

Legal Servicing LLC v Gomez
2020 NY Slip Op 35797(U)
November 19, 2020
Supreme Court, Nassau County
Docket Number: Index No. 612122/2017
Judge: Helen Voutsinas
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 25
Present: Hon. Helen Voutsinas, J.S.C.**

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LEGAL SERVICING LLC,

Plaintiffs,

Index No.: 612122/2017

-against-

Motion Seq. Nos.: 006 & 007

**ARMANDO GOMEZ,
SILVIA GOMEZ,**

Defendants.

----- X **Short Form Order**

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Defendants, Armando Gomez and Silvia Gomez, move for an Order, pursuant to CPLR §3212, granting summary judgment dismissing Legal Servicing, LLC's ("Legal") complaint. Plaintiff cross-moves for an Order, pursuant to CPLR §3212, granting summary judgment against defendants, and an order pursuant to NYS Debtor and Creditor Law §§273, 275 and 276 to have the conveyance of a certain parcel of real property declared null and void and an order pursuant to CPLR §§5236 and 5206(e) to have the Sheriff of Nassau County conduct a sale of defendant Armando Gomez's interest in said property. The motions are determined as follows.

In a previous action in this Court entitled *Legal Servicing, LLC vs. Successor in Interest to Chase v. Armando Gomez* (the "Original Action"), bearing Index Number 13941/2004, Legal obtained a judgment, entered with the Clerk of Nassau County on March 16, 2005 ("the 2005 Judgment"), against defendant Armando Gomez in the amount of \$18,120.11. The action was to recover monies due for charges incurred by Armando Gomez with regard to a Chase credit card.

In or around October, 2015, Armando Gomez, pro se, filed a motion for an Order pursuant to either CPLR §317 or CPLR §5015 (a)(1), vacating the default judgment entered in the Original Action on March 16, 2005. By Order dated December 10, 2015, the Court (J. Parga), defendant's motion was denied.

On or about December 28, 2015, Legal commenced an action in this Court entitled *Legal Servicing, LLC vs. Armando Gomez* (the "Renewal Judgment Action"), under Index Number 608353/15, seeking to renew the March 16, 2005 Judgment. By Order dated March 15, 2016, the Court (J. Parga) granted summary judgment to plaintiff, and thereafter a renewal judgment was

entered on April 26, 2017 against Armando Gomez in the amount of \$38,255.70 (the "Renewal Judgment").

Defendant Armando Gomez had appeared in the Renewal Judgment Action. After Legal had been granted summary judgment in that action, defendant moved, by counsel, for an Order "vacating the summary judgment order" or "reopening the proceeding". By Order dated July 17, 2017, the Court (J. Parga) denied the application, finding that "defendant fails to provide an excusable default or a meritorious defense to the underlying claims pursuant to CPLR §5015[a][1]."

Plaintiff commenced this action after discovering that defendant Armando Gomez transferred his entire interest in real property known as 915 Glenwood Road, West Hempstead, New York ("915 Glenwood Road" or the "Subject Property") to his mother, defendant Silvia Gomez by Quitclaim Deed on June 10, 2016. The deed was recorded in the Nassau County Clerk's office on July 15, 2016. It is not disputed that the transfer was made for no consideration. In the action, Plaintiff seeks to have the conveyance of the Subject Property deemed a fraudulent conveyance and null and void pursuant to New York Debtor and Creditor Law §§ 273, 275 and 276, and to have Armando Gomez's interest in said property sold in order for plaintiff to collect its money judgment.

On September 19, 2018, plaintiff filed a motion pursuant to CPLR §3212 for summary judgment. By Order dated December 7, 2018, the Court (J. Parga) denied plaintiff's motion without prejudice to renew upon completion of discovery in this matter. Discovery was thereafter completed, the case was certified on October 10, 2019, and plaintiff filed a note of issue and certificate of readiness on January 2, 2020.

Defendants, pro se, move for summary judgment. Defendants argue that plaintiff's judgment should be vacated as it is against the wrong debtor. They submit an affidavit jointly signed by defendants, together with copies of various documents, including but not limited to a transcript of judgment pertaining to the 2005 Judgment, a Nassau County Sheriff's Income Execution, monthly statements regarding the underlying credit card account, a MasterCard and Visa cardmember agreement, credit report for Mr. Gomez, Mr. Gomez' driver's license, a letter to Mr. Gomez from the Nassau County Assessor regarding 915 Glenwood Road, the recorded quitclaim deed, and other documents.

Defendants contend that the 2005 Judgment and the Renewal Judgment should be vacated because they are against the wrong debtor. Further, in regard to 915 Glenwood Road, defendants contend that "[t]he transfer was one in accordance to all rules and regulations with the County of Nassau Clerk's Office. All appropriate fees were paid and a Title Search was completed with no liens. A new title was then issued the 15th day of July, 2016". Defendants claim that the Subject Property was originally purchased by Silvia Gomez but deeded to Armand Gomez, that the home really belonged to Silvia, and that she has always paid all the bills for the home. Defendants state that it was deeded back to her in 2016 because she wanted it back as part of her estate planning.

This Court finds that defendants' arguments regarding the 2005 Judgment and Renewal Judgment, and the request to vacate same, are barred by the doctrine of res judicata. Pursuant to

the doctrine of res judicata, "a final judgment on the merits of an action by a court of competent jurisdiction is binding upon the parties and their privies in all other actions or suits on points and matters litigated and adjudicated in the first suit or which might have been litigated therein." (See, *Israel v. Wood Dolson Co.*, 1 NY2d 116, 118-120 [1956], citing *Good Health Dairy Prods. Corp. v. Emery*, 275 NY 14, 17 [1937]). Although the 2005 Judgment was entered based on the default of defendant Armando Gomez, the doctrine of res judicata "is applicable to an order or judgment taken by default which has not been vacated . . ." (*Eagle Ins. Co. v. Facey*, 272 AD2d 399 [2d Dept 2000]). The Supreme Court judgment is a conclusive final determination, notwithstanding that it was entered on . . . default". (*Trisingh Enters. v. Kessler*, 249 AD2d 45 [1st Dept 1998]; *Robbins v. Growney*, 229 AD2d 356 [1st Dept 1996]). As detailed above, defendant Armando Gomez has already made two (2) previous applications to have the underlying judgment vacated, and both have been denied.

Plaintiff cross-move for summary judgment contending, inter alia, that Armando Gomez's conveyance of the Subject Property was done with the intent to defraud the plaintiff and hinder plaintiff from enforcing its judgment.

Plaintiffs alleges that the transfer was a fraudulent transfer pursuant to Debtor and Creditor Law §273 (debtor rendered insolvent by transfer), §275 (conveyance when debtor intends or believes future debts will be beyond ability to pay) and §276 (conveyance with actual intent to defraud). All such transfers must be without fair consideration, as that term is defined by §272. Plaintiff seeks to deem the conveyance of the subject property null and void and to have Armando Gomez's interest in said property sold in order for plaintiff to collect its money judgment.

It is well established that a proponent of a summary judgment motion must make a prima facie case of entitlement to judgment as a matter of law when there are no material issues of fact (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Summary judgment is a drastic remedy that is awarded only when it is clear that no triable issue of fact exists. (*Id.* at 325; *Andre v. Pomeroy*, 35 NY2d 361 [1974]). Summary judgment is the procedural equivalent of a trial (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). Thus, the burden falls upon the moving party to demonstrate that, on the facts, it is entitled to judgment as a matter of law (see, *Whelen v. G.T.E. Sylvania Inc.*, 182 AD2d 446 [1st Dept 1992]). The court's role is issue finding rather than issue determination (see, e.g., *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Gervasio v. Di Napoli*, 134 AD2d 235, 236 [2d Dept 1987]; *Assing v. United Rubber Supply Co.*, 126 AD2d 590 [2d Dept 1987]).

In deciding a summary judgment motion the court must draw all reasonable inferences in favor of the nonmoving party (*Nicklas v. Tedlen Realty Corp.*, 305 AD2d 385 [2d Dept 2003]), and the evidence must be construed in a light most favorable to the party opposing the motion (*Benincasa v. Garrubbo*, 141 AD2d 618 [2d Dept 1988])). "[E]ven the color of a triable issue forecloses the remedy". (*Rudnitsky v. Rabbits*, 191 AD2d 488, 489 [2d Dept 1993]). Furthermore, the credibility of the parties is not an appropriate consideration for the Court. (See *S.J. Capelin Assoc., Inc. v. Globe Mfg. Corp.*, 34 NY2d 338 [1974]).

The Court, having carefully reviewed and considered the evidence submitted, drawing all reasonable inferences in favor of the nonmoving party and construing the evidence in a light most

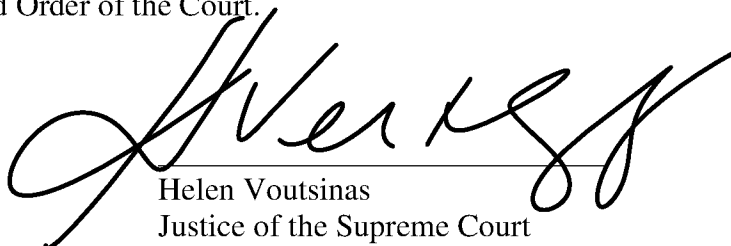
favorable to the nonmoving party, as it must, finds that triable issues of fact exist precluding summary judgment. Issues of fact exist as to whether defendant Armando Gomez was rendered insolvent by the transfer of the Subject Property, a finding necessary under Debtor and Creditor Law §273, or whether the transfer rendered Armando Gomez beyond his ability to pay future debts, as required under §275. The Court also finds issues of fact to exist surrounding the circumstances of the transfer of the Subject Property from Armando Gomez to Silvia Gomez, and whether the transfer was made with actual intent to defraud, as required under Debtor and Creditor Law §276.

Accordingly, based upon all of the foregoing, defendants' motion for summary judgment is **DENIED**, and plaintiff's cross-motion for summary judgment is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: November 19, 2020
Mineola, NY

ENTERED
Nov 24 2020
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Helen Voutsinas
Justice of the Supreme Court