

**Bisnath v Porteus**

2018 NY Slip Op 33416(U)

November 26, 2018

Supreme Court, Bronx County

Docket Number: 310337/2010

Judge: Alison Y. Tuitt

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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

RAJENDRANAATH BISNATH and TARAMATIE BISNATH,

INDEX NUMBER: 310337/2010

Plaintiffs,

-against-

Justice:  
ALISON Y. TUITT

JOAN CHIAPPA PORTEUS, ALFRED CHIAPPA,  
JOHN PORTEUS and JASON PORTEUS,

Defendants.

The following papers numbered 1-3,

Read on this Defendants' Motion to Compel

On Calendar of 5/18/17

Notice of Motion - Exhibits, Affirmation 1

Affirmation in Opposition 2

Reply Affirmation 3

Upon the foregoing papers, defendants' motion to compel is granted for the reasons set forth herein.

Plaintiffs reside at 1937 Hunt Avenue Bronx, New York. The within matter pertains to real property located next door at 1941 Hunt Avenue, Bronx, New York. In their Verified Complaint, plaintiffs allege as follow: Prior to September 10, 2010, defendants Joan Chiappa Porteus and Alfred Chiappa were seized in fee simple of 1941 Hunt Avenue when the Sheriff sold the interest of defendant Joan Chiappa Porteus at a public sale. The sale was pursuant to a Judgment in an action between Rajendranauth Bisnath and Taramatie Bisnath and Joan Chiappa Porteus for the sum of \$558,820. On August 11, 2010, plaintiffs purchased Joan Chiappa Porteus' title and interest in the premises under a deed to the premises issued to plaintiff by Lindsay Eason, as Sheriff of the City of New York. The deed was dated September 13, 2010 and recorded on September

23, 2010. Since September 13, 2010, plaintiffs have been a one-half interest, co-owner as tenant in common with defendant Alfred Chiappa. Defendants Joan Chiappa Porteus and Alfred Chiappa are in use, possession and occupancy of the premise and have refused to allow plaintiffs entry to the premises. Plaintiffs claim they have advanced diverse funds of money in furtherance of maintenance of the property. Upon information and belief, the value of the occupancy of the premises is \$5,000 per month and defendant Alfred Chiappa collected rents and proceeds from the premises or forgave the rents. Plaintiffs have no knowledge of the exact amount of the rents collected or the sums paid by Alfred Chiappa for the expenses related to the premises. Although demanded by plaintiffs, defendant Alfred Chiappa has failed or refused to account to plaintiffs for the sums that he had received by way of rents or proceeds from the premises. Since the date of the sale, defendants have remained in possession of the premises. Plaintiffs seeks a finding that they are co-owner and tenant in common of the premises and are entitled to the immediate use, possession and occupancy thereof; plaintiffs are seized and possessed as tenants in common in fee of an undivided one-half part of the premises; that a sale is necessary; that an accounting be had; directing a partition and division of the premises.

Plaintiffs had previously moved for summary judgment which was denied by Justice Sharon Aarons by decision and Order dated December 18, 2013. In that decision, Judge Aarons set forth the long history of this case. Defendant Joan Chiappa Porteus resides at the subject premises and has resided their her entire life. The Deed showed the property was owned by “Tillie Chiappa, Joan Chiappa Porteus and Alfred Chiappa, as joint tenants with the right of survivorship”. Alfred Chiappa is Joan Chiappa Porteus’ brother and Tillie Chiappa is their late mother. There was a prior proceeding under Index No. 21167/2003 between the Bisnaths and Porteus wherein an Inquest was held before Justice Stanley Green on February 5, 2005. Plaintiffs only produced the last page of a transcript from the Inquest where plaintiff Taramatie Bisnath was awarded damages against defendant Joan Chiappa Porteus in the total amount of \$500,000. Plaintiffs also submitted a Judgment against defendant Joan Chiappa Porteus in the amount \$558,820 by the Clerk of the Court dated February 1, 2006 and a Sheriff’s Deed dated September 13, 2010, purportedly conveying defendant Joan Chiappa Porteus’ interest in the property to plaintiffs.

The moving papers are deficient since Movants BISNATH fail to provide this Court with appropriate documentation and relevant prior Court Orders, and fail to cite any statute or case law whatsoever, to support their claim for the relief requested. Further, there has been no discovery exchanges...

Defendants raise concerns regarding the regularity of prior legal proceedings, including the validity of the Sheriff’s Deed purporting to convey PORTEUS’ portion of the property to the

BISNATHs.

Defendants maintain that BISNATH fraudulently obtained a \$500,000 judgment against PORTEUS, by giving false and perjured testimony made at the inquest before the Honorable Judge Green on February 8, 2005, in the prior Supreme Court matter of Bisnath v. Porteus, Index No. 21167/2003, wherein [Alfred] CHIAPPA was not named as a party. Although Plaintiffs BISNATH alleged that the transcript of that inquest is attached to their papers, it is not, except for the last page. Plaintiffs fail to present a copy of testimony and evidence that BISNATH produced at the inquest that purportedly substantiated compensatory damages in the amount \$250,000, and punitive damages in the amount of \$250,000... The BISNATHs... failed to show how they merited a judgment in such an astronomical amount.

Moreover, Plaintiffs have not shown that they validly obtained the ensuing Sheriff's Deed conveying PORTEUS' half of the property to them. In this regard, Plaintiffs err when they misrepresent that Justice Green granted BISNATH's motion to levy, against PORTEUS' interest in the subject premises, by his "decision and order dated April 20, 2009." This problematic since, based upon the papers available to this Court, there was no "Order" rendered that date, but merely a "decision", dated April 20, 2009, by Justice Green which provides as follows: "Motion for an order directing sale of property is granted on default. **Settle order** by regular & CMRRR [certified mail return receipt requested]."

However, it appears that that "decision" was never subsequently settled on **notice**; consequently, it never culminated in a valid "Order".

Having failed to present an "Order" directing that there be a sale of PORTEUS share of the subject property, Plaintiffs have not shown that the Sheriff's Sale held on August 11, 2010, and consequent Sheriff's Deed dated September 13, 2010, are valid... This also supports Defendants' counterclaims that the BISNATHs wrongfully trespassed upon their land (parked in the garages, played ball in the backyard, etc), and took Defendants' personal property out of Defendants' garages...

Even assuming, *arguendo*, that Plaintiffs became owners of the "partial lot" belonging to PORTEUS, Defendants claim that BISNATH wrongfully recently commenced a Housing Court action to evict PORTEUS from the entire premises...

Thus, since CHIAPPA owns the property as a joint tenant with the right of survivorship, it is his position that he would be legally entitled to permit his sister PORTEUS to reside there...

Accordingly, Plaintiffs' Motion for summary judgment is denied... the parties are entitled to a trial/hearing on the issues presented, including, *but not limited to*, whether the subject judgment was fraudulently obtained; whether the Sheriff's partial sale was validly held; whether the partial sale was, or should be, conditioned on CHIAPPA's portion of the family house not being sold during his lifetime; whether the partial sale should be set aside to relieve oppressive or unfair conduct; and whether there are means, less drastic than selling the family home, by which Plaintiffs may enforce any valid judgment against PORTEUS only. Defendants are also entitled to a trial/hearing on their various counterclaims, including trespass, conversion, and abuse of

process; and whether any award of damages they obtain may be used to offset the judgment amount previously obtained by BISNATH.

Under the circumstances, therefore, until further order of the Court, PORTEUS is permitted to remain in possession of the subject premises; and Plaintiffs BISNATH shall not enter upon the premises.

Defendants Alfred Chiappa, John Porteus and Jason Porteus then moved for partial summary judgment seeking to declare as invalid the sheriff's sale held on August 11, 2010 and the motion was denied by Justice Aarons by decision and Order dated August 8, 2016. Justice Aarons wrote

Defendants-counterclaimants argue that they are entitled to partial summary judgment based upon certain statement of facts from this Court's December 18, 2013 decision and order. In quoting from this decision and order, they state that "[p]laintiffs have not shown that they validly obtained the .... Sheriff's Deed conveying [Joan] Porteus' half of property to them."...

This argument, however, fails... first, this quoted sentence is a legal conclusion reached by this Court after evaluating the proof submitted in plaintiffs' prior motion for summary judgment. It is not, as defendants... characterize, an uncontroverted fact. Rather, this Court held that plaintiffs' moving papers were deficient...

Second, Defendants-counterclaimants... as the moving party here... do not submit any proof showing the ownership interest in the subject property; they do not submit a copy of the pleadings. Hence, the burden never shifted to plaintiffs as defendants-counterclaimants failed to meet their respective summary judgment burden.

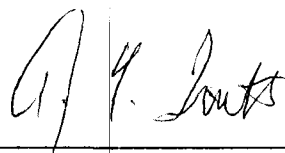
Defendants now move to compel plaintiffs to produce one certain document referred to in Justice Aarons December 18, 2013 decision and Order. Defendants served their First Notice of Discovery and Inspection dated November 3, 2016. Defendants seek proof of compliance with Justice Green's decision dated April 20, 2009 which required plaintiffs to settle order. Defendants argue that the Court should grant an order compelling plaintiffs to produce the document and conditionally striking plaintiff's complaint.

Justice Aarons' decision and Order was not appealed by any of the parties and, thus, is the law of the case. Justice Aarons' held that plaintiffs failed to present the settled order that Justice Green directed in his decision. As noted by Justice Aarons, without the settled order, plaintiffs cannot show that the Sheriff's Sale and consequent Sheriff's Deed are valid. Accordingly, defendants' motion to compel the production of the settled order, with affidavits of service showing it was served by regular mail and certified mail, return receipt requested, is granted to the extent that plaintiffs are directed to produce the settled order within 30 days after service of this Order with Notice of Entry. Should plaintiffs fail to produce the settled order, they will have difficulty in showing that the subject judgment was not wrongfully obtained and that the Sheriff's partial sale

was valid. As held by Justice Aarons “Having failed to present an “Order” directing that there be a sale of PORTEUS’ share of the subject property, Plaintiffs have not shown that the Sheriff’s Sale... and Sheriff’s Deed... are valid. If they are not, then Plaintiffs may not even be deemed the owners of PORTEUS’ one-half share.”

This constitutes the decision and Order of this Court.

Dated: 11/26/18



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**Hon. Alison Y. Tuitt**