

Rockaway Atl. Holdings LLC v Sepulveda
2020 NY Slip Op 30657(U)
January 7, 2020
Supreme Court, Kings County
Docket Number: 514016/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 514016/2017

Motion Date: 10-7-19

Mot. Cal. No.:50

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ROCKAWAY ATLANTIC HOLDINGS LLC and CHAIM
SOBEL,

Plaintiffs,

-against-

DECISION/ORDER

ROBERTO SEPULVEDA JR., MARIA A. SEPULVEDA,
GABRIEL SEPULVEDA, ROBERTO A. SEPULVEDA,
DAVID SEPULVEDA and CHRISTIAN SEPULVEDA,
being all of the heirs of ROBERT SEPULVEDA a/k/a
ROBERTO SEPULVEDA, deceased,

Defendants.

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KINGS COUNTY CLERK
FILED

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The following papers numbered 1 to 5 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.....	2-4
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	3
Sur-Reply.....	5

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

In this action for specific performance, the plaintiff, ROCKAWAY ATLANTIC HOLDINGS LLC and CHAIM SOBEL, moves pursuant to CPLR 3212 for summary judgment on its complaint.

In support of the motion, plaintiff, ROCKAWAY ATLANTIC HOLDINGS LLC ("Rockaway"), submitted the affidavit of Chaim Sobel a/k/a Reuven Sobel, a partner in Rockaway, who averred that he entered into a contract of sale pursuant to which he agreed

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to buy and Roberto Sepulveda, Sr. agreed to sell real property located at 193 Rockaway Avenue, Brooklyn, New York. The contract is dated December 10, 2014 and the purchase price set forth therein is \$290,000. Sobel claims that he forwarded a down payment in the amount of \$14,500 to Sepulveda Sr.'s attorney. Sobel goes on to state that he assigned his rights to the contract to the Rockaway on April 21, 2015. After the contract was purportedly signed by Sepulveda, Sr. but before the closing, Sepulveda, Sr. died. Sobel claims that Sepulveda, Sr.'s heirs thereafter entered into a contract to sell the property to Ibrahim Mohammed.

Interestingly, in support of the motion, plaintiff also submitted the affidavit of Lorraine R. Dunfee, the attorney who purportedly represented Sepulveda, Sr. in the transaction. She averred that she witnessed Sepulveda, Sr. execute the contract and that she believed that he was mentally competent at the time. Dunfee continues to hold the down payment.

According to defendants' attorney, who submitted an affirmation in opposition, Sepulveda, Sr. was admitted to the hospital on December 10, 2014, the day the contract was purportedly signed, and remained there until his death on February 8, 2015.

Defendants also submitted the affidavits of Maria Sepulveda and Gabriel Sepulveda, the daughter and son of Sepulveda Sr., in opposition to the motion. They both averred that beginning in March of 2014, Sepulveda Sr. became totally incapacitated and bed ridden and that could not leave the house except for going to the hospital. They further averred that the signature on the contract was not their father's and that their sister and brother-in-law were constantly signing his name. They also averred that in 2014, their

father had rejected an offer for the house for \$750,000. Defendants' are claiming that Sepulveda Sr. lacked mental capacity to enter into the contract if he indeed signed the contract.

The defendants are purportedly Sepulveda Sr. heirs/distributees. There is no indication in record if Sepulveda Sr. died intestate or whether an administrator or executor has been appointed for his estate.

Although plaintiff's correctly states that title to real property automatically vests in the heirs of a decedent who dies intestate (*see Matter of Roberts*, 214 N.Y. 369, 377, 108 N.E. 562; *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), plaintiff's claim in this case is against the decedent for breach of contract, not his heirs. It is well settled that "[a] party may not commence a legal action or proceeding against a dead person, but must instead name the personal representative of the decedent's estate" (*Jordan v. City of New York*, 23 A.D.3d 436, 437, 807 N.Y.S.2d 595; *see Krysa v. Estate of Qyra*, 136 A.D.3d 760, 760–761, 24 N.Y.S.3d 534; *Dime Sav. Bank of N.Y. v. Luna*, 302 A.D.2d 558, 558, 755 N.Y.S.2d 300; *see also* 1–210 Weinstein–Korn–Miller, N.Y. Civ Prac CPLR ¶ 210.04). "A distributee is not the same as an executor or administrator of an estate, even if such person is the sole beneficiary of the estate (*see Jackson v. Kessner*, 206 A.D.2d 123, 127, 618 N.Y.S.2d 635 [1994] ["the distinction between an individual's status as fiduciary of an estate and beneficiary cannot be disregarded"], *see also Visutton Assocs. v. Fastman*, 44 Misc. 3d 56, 58, 991 N.Y.S.2d 240, 242). Since the plaintiff did not sue the personal representative of the decedent's estate, the action is procedurally defective and for this reasons, the Court will not entertain the merits

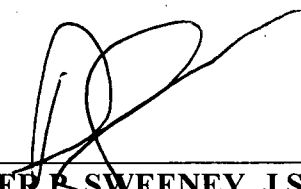
of plaintiff's motion.

Accordingly, it is hereby

ORDERED that plaintiff's motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: January 7, 2020



PETER P. SWEENEY, J.S.C.

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

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