

Vance v Vance

2018 NY Slip Op 31484(U)

July 5, 2018

Supreme Court, Westchester County

Docket Number: 53162/18

Judge: David F. Everett

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

To commence the 30-day statutory time period for appeals as of right under CPLR 5513 (a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
RENALDO VANCE,

Plaintiff,

-against-

PAMELA VANCE,

Defendant.

-----X
EVERETT, J.

Index No. 53162/18

Motion Sequence Nos. 001, 002, 003

Decision and Order

The following papers were read on the motion:

- 001 Notice of Motion/Aff in Supp with Exhibits (doc 4)
Reply Aff with Exhibits (doc 20)
- 002 Notice of Motion/Affirmation in Supp/Exhibits A-D (docs 6-11)
Affirmation in Opp with Exhibits (doc 19)
- 003 Notice of Cross-Motion/Affirmation in Supp and in Opp/Affidavit in Supp and
in Opp/Exhibits A-D (docs 12-18)

Plaintiff Renaldo Vance (R. Vance) moves, under motion sequence number 001, for an order granting summary judgment on his causes of action for partition and sale of certain property located at 1242 Putnam Avenue, Brooklyn, New York (Premises) and an accounting. Defendant Pamela Vance (P. Vance) moves, under motion sequence number 002, for an order transferring the action to Supreme Court, Kings County. P. Vance also cross-moves, under motion sequence number 003, for an order dismissing the action on the basis of laches, and granting her sole possession of the Premises, or in the alternative, setting the matter down for a hearing to determine the parties' equities in the Premises. The motions, under motion sequence

numbers 001, 002 and 003, are consolidated for disposition, and upon the foregoing papers, the motion of P. Vance for an order transferring the action to Supreme Court, Kings County is granted, and the motion of R. Vance and the cross motion of P. Vance are denied without prejudice.

The following facts are taken from the pleadings, motion papers, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

Plaintiff commenced the instant action by filing a summons and complaint in the Office of the Westchester County Clerk on March 7, 2018, seeking partition and sale of the Premises, with related relief. According to the complaint, the parties, then husband and wife, purchased the Premises on July 5, 1983, and lived there together until the time of their separation when they ceased living as husband and wife. The parties obtained a judgment of divorce in Kings County on or about May 8, 1989, and by order of the Supreme Court, Kings County dated April 23, 1990, P. Vance was given the right to occupy the Premises until the youngest child of the marriage was emancipated. As a result of the parties' divorce, they became tenants-in-common, rather than joint tenants, with each having a 50% ownership interest in the Premises. The complaint further alleges that the youngest child is emancipated, and that the Premises are so situated that a division or partition is not feasible. Accordingly, R. Vance seeks an order directing the sale of the Premises so that he can obtain his equitable share of the proceeds, together with an accounting of any income and expenses related to the Premises during the period of P. Vance's exclusive occupancy.

Issue was joined on or about March 22, 2018, by service of defendant's answer with five affirmative defenses, and a demand to change venue to Kings County. On March 26 2018,

plaintiff filed a response setting forth his right to choose the venue for commencement, and his right to place venue in Westchester County since it is his county of residence (*see* CPLR 503 [a]). R. Vance also asserts that any right P. Vance had to enforce her equitable distribution rights under the Kings County divorce judgment, are time-barred, precluding the necessity of proceeding with his partition action in that county.

On April 2, 2018, defendant served a separate demand, pursuant to CPLR 507 and 511 (a) and (b), for a change of place of trial on the ground of improper venue. On the same date, April 2, 2018, plaintiff and defendant served their respective motions, under motion sequence numbers 001 and 002, and several weeks later, defendant served her cross motion, under motion sequence 003.

Addressing the question of venue, CPLR 507 provides: “[t]he place of trial of an action in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated.” Given that the requested relief sounds only in partition and sale, and for an accounting with respect to real property located in Brooklyn, Kings County, New York, the instant action meets the definition of an action that would affect the title, the possession and/or the use or enjoyment of real property, rendering Kings County the proper venue, not withstanding plaintiff’s current residence in Westchester County.

As this matter is more properly venued in Kings County, the motions under motion sequence numbers 001 and 003, are denied without prejudice to renew upon assignment of the action to a part/court of proper jurisdiction within Kings County.

Accordingly, it is

ORDERED that the motion by defendant Pamela Vance, under motion sequence number 002, for an order changing venue is granted; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Kings, and the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Kings upon service of a copy of this order with notice of entry and payment of appropriate fees, if any; and it is further

ORDERED that the motions, under motion sequence numbers 001 and 003, are denied without prejudice to renew upon assignment of the action to a part/court of proper jurisdiction within the County of Kings.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
July 5, 2018

ENTER:


HON. DAVID F. EVERETT, A.J.S.C.

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