H).

Plaintiff opposes this motion and argues that collateral estoppel cannot apply here because there was no prior hearing on the merits and no order filed in California granting a divorce or acknowledging a foreign divorce decree. (see Memo of Law in Opp. P. 4). Plaintiff contends that the divorce decree from the Ivory Coast is fraudulent and that "there was no adjudication on the merits in the California court and there was no action filed by her in the Ivory Coast." (Id. P. 7; see also Opp. Exh. L documents from Ivory Coast Court stating that there is no record of a divorce decree between Plaintiff and Decedent).

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact.(Klein V. City of New York, 89 NY2d 833; Ayotte V. Gervasio, 81 NY2d 1062, Alvarez v. Prospect Hospital, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues(Kaufman V. Silver, 90 NY2d 204; Amatulli V. Delhi Constr. Corp., 77 NY2d 525; Iselin & Co. V. Mann Judd Landau, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party(SSBS Realty Corp. V. Public Service Mut. Ins. Co., 253 AD2d 583; Martin V. Briggs, 235 192).

"The doctrine of Collateral Estoppel precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. The issue must have been material to the first action or proceeding and essential to the decision rendered therein, and it must be the point actually to be determined in the second action or proceeding such that a different judgment in the second

would destroy or impair rights or interests established by the first." (see *Ryan v. New York Telephone Company*, 62 N.Y. 2d 494, 467 NE 2d 487, 478 N.Y.S. 2d 823 [1984]).

Under the Doctrine of Res Judicata a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or seeking a different remedy (*Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 690 N.Y.S.2d 478, 712 N.E.2d 647 [1999] citing to *Matter of Reilly v. Reid*, 45 N.Y.2d 24, 407 N.Y.S. 2d 645 [1978]). For res judicata to apply the issue must have been material to the first action or proceeding and essential to the decision rendered therein (*Ryan v. New York Telephone Co.*, 62 N.Y. 2d 494, 478 N.Y.S. 2d 823 [1984]). "Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action" (*Amalgamated Bank v Helmsley-Spear, Inc.*, 109 A.D.3d 418, at 419, 970 N.Y.S.2d 522, at 2 [2013] citing to, *Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 690 N.Y.S.2d 478, 712 N.E.2d 647 [1999]).

"Collateral estoppel...is but a component of the broader doctrine of Res Judicata which holds that, as to the parties in a litigation..., 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." *Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481 (Ct. of Appeals 1979) citing to *Matter of Shea*, 309 N.Y. 605, 132 N.E.2d 864 (Ct. Of Appeals 1956).

"As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, strict requirements for application of the doctrine must be satisfied to insure that a party not be precluded from obtaining at least one full hearing on his or her claim." See *Gramatan*.

Here, neither res judicata nor collateral estoppel applies as the California action did not render a final judgment on the merits. In fact, the California Court Decision simply granted the Defendant in that action (the Decedent) a motion to quash the summons but did not offer any guidance as to exactly what the motion to quash was based on.

Based on this, Defendant fails to make a prima facie showing that she is entitled to judgment as a matter of law. There are clearly material issues of fact that cannot be decided through a summary judgment motion. Defendant asserts that the divorce decree from the Ivory Coast clearly

shows that Decedent and the Plaintiff were divorced, and Plaintiff rejects this assertion by raising issues as to the validity of the divorce decree and the lack of the California Court rendering a decision on the merits.

Defendant further asserts that the lack of Plaintiff seeking clarification on the California Order precludes her from challenging that Order now and the validity of the Ivory Coast decree must be presumed and therefore is entitled to collateral estoppel effect. (see Reply Aff. P. 3). Defendant makes further arguments regarding the admissibility of Plaintiff's evidence offered in opposition to the summary judgment motion as being "conclusory" and "hearsay". (See Reply Aff. PP. 4-12).

Having considered Defendant's remaining arguments, in light of the fact that the California Court simply rendered a check-the-box type of Order, no final determination on the merits was made, as is required for collateral estoppel and res judicata to apply, therefore an order for summary judgment in favor of Defendant cannot stand.

Accordingly, it is ORDERED that Defendant's motion for summary judgment to dismiss the complaint in its entirety and declare that Defendant is the Decedent's surviving widow is denied in its entirety.

ENTER:



MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ

J.S.C.

Dated: March 30, 2016

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE