

Brereton v Wells
2021 NY Slip Op 30340(U)
February 3, 2021
Supreme Court, Kings County
Docket Number: 525781/2018
Judge: Debra Silber
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.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

_____x

**IAN BRERETON, Individually, and as ADMINISTRATOR
of the ESTATE OF MARCELLA REDMAN,**

Plaintiff,

DECISION / ORDER

-against-

**Index No. 525781/2018
Motion Seq. No. 3, 4
Date Submitted: 12/3/20**

**JONATHAN WELLS, AUDREY BRISTOL, MICHAEL
REDMAN; LESLIE PELIZ REDMAN; RHONDA F.
JOHNSON; SUSAN REDMAN; CJS LAND SERVICES;
FREMONT INVESTMENT & LOAN; HSBC BANK USA
NATIONAL ASSOCIATION; PRIME TIME PT; WEB TITLE
AGENCY; A-Z HOUSE CORP; CITI ABSTRACT INC.;
HAMPTON PARTNERS LLC; HEIGHTS ABSTRACT LTD.;
MARIA FLORES; SECURTY CONNECTIONS INC.; US
ALLIANCE FEDERAL CREDIT UNION; COMMISSIONER
OF DEEDS. "JOHN DOES" 1-5 AND "JANE DOES" 1-5,
THE LAST 10 NAMES BEING FICTITIOUS, SAID
PARTIES BEING INTENDED UNNAMED, UNDISCLOSED,
UNKNOWN, HAVING OR CLAIMING AN INTEREST OR
LIEN ON THE SUBJECT PREMISES OF THE WITHIN
PROCEEDING,**

Defendants.

_____x

*Recitation, as required by CPLR 2219 (a), of the papers considered in the review of defendant
HSBC's motion for summary judgment and defendant CJS Land Services' cross motion for
summary judgment.*

Papers	NYSCEF Doc.
Notice of Motion, Affirmations, Affidavits and Exhibits Annexed.....	<u>96-126</u>
Notice of Cross Motion, Affirmations and Exhibits Annexed.....	<u>131-132</u>
Affirmation in Opposition to Motion and Exhibits Annexed.....	<u>155</u>
Affirmation in Opposition to Cross Motion and Exhibits Annexed.....	<u>156-171, 180</u>
Reply Affirmations.....	<u>173-179, 183</u>

Upon the foregoing cited papers, the Decision/Order on these motions is as follows:

Upon the foregoing papers, defendant HSBC moves, (Mot. Seq. # 3) pursuant to
CPLR 3212, for an order granting it summary judgment dismissing plaintiff's complaint.

Defendant CJS Land Services (hereafter CJS) cross-moves (Mot. Seq. # 4) for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the complaint. For the reasons which follow, both motions are granted.

Background

This quiet title action was commenced on or about December 21, 2018, and therein plaintiff alleges that his name was forged on a deed which was recorded in 2006, which transferred all of his right, title and interest in a fractional share of the property at 974 Park Place, Brooklyn, NY, Block 1242, Lot 36 to his son, and deprived him of his right to such share. There was a prior action, 501402/2016, which was discontinued in 2018 without prejudice.

The chain of title is as follows. Assuming that Gertrude Bristol, also known as Gertrude Bristol Jackson, owned 100 per cent of this property in 1976 (this is the earliest deed in ACRIS), her executor transferred it pursuant to her will, in 1976, to her two children, Elaine Blanche Redman (5/8) and Audrey Bristol (3/8), as tenants in common.

Apparently Elaine Blanche Redman passed away sometime before the end of 1989, and on January 5, 1990, two deeds were signed on the same date, but were not recorded together. The first is a bargain and sale deed, which states that Audrey Bristol, who was residing at the premises, and Marcella Redman, Michael Redman and Susan Redman, who all lived at the property, and Leslie Peliz Redman, who lived on Staten Island, were the distributees of Elaine Blanche Redman, and they transferred their interest in the property (Elaine Blanche Redman's 5/8 and Audrey Bristol's 3/8) to the five of them, "as tenants in common with rights of survivorship". This was

apparently not clearly drafted, as plaintiff points out in the complaint that Audrey Bristol was not a distributee of Elaine but was her sister. However, as her address is listed after her name, and then the other four people are listed and described as the distributees of Elaine, the intent seems to be clear that Audrey was transferring her 3/8 and the four children of Elaine were transferring their 5/8 share. The second deed signed that day was signed by Susan Redman, who signed a quit claim deed, transferring whatever interest in the property she had to Marcella Redman, Audrey Bristol, Michael Redman and Leslie Peliz Redman. Thus, once these deeds were recorded, there were four people who owned the property, twenty-five percent each. They were Elaine Blanche Redman's three children and her sister Audrey Bristol. One of these four 25% owners was Marcella Redman, plaintiff's deceased wife.

Nothing changed with regard to the title or the mortgages until 2002, when a bargain and sale deed was recorded that states that, in essence, Marcella had died, and Jonathan Wells, as her sole surviving heir, was joining with the other three owners to transfer title to the property to the four of them. Plaintiff states that Jonathan Wells was Marcella Redman's son (complaint paragraph 39). This deed does not have any form of ownership specified, so it presumably cures the "tenants in common with rights of survivorship" error, making them all tenants in common. As Audrey Bristol signed this deed, and it does not specify that she has a 3/8 interest plus 25% of 5/8, it is clear to the court that this acknowledged that she was a 25% owner, but this is not relevant to these motions. At the point that this deed was recorded, there was no mortgage on the property.

In 2006, the four owners mortgaged the property. On February 3, 2006, all four

of them signed a mortgage for \$450,000. There was no transfer of ownership, and so the cash would have been paid to the owners, or some of them. They did not purchase any title insurance, as there was no sale of the property. The bank purchased mortgage insurance, however, from movant defendant CJS Land Services, which provided coverage from Fidelity National Title Insurance Company.

On January 31, 2006, just a few days before the closing on the mortgage, a quit claim deed was signed, allegedly by plaintiff, to defendant Jonathan Wells. This is the deed plaintiff alleges was forged. To be clear, the plaintiff's name was never in the chain of title before. Both this deed and the mortgage were recorded together, and this deed is listed on the cover page as being recorded by movant CJS Land Services. The two documents are not notarized by the same person. The allegedly forged deed was notarized by defendant Rhonda Johnson, who has not been served with this action and thus plaintiff has abandoned his claims against her.

Plaintiff claims his wife Marcella Redman, now deceased, was in title, and that as her surviving spouse, he was entitled to her intestate share, not the non-appearing defendant, her son Jonathan Wells. In fact, Mr. Wells, as her son, would also have been entitled to a share in intestacy. EPTL §4-1.1(a)(1) provides that a surviving spouse is entitled to Fifty Thousand Dollars and one-half the balance of the estate, and the children are entitled to share the remainder. The percentage Mr. Wells would be entitled to would depend on whether Marcella Redman had other children besides Jonathan Wells.

Notwithstanding these people knowing that plaintiff was the surviving spouse of Marcella Redman, plaintiff claims the other three parties with an interest in the title, all

executed the deeds described above with full knowledge that they were depriving plaintiff of his share. First, defendant Jonathan Wells is alleged to have signed a deed as the sole surviving heir of Marcella Redman, which he wasn't, in 2002, along with the other persons ostensibly in title, to himself and the others. Then, an unknown "fraudster", perhaps Wells, then executed a 2006 quit claim deed from plaintiff (who is not in the chain of title whatsoever, with no reference to his status as a heir or any other reference) to Wells (this is the one alleged to be forged). Plaintiff claims Wells then joined with the other parties with an interest in the title in transferring 100 percent of the ownership to himself. On the same date that the 2006 deed was recorded, which plaintiff alleges was forged, a mortgage was recorded, which was executed by Jonathan Wells, Audrey Bristol, Michael Redman and Leslie Peliz Redman to Fremont Investment and Loan, which was subsequently assigned to HSBC.

Wells then sold the property to a third party, defendant A-Z House Corp. in 2014, who then resold the property to defendant Maria Flores in 2015. Each of these buyers took out a mortgage in connection with their purchases, and the lenders presumably each purchased mortgage title insurance. Plaintiff seems to have named, although he has not served, everyone involved in these transfers from the date of the 2002 deed to the present.

HSBC BANK's MOTION FOR SUMMARY JUDGMENT

Addressing HSBC's motion for summary judgment, counsel for the bank argues that it has no interest in the property, that the mortgage which was taken out in 2006, which was assigned to HSBC, was satisfied in connection with the sale of the property by Jonathan Wells to A-Z House Corp. in 2014, that a satisfaction was recorded in

2015, and thus they are entitled to be dismissed from this action. The only opposition filed is from the plaintiff, whose former attorney makes unusual and inapplicable arguments. The causes of action asserted in the complaint are 1) to cancel a forged deed, 2) fraud, 3) aiding and abetting a fraud, and 4) negligence.

The court finds that none of the causes of action asserted in the complaint could result in a verdict against this defendant, that as to this bank, plaintiff fails to state a claim for which relief can be granted, and thus, grants the motion for summary judgment dismissing the complaint and any cross claims asserted against HSBC.

CJS LAND SERVICES's MOTION FOR SUMMARY JUDGMENT

CJS insured only the mortgage in 2006, when Fremont provided a mortgage to the four owners. They move for summary judgment dismissing the complaint and all cross claims. Their cross motion is opposed by plaintiff and by counsel for defendants Maria Florez (sued herein as Maria Flores) and US Alliance Federal Credit Union ("Alliance"), who provided the mortgage for Ms. Florez' purchase. Presumably counsel for these defendants was retained by defendant Heights Abstract, the title company which insured this transaction, the latest of record.

Movant supports its motion with an affirmation of counsel and a copy of the mortgage insurance policy it issued. The opposition from counsel for Florez and US Alliance claims the motion is premature, that summary judgment is a drastic remedy, and that there is no affidavit from a person with personal knowledge at CJS, along with a number of other red herrings.

To reiterate, the movant provided a mortgage policy to Fremont in 2006, for a mortgage which was subsequently assigned to HSBC. It guaranteed that the mortgage

was a valid first lien on the property. The owners did not purchase a policy of fee insurance, and thus the act of taking the deed for recording, which plaintiff alleges was forged, is not actionable, because CJS did not insure the title to the property. It was merely an accommodation. The title company did not provide any insurance that anyone received good title. Once the loan was repaid to HSBC, the policy terminated by its terms.

The loan (mortgage) policy, E-File Doc. 132, states:

The Company hereby insures against loss or damage by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest, including the provision in the mortgage which permits the borrower to convert to a fixed interest rate as provided therein.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest, including the provision in the mortgage that permits the borrower to convert to a fixed interest rate as provided therein.

Accordingly, both motions are granted, and the complaint and all crossclaims against defendants HSBC and CJS Land Services are hereby dismissed.

The foregoing constitutes the decision and order of the court.

Dated: February 3, 2021

ENTER:



Hon. Debra Silber, J.S.C.