

Freilich v Jackson
2018 NY Slip Op 30945(U)
May 17, 2018
Supreme Court, Kings County
Docket Number: 512570/17
Judge: Sylvia G. Ash
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 71 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of May, 2018.

P R E S E N T:

HON. SYLVIA G. ASH,

Justice.

-----X
MOSES FREILICH,

Plaintiffs,

- against -

Index No. 512570/17

BERNARD JACKSON and KATRINA D. JACKSON BROWN, as executors of THE ESTATE OF ANNIE LEE MAZYCK JACKSON, YOMI HOMES, INC., KENNETH W. RICHARDSON, ESQ., as Referee; KIM REESE; MARQUIS CONCEPTION; ROBERT TOMPKINS; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, JOHN DOE #1 AND JANE DOE #1, JOHN DOE #2 AND JANE DOE #2 (the identity of the last four individuals being fictitious and unknown to Plaintiff, but intended to identify any and all occupants of the premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the subject premises),

Defendants.

-----X
The following papers numbered 1 to 28 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

1-3 4-5 6-8 9-11 12-14 15-16 17-20

Opposing Affidavits (Affirmations) _____

21 7-8 22-23 24, 25 16 26-27 26-27

Reply Affidavits (Affirmations) _____

22-23 25 26-27 28

Upon the foregoing papers, plaintiff Moses Freilich (Freilich) moves, by order to show cause (in motion sequence #1), for an order: (1) consolidating this action with the action entitled *Yomi Homes, Inc. v Annie Jackson, et al.*, Kings County index No. 19238/13 (Yomi Homes Action), pursuant to CPLR 602; or, alternatively, (2) permitting Freilich to intervene in the Yomi Homes Action, pursuant to CPLR 1013, and, upon doing so: (a) vacating or staying the June 5, 2017 order in the Yomi Homes Action which directed Kenneth W. Richardson, Esq. (Referee Richardson) to transfer title to the property at 27 Bleeker Street in Brooklyn (Property) to Yomi Homes, Inc. (Yomi Homes), and (b) granting Freilich a preliminary injunction enjoining Bernard Jackson and Katrina D. Jackson, as executors of the Estate of Annie Lee Mazyck Jackson (Executors and the Estate, respectively), Yomi Homes and Referee Richardson, or any person acting on their behalf, pursuant to CPLR 6301, from: (i) transferring or receiving title to the Property, and (ii) mortgaging, leasing or otherwise encumbering the Property.

Defendant Yomi Homes moves (in motion sequence #2) for an order: (1) granting it summary judgment dismissing the complaint, pursuant to CPLR 3212, or, alternatively, (2) dismissing the complaint, pursuant to CPLR 3211 (a) (7).¹

Freilich also cross-moves (in motion sequence #3) for an order: (1) granting him summary judgment on his first cause of action against Yomi Homes for a declaration that his interest in the Property is superior to Yomi Home's interest, pursuant to CPLR 3212, and (2)

¹ Since Yomi Homes has answered the complaint, its motion is deemed to be for summary judgment dismissing the complaint, pursuant to CPLR 3212.

granting him a default judgment against the Estate and directing the Estate to transfer title in the Property to Freilich and otherwise perform under the contract of sale, pursuant to CPLR 3215.

The Estate cross-moves (in motion sequence #4) for an order: (1) vacating and setting aside any default against the Estate, pursuant to CPLR 5015 (a); (2) dismissing the complaint, or, alternatively, (3) granting the Estate leave to serve a late answer, pursuant to CPLR 3012 (d).

Freilich also moves (in motion sequence #5), upon granting his pending Order to Show Cause to consolidate this action with the Yomi Homes Action, for an order: (1) vacating the June 5, 2017 order and underlying stipulation of settlement in the Yomi Homes Action, pursuant to CPLR 5015 (a) (2) and (a) (3); (2) declaring the underlying contract to sell the Property to Yomi Homes invalid, pursuant to CPLR 5015 (a) (2) and (a) (3); (3) granting Freilich summary judgment dismissing the Yomi Homes Action, pursuant to CPLR 3211 (a) (1), (a) (7) and (a) (10) and CPLR 3212; (4) in the event the Estate's pending cross motion to vacate their default and submit a late answer is granted, granting summary judgment on the second cause of action asserted against the Estate and directing the Estate to transfer title to Freilich, pursuant to CPLR 3212; and (5) in the event that the Property is transferred to Yomi Homes, granting Freilich summary judgment, pursuant to CPLR 3212, or a default judgment against the Estate, pursuant to CPLR 3215, on the third cause of action for money damages against the Estate and/or Yomi Homes, and setting a hearing date for determining damages.

Yomi Homes cross-moves (in motion sequence #6) for an order, pursuant to 22 NYCRR § 130-1.1 (Part 130), imposing financial sanctions and/or attorneys' fees upon Freilich's counsel,

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C. (Borah Law Firm), for engaging in frivolous conduct.

The Estate cross-moves (in motion sequence 7) for an order: (1) imposing sanctions upon Freilich and his counsel at the Borah Law Firm for frivolous conduct, pursuant to Part 130; (2) holding Freilich in civil contempt of court for failure to remove his UCC-1 Lien against the Property in accordance with the court's June 15, 2017 order (Baynes, J.); and (3) dismissing the complaint, pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7).

Background

The 2009 Freilich Contract

Annie Lee Mazyck Jackson, now deceased (Decedent), was the owner of the Property. On October 14, 2009, prior to her death on October 8, 2011, the Decedent entered into a contract to sell the Property to Freilich for \$272,000.00 with a closing date of November 15, 2009 (2009 Freilich Contract). The sale never took place because Freilich allegedly defaulted under the 2009 Freilich Contract.

In 2010 and 2012, Freilich nevertheless filed UCC-1 statements against the Property.

The 2011 Yomi Homes Contract

On August 4, 2011, two months before her death, the Decedent entered into another contract to sell the Property to Yomi Homes (Yomi Homes Contract). The Decedent allegedly failed to proceed to closing and thereby repudiated the Yomi Homes Contract.

The Yomi Homes Action

On or about October 29, 2013, Yomi Homes commenced the Yomi Homes Action against the Decedent and Bernard Jackson, as attorney in fact, seeking specific performance of the Yomi Homes Contract. Freilich was not named as a party to the Yomi Homes Action.

On or about July 9, 2015, Bernard Jackson, the Decedent's sole heir, and Yomi Homes entered into a stipulation of settlement in the Yomi Homes Action, pursuant to which the parties ratified and amended the Yomi Homes Contract and agreed to proceed with a sale of the Property to Yomi Homes on or before July 31, 2015, time being of the essence. The closing did not take place on or before July 31, 2015.

On or about November 15, 2016, Yomi Homes moved for the appointment of a referee to effectuate the transfer of the Property in accordance with the parties' stipulation of settlement. By a June 5, 2017 order (June 2017 Order), this court appointed Referee Richardson to effectuate specific performance of the Yomi Homes Contract.

***The Estate's Action Against Freilich
Seeking To Vacate the UCC-1 Statements***

Meanwhile, Bernard Jackson, as Executor of the Decedent's Estate, commenced an action against Freilich entitled *Estate of Annie Lee Mazyck Jackson, by Bernard Jackson as Executor v Freilich*, in Kings County Supreme Court under index No. 1656/17 (the Estate's Prior Action). On May 19, 2017, the Estate moved, by order to show cause, for an order directing Freilich to terminate his UCC-1 financing statements against the Property.

By a June 15, 2017 order, the court (Baynes, J.) granted the Estate's motion and ordered that Freilich's UCC-1 financing statements against the Property be removed.

This Specific Performance Action

By a June 13, 2017 letter, Freilich's counsel provided the Estate's counsel with "official notice" that "July 12, 2017 is the *time of the essence* date for the Estate . . . to close title . . ." pursuant to the 2009 Freilich Contract.

Two weeks later, on June 27, 2017, Freilich commenced this action against the Estate, Yomi Homes, Referee Richardson and others seeking: (1) a declaration that the 2009 Freilich Contract is valid and the Yomi Homes Contract is a nullity; (2) specific performance of the 2009 Freilich Contract; and (3) damages for breach of the 2009 Freilich Contract.

On August 11, 2017, Yomi Homes answered the complaint, denied the material allegations therein and asserted several affirmative defenses. The Estate failed to timely answer or otherwise appear in this action.

The Instant Motions and Cross Motions

A. Freilich's Order To Show Cause To Consolidate or Intervene

Contemporaneously with his commencement of this action, Freilich filed an order to show cause seeking to consolidate this action with the Yomi Homes Action. Alternatively, Freilich seeks the following relief *in the Yomi Homes Action*: (1) an order allowing him to intervene; (2) an order vacating or staying the court's June 2017 Order, which directed Referee Richardson to transfer the Property to Yomi Homes; and (3) an order enjoining the Estate, Yomi Homes and

Referee Richardson from transferring and encumbering the Property. Freilich argues that he is an “indispensable party to the Yomi Homes Action” and that he has “equitable title and a contract right to the Property with which the Executors and Yomi Homes are interfering.”

Yomi Homes, in opposition, argues that consolidation or intervention is not warranted because Freilich is not entitled to specific performance of the 2009 Freilich Contract because he failed to demonstrate that he was ready, willing and able to purchase the Property within a reasonable time after November 15, 2009 (the closing date set in the 2009 Freilich Contract).

Yomi Homes asserts that “a time of the essence letter sent nearly eight years after the closing date proposed in the contract . . .” is not a “reasonable time thereafter.” Yomi Homes thus argues that the claims in Freilich’s complaint are barred by the equitable doctrine of laches. Yomi Homes further argues that Freilich cannot seek specific performance because he failed to comply with the mortgage contingency provision in the 2009 Freilich Contract and abandoned the 2009 Freilich Contract. Yomi Homes also contends that Freilich’s contractual claims are barred by the six-year statute of limitations, which accrued on November 15, 2009.

B. Yomi Homes’ Summary Judgment Motion

Yomi Homes, on September 11, 2017, moved for summary judgment dismissing the complaint based on laches, the statute of limitations and Freilich’s failure to satisfy the mortgage contingency provision in the 2009 Freilich Contract.

C. *Freilich's Cross Motion for a Default Judgment Against the Estate and Partial Summary Judgment Against Yomi Homes*

Freilich opposes Yomi Homes' summary judgment motion and cross-moves for a default judgment against the Estate on his second cause of action for specific performance and partial summary judgment against Yomi Homes on his first cause of action for a declaratory judgment.

Freilich opposes Yomi Homes' summary judgment motion on the ground that it cannot be granted based entirely on an attorney affirmation. Freilich further contends that "time of the essence for closing [the 2009 Freilich Contract] was not issued until June 12, 2017, meaning the Statute of Limitations has not expired." Freilich, in support of his summary judgment cross motion, argues that he is entitled to an order declaring that the 2009 Freilich Contract "was executed prior to the Yomi Contract and for that reason, Yomi's Contract is a nullity."

D. *The Estate's Cross Motion*

The Estate cross-moves to vacate its default and dismiss the complaint or, alternatively, for an order granting it leave to serve a late answer based upon its counsel's law office failure. The Estate's counsel asserts that "your affiant's office simply failed to calendar the date by which an Answer to the Plaintiff's Complaint was due" and "Defendants should not be punished for our office's error in its failure to timely submit an answer, and the Defendants should be allowed to defend this action on the merits."

E. *Freilich's Motion for Relief in the Yomi Homes Action*

In addition to Freilich's pending order to show cause and pending cross motion, Freilich filed another motion seeking relief in the Yomi Homes Action "upon granting [his] pending

Order to Show Cause to consolidate” including: (1) an order vacating the June 2017 Order by which the court appointed Referee Richardson to effectuate specific performance of the Yomi Homes Contract; (2) a declaration that the Yomi Homes Contract is invalid; and (3) an order dismissing the Yomi Homes Action, pursuant to CPLR 3211 or 3212.

Freilich moves for an order granting him summary judgment in this action on his second cause of action and directing the Estate to transfer the Property to him “[i]n the event [the Estate’s] pending cross-motion to vacate the Estate’s default and submit a late Answer . . . is granted.” “In the event that the Property is transferred to Yomi [Homes] . . .” Freilich seeks summary judgment on his third cause of action for damages against the Estate and Yomi Homes.

Notably, Freilich’s motion was submitted with an improper caption because Freilich unilaterally combined the captions in this action and the Yomi Homes Action, despite the fact that his motion to consolidate the two actions is now pending.

F. Defendants’ Cross Motions for Sanctions and Dismissal

Yomi Homes opposes Freilich’s third motion and cross-moves for the imposition of Part 130 sanctions on Freilich’s counsel at the Borah Law Firm for engaging in frivolous conduct. Yomi Homes argues that “[t]he filing of the underlying motion by the Plaintiff seeking [relief in the Yomi Homes Action] **despite the Plaintiff’s motion to intervene in the Yomi Action still pending and a lack of standing to otherwise request relief in the same**, represents a waste of judicial resources and is a frivolous attempt to cost the Defendants additional money in litigation and warrants sanctions by this Court.” In other words, Yomi Homes argues that “**the**

Plaintiff cannot request standing in the Yomi [Homes] Action through its pending motion to intervene, while also simultaneously requesting relief that is dependent on said intervention being granted.” Yomi Homes further argues that Freilich’s third motion is “vexatious” because “[f]iling the underlying motion to seek previously requested relief, while motions requesting this *same* relief are still pending represents additional frivolous conduct by the Plaintiff that only serves to further burden this Court and the Defendant.” Yomi Homes seeks \$2,000.00 in attorneys’ fees and the imposition of sanctions on the Borah Law Firm for its frivolous conduct.

The Estate also cross-moves for the imposition of Part 130 sanctions, including an award of \$7,500.00 in attorneys’ fees, against Freilich and his counsel at the Borah Law Firm for their frivolous conduct “in that Plaintiff and Counsel bring this 2017 matter before this court based upon a 2009 Contract of Sale.” The Estate further seeks an order: (1) holding Freilich in civil contempt of court for failing to remove his UCC-1 liens against the Property in accordance with the June 15, 2017 order in the Estate’s Prior Action against Freilich, and (2) dismissing the complaint in this action, pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7).

The Estate contends that it “is being severely prejudiced by Plaintiff and Plaintiff’s attorneys’ several frivolous actions in this matter,” that “[t]here is no legal basis for a contract action to be commenced eight years after the contract’s performance date” and that “[t]here is no legal basis for Plaintiff to fail to comply with a ‘forthwith’ directive of this Court issued eight months ago” in the Estate’s Prior Action.

The Estate further argues that dismissal of the complaint is warranted because: (1) Freilich's claims are barred by the six-year statute of limitations, which accrued on November 15, 2009, the closing date in the 2009 Freilich Contract, and (2) Freilich's claim for specific performance of the 2009 Freilich Contract fails to state a cause of action because the complaint does not allege that Freilich substantially performed his contractual obligations under the 2009 Freilich Contract and that he was ready, willing and able to close on November 15, 2009.

Discussion

(1)

The Estate's Cross Motion for Leave to File a Late Answer

CPLR 3012 (d) provides that "[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default." Thus, in support of the Estate's cross motion for leave to appear or serve a late answer it was required to provide a reasonable excuse for its default in answering or otherwise appearing, and a potentially meritorious defense to the action (*see Lipp v Port Auth. of N.Y. & N.J.*, 34 AD3d 649 [2006]; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353, 356 [2005]). The determination of what constitutes a reasonable excuse lies within the sound discretion of the court (*Cooper v Cooper*, 55 AD3d 866, 866 [2008]).

Also relevant here is CPLR 2005, which provides that:

"[u]pon an application satisfying the requirements of subdivision (d) of section 3012 . . . the court shall not, as a matter of law, be precluded from exercising its

discretion in the interest of justice to excuse delay or default resulting from law office failure.”

New York courts have held that an attorney affirmation “is sufficient to establish that the failure to submit a timely answer was not willful, but, rather, was due to law office failure” (*Herzog v Belizario*, 52 Misc 3d 583, 591 [Sup Ct, Kings County 2016] [citing CPLR 2005]; *see also Josovich v Ceylan*, 133 AD3d 570, 571 [2015] [“Here, the affirmation of the attorney representing the third-party defendant . . . was sufficient to establish that the failure to submit a timely answer was not willful, but rather, was due to law office failure”]).

Defense counsel adequately demonstrated a reasonable excuse for the Estate’s default based on defense counsel’s failure to properly calendar the date by which the Estate’s answer was due. Furthermore, the Estate’s cross motion sufficiently demonstrates that the Estate has a meritorious defense to this specific performance action based on the statute of limitations and laches. Finally, there is a strong public policy “favoring the resolution of cases on the merits” especially where, as here, the Estate’s filing of a late answer would not prejudice Freilich (*Buchholz v A.L.A.C. Contracting Corp.*, 122 AD3d 660, 661 [2014]). Accordingly, the Estate’s cross motion for an order granting it leave to serve a late answer is granted.

(2)

Yomi Homes’ Summary Judgment Cross Motion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d

361, 364 [1974]). However, a motion for summary judgment will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law (CPLR 3212 [b]; *Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and the party opposing the motion for summary judgment fails to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman*, 49 NY2d at 562).

“The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2010], quoting *Alvarez*, 68 NY2d at 324; see also *Zuckerman*, 49 NY2d at 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]; see also *Zuckerman*, 49 NY2d at 562).

The court must evaluate whether the issues of fact alleged by the opposing party are genuine or unsubstantiated (*Gervasio v Di Napoli*, 134 AD2d 235, 236 [1987]; *Assing v United Rubber Supply Co.*, 126 AD2d 590 [1987]; *Columbus Trust Co. v Campolo*, 110 AD2d 616 [1985], *affd* 66 NY2d 701 [1985]). Mere conclusory statements, expressions of hope, or

unsubstantiated allegations are insufficient to defeat a motion for summary judgment (*Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Spodek v Park Prop. Dev. Assoc.*, 263 AD2d 478 [1999]). “[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment” (*Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383-384 [2004], quoting *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290 [1973]). Lastly, if there is no genuine issue of fact, the case should be summarily determined (*Andre*, 35 NY2d at 364).

Here, Yomi Homes has satisfied its prima facie burden of demonstrating that Freilich’s causes of action for specific performance and breach of the 2009 Freilich Contract are barred by the six-year statute of limitations, which accrued on November 15, 2009, the closing date set in the 2009 Freilich Contract. Freilich’s contractual claims regarding the 2009 Freilich Contract expired six years later, or in November 2015 (*see Jang Ho Choi v Beautri Realty Corp.*, 135 AD3d 451, 452 [2016] [holding that six-year statute of limitations was applicable to purchaser’s action for specific performance of contract to purchase real estate]). Furthermore, Freilich’s attempt to revive his time-barred claims under the 2009 Freilich Contract by sending a June 13, 2017 letter to the Estate stating that “July 12, 2017 is the *time of the essence* date for the Estate . . . to close title . . .” is ineffective and unavailing. Accordingly, Yomi Homes is entitled to summary judgment dismissing Freilich’s complaint in its entirety.

(3)

The Estate's Dismissal Cross Motion

Similarly, the Estate is entitled to an order dismissing Freilich's complaint regarding the 2009 Freilich Contract because Freilich's causes of action for specific performance and breach of contract are time-barred.

(4)

Defendants' Cross Motions for Sanctions

While public policy generally mandates free and unfettered access to the courts, such a right is not unlimited and may be curtailed under certain appropriate circumstances (*Jordan v Yardeny*, 35 Misc 3d 1214[A], 2012 NY Slip Op 50701, *3 [Sup Ct, Queens County 2012]). The court has both the power and duty to protect courts as well as opposing parties from the deleterious impact of repetitive and largely duplicative unfounded litigation (*see id.*; *Cohen v City of New York*, 32 Misc 3d 1208[A], 2011 NY Slip Op 51211[U], *3 [Sup Ct, Kings County 2011]; *Muka v New York State Bar Assn.*, 120 Misc 2d 897, 903 [Sup Ct, Tompkins County 1983]).

Litigants who repeatedly make similar motions numerous times can cause unwarranted costs to their adversaries while imposing a substantial burden on the courts by expending the court's limited resources (*Sassower v Signorelli*, 99 AD2d 358, 359 [1984]). Where litigants abuse the judicial process by continually filing motions reasserting claims and seeking relief already requested, equity may enjoin such vexatious litigation (*Matter of Manwani v Manwani*,

286 AD2d 767, 768-769 [2001]; *Sassower*, 99 AD2d at 359; *Matter of Shreve v Shreve*, 229 AD2d 1005, 1006 [2011]).

The court cautions Freilich and his counsel that it will impose restrictions if Freilich continues to file duplicative motions regarding his time-barred claims, including an order enjoining Freilich from filing any further actions or motions in the New York State courts regarding or arising from the 2009 Freilich Contract without obtaining the prior approval of the Administrative Judge for Civil Matters, Kings County Supreme Court (*see Quinones v Neighborhood Youth & Family Servs., Inc.*, 71 AD3d 1106, 1106-107 [2010], *lv dismissed* 15 NY3d 917 [2010], *cert denied* ___ US ___, 132 S Ct 109 [2011], *rehearing denied* ___ US ___, 132 S Ct 800 [2011]; *Matter of Robert v O'Meara*, 28 AD3d 567, 568 [2006], *lv denied* 7 NY3d 716 [2006]; *Duffy v Holt-Harris*, 260 AD2d 595, 596 [1999], *lv dismissed* 93 NY2d 1033 [1999]; *Braten v Finkelstein*, 235 AD2d 513, 514 [1997]).

As a final matter, the court denies defendants' cross motions to the extent that they seek the imposition of sanctions or the award of attorneys' fees. Accordingly, it is

ORDERED that Yomi Homes motion (in motion sequence #2) for summary judgment dismissing the complaint is granted; and it is further

ORDERED that the Estate's cross motion (in motion sequence #4) for an order, pursuant to CPLR 3012 (d), granting it leave to serve a late answer is granted; and it is further

ORDERED that the branch of the Estate's cross motion (in motion sequence #7) dismissing the complaint, pursuant to CPLR 3211 (a) (5), is granted; and it is further

ORDERED that Freilich's motion (in motion sequence #1) is denied as moot; and it is further

ORDERED that Freilich's cross motion (in motion sequence #3) for summary judgment on his first cause of action against Yomi Homes and a default judgment against the Estate is denied as moot; and it is further

ORDERED that Freilich motion (in motion sequence #5) is denied in its entirety; and it is further

ORDERED that Yomi Homes cross motion (in motion sequence #6) for the imposition of Part 130 sanctions upon the Borah Law Firm is denied; and it is further

ORDERED that the branch of the Estate's cross motion (in motion sequence #7) for the imposition of Part 130 sanctions against Freilich and his counsel at the Borah Law Firm is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. SYLVIA G. ASH, JSC