

VNB New York Corp. v Lewitin
2016 NY Slip Op 30782(U)
April 27, 2016
Supreme Court, New York County
Docket Number: 650805/2011
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

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VNB NEW YORK CORP.,

Plaintiff,

DECISION/ORDER
Index No. 650805/2011

-against-

MARGUERITE LEWITIN a/k/a MARGOT LEWITIN

Defendant.

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HON. SALIANN SCARPULLA, J.:

In this action, defendant Marguerite Lewitin a/k/a Margot Lewitin (“Lewitin” or “defendant”) moves by order to show cause, pursuant to CPLR §§ 2003, 5236, and 5240, for an order vacating a particular Sheriff’s sale because plaintiff VNB New York Corp. (“VNB” or “plaintiff”) did not give defendant notice of the sale and the price for which the property sold “was inadequate.”

In 2011, VNB brought suit against defendant to collect a debt, and, by a judgment dated October 5, 2011, plaintiff was awarded \$249,816.99 (“Judgment”). VNB executed the Judgment against certain real property in New Hampshire (“Property”), and the Property was sold by a Sheriff’s sale.

Lewitin claims that the sale was conducted with no notice to her in violation of the CPLR. Specifically, defendant argues that pursuant to CPLR § 5236 the Sheriff overseeing the sale of the Property, Domenic M. Richardi (“Richardi”), should have served her with a notice of the sale, but, instead, Lewitin “learned of the sale by

happenstance when the defendant had telephoned the Center Sandwich Town Clerk to inquire about taxes due.”

Defendant also claims that VNB’s “subsidiary and/or affiliate,” SAR I Inc., acquired the Property at the Sheriff’s sale. Lewitin submits the Sheriff’s Deed, dated August 8, 2014, with her application, which states that SAR I Inc. is “a New Jersey corporation with an address c/o Valley National Bank, 1455 Valley Road, Wayne, NJ 07470.”

Finally, Lewitin claims that the Property sold for “less than 50% of the Property’s true market value.” Defendant maintains that “[t]he sale’s price was \$60,000, even though the Property’s true market value is more than twice that amount, or \$137,000.”

Lewitin argues that the lack of notice, along with the low purchase price put forth by SAR I Inc., “render the Sheriff’s sale of the Property invalid, not only procedurally, but in the interest of justice: plaintiff has purposefully and with intentional overreaching appropriated defendant’s asset, but, in doing so, made no significant dent in the underlying judgment owed by defendant.” Lewitin claims that “[t]his type of self-serving collection practice is abusive.” Defendant further posits that “[b]ased on its actions, it appears that plaintiff intends to ‘chip away’ at defendant’s assets with no intention of ever fully satisfying its judgment, for which interest is accruing, as this Court knows, at the rate of 9% per annum.”

Defendant now moves, by order to show case, to vacate the Sheriff’s sale, pursuant to CPLR §§ 2003, 5236, and 5240.

In opposition to defendant's motion, plaintiff first notes that the sale occurred in accordance with a judgment entered in and execution issued by Hillsborough Superior Court, Southern District, State of New Hampshire ("New Hampshire Court"), and it argues "that this Court does not have jurisdiction to entertain this application, being that this Court has no jurisdiction over the Sheriff of Carroll County, State of New Hampshire and the judgment upon which the sale was based was entered in the State of New Hampshire." Additionally, plaintiff argues that New Hampshire law should dictate the "notice requirements in this case," and urges that defendant should have brought this motion in New Hampshire.

Plaintiff next argues that even if I have jurisdiction, there is no basis to vacate the Sheriff's sale. Judgment was entered against defendant in New York more than four years ago, defendant never moved to vacate the Judgment, and defendant had notice of the Judgment. Further, plaintiff alleges that Lewitin never moved to vacate or stay enforcement of the Judgment after plaintiff sought to have it entered in New Hampshire, and she has not attempted to redeem the Property, pursuant to a provision of the Sheriff's Deed allowing for redemption for one-year after August 8, 2014, in accordance with New Hampshire law. Plaintiff also claims that "the judgment pursuant to which the levy of the Premises occurred has not been satisfied."

Finally, VNB argues that Lewitin was aware of the Property's sale as early as September 25, 2014, and plaintiff claims that "notice of the sale was in fact published" and "a copy of the publication was served upon Ms. Lewitin by certified mail." Plaintiff argues that the Sheriff's sale should not be vacated due to a defect in notice in this case.

Plaintiff maintains that “[t]he dispute over the amount that should be allocated toward the judgment”—that is, the \$137,000 that defendant claims to be “the Property’s true market value” and the \$60,000 sale price for the Property—by itself, “is not . . . a substantial right meriting a vacatur of the sale, particularly here where defendant has never sought to vacate the underlying judgment, either in New York or in New Hampshire, nor did she act to stay the sale for several months despite having knowledge thereof.” Instead, VNB argues that “defendant has only caused further prejudice to plaintiff given that plaintiff is currently in contract of sale to sell the subject property and has been prejudiced as a result of the defendant’s within application which prevent[s] such sale.”

Discussion

On June 4, 2013, VNB filed the Judgment with the New Hampshire Court. On June 5, 2013, the Clerk of Court notified Lewitin of the filing of the Judgment, and the notice stated

[y]ou have fifteen (15) days from the date of this notice to request in writing that this court vacate or stay the enforcement of this foreign judgment. If you do not make such a request, the court will register the foreign judgment in this court and the foreign judgment will be treated like a judgment of this court.

On June 24, 2013, the New Hampshire Court entered judgment in the amount of \$249,816.99. According to the Sheriff’s Deed, Richardi conducted the sale pursuant to an execution of judgment from the New Hampshire Court, dated February 14, 2014.¹

¹ See Sheriff’s Deed (emphasis added)

(KNOW ALL MEN BY THESE PRESENTS, that I, Domenic M. Richardi, Sheriff for the County of Carroll and the State of New Hampshire, *by virtue of an execution # 226-2013-cv-00323, issued by the Hillsborough Superior Court Southern District on February 14, 2014, upon a judgment recovered in favor of*

This Court does not have jurisdiction to vacate a Sheriff's sale conducted by a Carroll County, New Hampshire Sheriff pursuant to an execution of judgment from the New Hampshire Court. Defendant's application, therefore, is denied.

In accordance with the foregoing, it is hereby

ORDERED that defendant Marguerite Lewitin a/k/a Margot Lewitin's motion pursuant to CPLR §§ 2003, 5236, and 5240, for an order vacating the aforementioned Sheriff's sale is denied.

This constitutes the decision and order of the Court.

DATE :

4/27/14


SALIANN SCARPULLA, JSC

VNB New York Corp. . . . against Marguerite Lewitin a/k/a Margot Lewitin . . . , in consideration of the sum of Sixty Thousand Dollars (\$60,000.00), this being the highest bid of sale, do hereby sell and convey to SAR I Inc. . . . its successors and assigns all Right, Title and Interest and Equity which the within named Marguerite Lewitin a/k/a Margot Lewitin . . . did have at the time of said sale in a certain tract of land in Sandwich, County of Carroll and State of New Hampshire).