

Ashirova v Cevallos

2018 NY Slip Op 31193(U)

May 24, 2018

Supreme Court, Kings County

Docket Number: 506927/17

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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JULIA ASHIROVA,

Plaintiff,

Decision and order

- against -

Index No. 506927/17

DAN CEVALLOS,

Defendant,

May 24, 2018

-----x
PRESENT: HON. LEON RUCHELSMAN

2018 MAY 31 AM 9:14

KINGS COUNTY CLERK
FILED

The plaintiff has moved seeking to enforce a decision of this court dated August 21, 2017 as well as a decision issued by Justice Rivera on December 5, 2017. The plaintiff also seeks to hold the defendant in civil contempt. The defendant has opposed the motion and has cross-moved seeking to vacate both orders due to service irregularities. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order this lawsuit concerns a stipulation of settlement entered into between the parties on September 26, 2012. The agreement provided that Ashirova would transfer all of her interests in a property located at 9 Cedar Lane in Swan Lake New York to Cevallos and two other properties as well. In exchange Cevallos agreed to accept title to the Swan Lake property, obtain a mortgage regarding the property, execute a pre-nuptual agreement in the event Cevallos remarried that excluded these properties from any future spouse's interest and

execute a Will devising the property to their two children Katerina and Peter. On December 11, 2014 Cevallos sent a letter to Ashirova's counsel directing the property be transferred to Cevallos' mother Mercedes Cevallos and Ashirova complied with that request. This court held that one change did not thereby constitute a novation nullifying all the remaining provisions of the agreement. Consequently, the court concluded the defendant was required to secure title to the property and obtain a mortgage to secure the property for the children of plaintiff and defendant and to insure the property does not become the property of the heirs of Mercedes Cevallos.

On December 5, 2017 Justice Rivera ordered the defendant to pay the plaintiff up to \$1,000 as costs for bringing a motion to compel compliance with the court's August 21, 2017 order. This motion now seeks the same relief, namely ordering the defendant to comply with the previous orders. Thus, this motion seeks, once again, an order the defendant secure title to the property located at 9 Cedar Lane, Swan Lake New York and obtaining a mortgage on the property and paying the plaintiff the sum of \$1,000.

The defendant has not explained why it has failed to comply with previous court orders. Rather, defendant seeks to dismiss and vacate the previous order dated August 21, 2017 on the

grounds the plaintiff's notice of entry date was incorrect rendering the notice a nullity. It is true that where a notice of entry sets forth an incorrect date then such service is a nullity and that the time in which to appeal is thereby affected (Baranello v. Westchester Square Medical Center, 282 AD2d 259, 722 NYS2d 863 [1st Dept., 2001]). This, however, does not mean the court's decision is a nullity and need not be followed. It is also true that for an order to be enforced it must be served upon the party sought to be enforced (Wells Fargo Bank, N.A. v. Frierson, 150 AD3d 1045, 55 NYS3d 332 [2d Dept., 2017]). The service performed by the plaintiff, which incidentally contained the wrong date, might not have been valid service for purposes of times in which to appeal or file a motion to reargue, however, there is no dispute the defendant was made aware of the judge's decision. Furthermore, as conceded by the defendant he was made aware of the decision only a week after it was rendered when it was uploaded to the New York State Court Electronic Filing (NYSCEF) site (*cf.*, Fazio v. Costco Wholesale Corp., 85 AD3d 443, 924 NYS2d 381 [1st Dept., 2011]). The defendant's sole basis for not complying with a court order, the existence of which it was well aware, rests on the specious fact the plaintiff filed the wrong date on the notice of entry. That is an insufficient basis upon which to flout an order of the court. Indeed, the

defendant's actions are contemptible.

Therefore, the plaintiff's motion seeking to enforce the prior orders is hereby granted. The defendant's motion seeking to vacate the prior orders is denied. The defendant shall be given thirty days in which to fully comply with all previous court orders. The court will entertain a motion for contempt should the defendant fail to comply with this order.

So Ordered.

ENTER:

DATED: May 24, 2018
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

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