

Lefkowitz-Greenberger v Lefkowitz
2019 NY Slip Op 30575(U)
February 8, 2019
Supreme Court, Kings County
Docket Number: 506760/17
Judge: Johnny L. Baynes
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 a(n) IAS Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse thereof, at 360 Adams Street, Brooklyn, NY 11201, on the 8 day of February, 2019.

PRESENT:

HON. JOHNNY L. BAYNES,

JSC.

-----x

Index No.:

506760/17

MS#2

ROSE LEFKOWITZ-GREENBERGER,

Plaintiff,

-against-

JULIUS LEFKOWITZ,

Defendants.

-----X

Plaintiff, Rose Lefkowitz-Greenberg ("Rose"), commenced this action against her brother, Defendant Julius Lefkowitz ("Julius") seeking declaratory and equitable relief with respect to their respective rights in several burial plots.

Julius originally defaulted, and submitted a letter requesting that his default be opened in view of his unsworn statement of a valid excuse for defaulting and a meritorious defense to the action. This Court rejected the letter as a formal Answer, and Rose submitted an Order to Show Cause seeking a default judgment and imposing a temporary restraining Order on Julius' disposal of the underlying plots.

During a March 19, 2018 conference in connection with the foregoing motion, this Court granted Defendant's application to open his default, and granted him 30 days file a formal Answer and/or seek legal counsel. This Court further granted Plaintiff's

application solely to the extent of imposing a temporary injunction on Julius' disposal of the underlying plots unless and until lifted by this Court.

During a subsequent December 13th conference, it was determined that Defendant Julius had not yet filed a formal Answer, or retained counsel, however, he appeared with his son, Eric Lefkowitz, a corporate attorney, who indicated that he was essentially appearing in support of his father, rather than appearing as his attorney in this matter.

The parties' uncle, non-party, Solomon Lefkowitz ("Solomon"), also appeared through his guardian, WILLIAM ELLERTON to protect Solomon's interest.

Substantively, Plaintiff's complaint essentially alleges that nine burial plots were purchased with money from a joint venture between Rose, Julius, their parents, and Rose's husband (the "Joint Venture"). No agreement has been proffered, commemorating the terms of any such Joint Venture, or suggesting that its terms would be enforceable, whether in contract or some other basis, such as *quantum meruit*, however, Plaintiff alleges that their parents advanced most of the funds for said Joint Venture and that she believes that they owned the burial plots at issue.

Julius, disagrees with his sister, and alleges that he purchased the underlying plots independently, after the unrelated Joint Venture to which Rose refers had ended, and that in any event said joint venture was, in reality, an unrelated partnership between their father, himself, and Rose's deceased husband but not Rose herself (the "Partnership") to buy, restore, and sell a two-family house in Staten Island, which they completed at a profit. In this regard, Julius has produced an unauthenticated copy of what he maintains is a deed reflecting that he alone owns the underlying plots.

Julius concedes that Rose's deceased husband was buried first in Plot 9, and that their mother and father, both Holocaust survivors, are buried respectively in Plots 7 Plot 6 leaving Plots 1 thorough 5, and Plot 8 empty, which Rose maintains was intended for her, and Julius maintains is allegedly currently "under construction."

During the foregoing December conference, the parties agreed that whichever sibling prevails, one of the foregoing plots is for their Uncle Solomon, and that said plot would presumably be the one next to their father. Accordingly, this Court lifted its stay solely to extent of allowing Julius to make arrangements, if necessary, with respect to Uncle Solomon.

Now, in view of the protracted acrimonious and cantankerous dealings between the parties, this Court will set forth certain guidelines going forward.

First, as a general rule, *pro se* parties' pleadings are to be "liberally construed, and, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers, Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007), however, such rules of liberal construction do not supersede the rules of evidence, or justify advancing arguments and theories not hinted at by the *pro se* party.

On the other hand, although not cited in her original papers, Plaintiff's relief appears to be sought pursuant broad authority of CPLR § 3001 which provides that "[t]he Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed (emphasis added)." In this regard, it is noted that a declaratory judgment does not entail coercive relief, but only provides a declaration

of rights between parties that, it is hoped, will forestall later litigation. Morgenthau v. Erlbaum, 59 N.Y.2d 143, 464 N.Y.S.2d 392, 451 N.E.2d 150 (1983). Such relief is *sui generis* and “escapes both the substantive objections and procedural limitations of special writs and extraordinary remedies, since it is not deemed an extraordinary remedy.” Id. Thus, this Court does have broad authority to declare rights derived from both private and public law. Id. at 147–48, 464 N.Y.S.2d 392, 451 N.E.2d 150).

In the hopes of inspiring the parties to focus their arguments going forward, it is noted that the most obvious, yet unaddressed issues, appear to be (1) whether there are any documents purporting to enforceably commemorate the alleged Joint Venture and/or Partnership, (2) whether any alleged agreements or understandings pursuant to such a joint venture or partnership would be unenforceable pursuant to General Obligations Law § 5-701 (the “Statute of Frauds”) if not reduced to a written instrument, and (3) whether there are any equitable grounds to set aside a deed, such as lack of capacity, undue influence, or fraud.

For now, however, it is

ORDERED AND ADJUDGED that Defendant’s default is vacated, and his time to interpose an Answer and/or retain legal counsel is extended, *sua sponte*, to February 28, 2019; and it is further

ORDERED ADJUDGED that Defendant is stayed from transferring, gifting, selling or otherwise disposing of those certain burial plots located in Beth Moses Cemetery in West Babylon, NY identified as grave numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9, in row number 7, said graves being part of lots numbered 79-90 inclusive in Block 29, Section 2; and it is further

ORDERED ADJUDGED that the parties hereto shall serve all future pleadings on their uncle SOLOMON LEFKOWITZ via his current guardian WILLIAM A. ELLERTON, or any subsequent guardian the Courts may appoint, whether or not said guardian formally appears herein.

The foregoing constitutes the Decision and Order of the Court.

ENTER

J. Baynes

 JOHNNY L. BAYNES, JSC
 HON. JOHNNY L. BAYNES

Nancy T. Sunshine

NANCY T. SUNSHINE
 Clerk

KINGS COUNTY CLERK
 FILED
 2019 MAR -7 PM 4:08