

Sky Valley LLC v Boulware

2019 NY Slip Op 33540(U)

November 25, 2019

Supreme Court, Kings County

Docket Number: 500660/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 500660/2019
Motion Date: 9-9-19
Mot. Cal. No.: 50

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SKY VALLEY LLC,

Plaintiff,

-against-

DECISION/ORDER

LEOTTA J. BOULWARE, RONALD E. YARD, LESTER
R. YARD, JOAN A. TOUSSANT, VIRGINA E. GRIFFITH
and BRINEL GOOD,

Defendants.

-----x

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memos of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memos of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	3
Other.....	

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

In this action for the partition and sale of real property, the plaintiff, SKY VALLEY LLC, moves pursuant to CPLR 3212 for an order awarding it summary judgment; striking defendant Leotta J. Boulware 's first counterclaim and severing her second counterclaim; granting a default judgment against the non-appearing defendants; declaring the rights of the parties to the subject real property and directing a judicial sale of the subject property and the division of the proceeds.

Background:

The real property at issue in this case is located at 417 Adelphi Street, Brooklyn, New York. By deed dated October 28, 1985 and recorded November 20, 1985, Leotta Yard

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and Maude Yard became the owners of the property as tenants in common. Plaintiff maintains, upon information and belief, that on or about May 9, 2016, Maude Yard died intestate but did not submit any proof of such. Plaintiff further asserts that at the time of her death, Maude Yard was survived by husband, Rupert L. Yard, and her son, Tellmadge Cleveland Ford and that they each became entitled to 25% interest in the property as a matter of law. Plaintiff maintains that it acquired its interest in the property on or about October 17, 2018, when Tellmadge Cleveland Ford deeded his ownership interest in the property to it. Plaintiff also maintains, upon information and belief, that Rupert L. Yard died intestate on or about May 24, 2010 and was survived by his six children, Rupert L. Yard, Jr., Ronald E. Yard, Lester R. Yard, Joan A. Toussant, Virginia E. Griffith and Brinel Good. Plaintiff contends that by deed dated November 29, 2018, Rupert L. Yard, Jr. transferred to it his 4.166% interest in the property.

The only defendants who have appeared in the action are Leotta J. Boulware and Lester Yard. In her answer, Leotta J. Boulware asserts two counterclaims. In her first counterclaim, she asserts that Tellmadge Cleveland Ford's transfer of his interest in the property to the plaintiff was void in that the transfer violated a June 27, 2011 Decree of the Kings County Surrogate, Hon. Margarita Lopez Torres, which appointed Mr. Ford the Administrator of his mother's estate and preclude him from selling, transferring, mortgaging or in any matter in conveying an interest in the subject real property without further court order. In her second counterclaim, she asserts that for periods of time both before and after Maude Boulware's death, she alone maintained the property and paid the taxes and seeks reimbursement for doing so.

Lester Yard has not opposed the motion. Leotta J. Boulware opposes the motion on several grounds. She contends that the June 27, 2011 Decree of the Hon. Margarita Lopez rendered Tellmadge Cleveland Ford's transfer of his interest in the property to the plaintiff void. She further contends that the motion should be denied because plaintiff did not name Karl Boulware and Erick Boulware as defendants. She contends that after this action was commenced but prior to the service of the summons and complaint on any of the defendants, she had transferred 1/2 of her interest in the property to these individuals in equal shares.

Analysis:

Defendant Leotta J. Boulware and the Estate of Maude Boulware apparently have disagreements as to their respective interests, rights, and shares in the property that remain unresolved. Leotta J. Boulware claims that before she transferred 1/2 of her interest in the property, she was entitled to a greater than a 50% share in the property because for periods of time both before and after Maude Yard's death, she alone maintained the property and paid taxes. It is well settled that before an interlocutory judgment of partition may be made, the rights between the parties must be determined (*see* RPAPL 915, *Grossman v. Baker*, 182 A.D.2d 1119, 1119, 583 N.Y.S.2d 92, 92; *Goldberger v. Rudnicki*, 94 A.D.3d 1048, 1050, 943 N.Y.S.2d 176, 178, *George v. Bridbord*, 113 A.D.2d 869, 871, 493 N.Y.S.2d 794). For this reason alone, an interlocutory judgment can not be issued. Moreover, while plaintiff correctly states that real property owned by an intestate decedent 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), to prevail on its motion for summary judgment, it was incumbent upon the plaintiff to demonstrate that decedents Maude Yard and Rupert Yard, Sr. 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, 105. While the Decree from the Surrogate's Court is perhaps sufficient to demonstrate that Maude Yard did intestate, no proof was submitted that Rupert Yard, Sr. died intestate. Further, no admissible proof was submitted demonstrating as a matter of law who were decedents' heirs. Thus, where the transfers to the plaintiff were not demonstrated to be valid.

That branch of plaintiff's motion for default judgment against the non-answering defendant is granted without opposition. The affidavits of service annexed to the motion sufficiently demonstrated that these defendants were served with a copy of the summons and complaint and the affirmation of plaintiff's counsel sufficiently demonstrated that they failed to appear in the action.

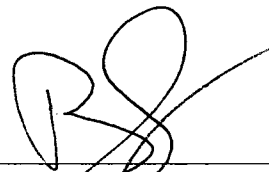
Accordingly, it is hereby

ORDERED that those branches of plaintiff's motion for an order awarding it granting summary judgment; dismissing Leotta J. Boulware's first counterclaim and severing her second counterclaim; declaring the rights of the parties to the subject real property and directing a judicial sale of the subject property and the division of the proceeds are **DENIED**. That branch of plaintiff's motion for default judgment against the

non-answering defendant is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: November 25, 2019



PETER P. SWEENEY, J.S.C.

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

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