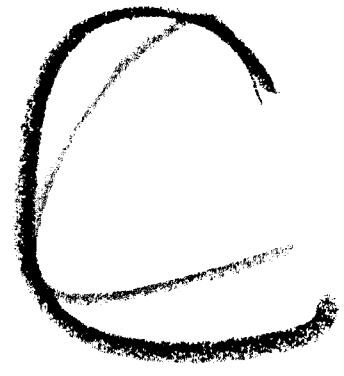


Barrett v R.P. Assets. Inc.
2017 NY Slip Op 30758(U)
March 1, 2017
Supreme Court, Bronx County
Docket Number: 303169/2016
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX - Part 4

-----x
Edgar Barrett ,

Plaintiff

Decision and Order

-against-

Index No. 303169/2016

R.P. Assets, Inc.,
Loushon Frazier,

Defendants

Howard H. Sherman

J.S.C.

-----x
The following papers numbered 1- 5 read on three consolidated motions : 1) by plaintiff for a default judgment ; 2) by defendant R.P. Assets , Inc., to dismiss the complaint pursuant to CPLR 3211[a][1], 7 & 8, and 3) by plaintiff for a stay of an eviction in a case in the Housing Part of the City of New York

Notice of Motion for Default Judgment, Affidavit in Support	1,2	
Notice of Motion [3211[a]] , Affirmation, Affidavit, Exhs, A-O	3	
Order to Show Cause, Affidavit, Exhs.	4	
Affirmation in Opposition , Exhs, A-E	5	

Upon the forgoing papers, the above motions are consolidated for purposes of disposition and decided as set forth below.

Self-represented plaintiff Edgar Barrett (Barrett) commenced this action on September 21, 2016 alleging causes of action for monetary damages and equitable relief in connection with an allegedly fraudulent transfer of residential real property in Bronx County in which Barrett claims a partial interest.

On the same day, he filed an order to show cause seeking to stay his eviction pursuant to a warrant in connection with a holdover proceeding commenced against him and other occupants of the subject premises in the Housing Part of the Civil Court .

In that proceeding, commenced in November 2015, Edgar Barrett was represented by counsel.¹

On September 29, 2016, this court declined to sign the order to show cause .

Motions

- 1) By notice dated January 20, 2017, Barrett moves for a default judgment submitting in support his affidavit, and copies of the summons and complaint, and affidavits of Nicole Barrett attesting to service of the pleadings upon defendants by mail.
- 2) By notice dated January 17, 2017 , defendant RP Assets , Inc., moves pursuant to CPLR 3211 [a] [1] , [7] , and [8], to dismiss the complaint contending that documentary evidence establishes as a matter of law its defense that it is the owner of record of the subject premises, while the prior decision and order of this court (Guzman, J.) in a prior action for the same relief rejected the claims asserted here and the allegations of fraud are not pleaded with sufficient particularity (see, CPLR 3016). Defendants also move to dismiss for lack of personal jurisdiction as the supporting affidavit attests to a patently improper method of service upon defendants.
- 3) By order to show cause signed by this court on February 6, 2017, Barrett moves for an order staying the noticed eviction in the holdover proceeding .

RP Assets opposes the motion for a stay contending that plaintiff has not

¹[L & T Index No. 069708/2015].

demonstrated neither a likelihood of success on the merits , or a balance of equities in his favor.

Discussion and Conclusions

Upon consideration of the papers on submission , and the oral argument thereon the court finds that defendant has demonstrated entitlement to judgment pursuant to C.P.L.R. 3211(a)(8) dismissing the complaint in the above-entitled action upon the ground that this court does not have jurisdiction of the person of the defendant limited liability company , as service was not alleged to have been, nor was it, in effect, made pursuant to CPLR § 311-a. As a consequence, , the court has no jurisdiction over defendant RP Assets and any proceedings, including the entry of the default judgment sought against it, would be nullities.

In light of the above determination , the motion for a default judgment and that for a stay are denied as academic.

The court notes that were the court to reach the merits , it is clear that the pleadings fail to conform with the requirements of CPLR 3016[b] , and the documents provided fail to evidence a meritorious claim.

This determination is made without prejudice to any appropriate application for further relief in the Housing Part of the City Of New York.

Accordingly, it is

ORDERED that the motion by defendant to dismiss the complaint be and hereby

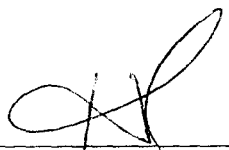
is granted, and it is further

ORDERED that the motion for a default judgment be and hereby is denied, and it is further

ORDERED that the motion for a stay of the enforcement of the judgment entered in the Housing Part of the City of New York in the proceeding entitled **RP Assets Inc. v. Edgar Barrett, et alia., [L& T Index No. 69708/15]** be and hereby is denied.

This shall constitute the decision and order of this court.

Dated: March 1, 2017



Howard H. Sherman