

Arlo 67 LLC v Doyle
2019 NY Slip Op 32550(U)
August 18, 2019
Supreme Court, Kings County
Docket Number: 503789/18
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 503789/18
Motion Date: 12-17-18
Mot. Cal. No.: 4

-----X
ARLO 67 LLC,

Plaintiff,

-against-

PHILLIPAA DOYLE, a/k/a PHILLIPA JANE DOYLE,

Defendant.
-----X

DECISION/ORDER

The following papers numbered 1 to 2 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/.....	1
Answering Affirmations/Affidavits/Exhibits.....	
Reply Affirmations/Affidavits/Exhibits.....	2
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action for a judgment directing the partition and sale of real property located at 234 Jefferson Avenue, Brooklyn, New York (“the Jefferson Avenue Property”), plaintiff, ARLO 67 LLC, moves for an order granting re-argument of its motion for summary judgment, which was denied by order dated February 7, 2019, and upon re-argument, for an order vacating that order and granting the motion. Plaintiff also seeks an order of reference. Although defendant submitted opposing papers, they were not considered due to defendant’s failure to appear on the return date of the motion.

Prior to their death, James Giles and Phyllis Giles (the decedents) were the owners

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of the Jefferson Avenue Property. The defendant is decedents' daughter and Walter Giles is their son. On May 16, 2017, Walter Giles transferred all his interest in the Jefferson Avenue Property, as an alleged presumptive heir of the decedents to the plaintiff. Plaintiff seeks a judgment of partition and sale.

In moving for summary judgment, plaintiff submitted no proof that the Estates of the decedents were administrated or that a Court of competent jurisdiction transferred an interest in the Jefferson Avenue Property to Walter Giles by order, decree or judgment. For these reasons, by order dated February 7, 2019, this Court denied plaintiff's motion. Plaintiff claims that this was error.

Plaintiff contends that its original motion papers established that Walter Giles and the defendant Phillipa Doyle are the decedents' only children and that they are therefore each entitled to a 50% interest in decedents' estates, which include the Jefferson Avenue Property. Plaintiff further maintains that upon the death of the decedents, Walter Giles 50% interest in the property automatically vested in him and that he was free to transfer his interest to the plaintiff even though neither of decedents' estates have been administered.

Motions for re-argument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision (*Barnett v. Smith*, 64 A.D.3d 669, 670-671, 883 N.Y.S.2d 573; *citing, E.W. Howell Co., Inc. v. S.A.F. La Sala Corp.*, 36 A.D.3d 653 at 654, 828 N.Y.S.2d 212; *see also, Beverage Marketing USA, Inc. v. South Beach Beverage Co., Inc.*, 58 A.D.3d 657, 873 N.Y.S.2d 84). Plaintiff correctly states that real property owned by an intestate

decendent devolves directly to his or her statutory distributees without the necessity of any act by an administrator of his or her estate (*see Matter of Roberts*, 214 N.Y. 369, 108 NE 562 [1915]; *Kraker v. Roll*, 100 A.D.2d 424, 474 N.Y.S.2d 527; *Matter of Blango*, 166 A.D.3d 767, 768, 89 N.Y.S.3d 100; *Kraker v. Roll*, 100 A.D.2d 424, 429, 474 N.Y.S.2d 527). In arriving at its earlier decision, the Court overlook this principle of law. For this reason, plaintiff's motion for re-argument is **GRANTED** but upon re-argument, the Court adheres to its prior determination.

Although title to real property automatically vests in the heirs of a decedent who dies intestate, to prevail on its motion for summary judgment in this case, it was incumbent upon the plaintiff to demonstrate that the decedents did in fact die intestate (*Wilson 3 Corp. v. Deutsche Bank Nat'l Tr. Co.*, 172 A.D.3d 960, 961-62, 102 N.Y.S.3d 102, 105¹). Plaintiff submitted no proof of this on its prior motion. Plaintiff therefore failed to demonstrate that it has an estate or interest in the Jefferson Avenue Property so as to have standing to maintain an action for partition and sale. Plaintiff therefore failed to make a prima facie showing of its entitlement to judgment as a matter of law (*id.*). This required denial of plaintiff's motion for summary judgment regardless of the sufficiency of the opposition papers (*id.*, citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508

¹In *Wilson 3 Corp.*, the plaintiffs allegedly purchased real property from a mortgagor's heirs and brought an action against the mortgagee's assignee to discharge of record the subject mortgage. The Supreme Court, Appellate Division, held that the alleged purchasers failed to demonstrate that they had an estate or interest in the subject property so as to have standing since they presented no evidence that the decedent died intestate. The Court also noted that the plaintiff did not establish that the people who deeded their alleged interests in the property to the plaintiffs were, in fact, the heirs of the decedent.

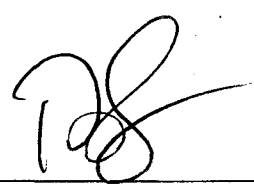
N.Y.S.2d 923, 501 N.E.2d 572; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642).

For all of the above reasons, it is hereby

ORDERED plaintiff's motion for re-argument is **GRANTED** but upon re-argument, the Court adheres to its original determination.

This constitutes the decision and order of the Court.

Dated: August 18, 2019



PETER P. SWEENEY, J.S.C.
KING PETER P. SWEENEY, J.S.C.

KINGS COUNTY CLERK
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