

<b>McMurren v Brown</b>
2021 NY Slip Op 31312(U)
April 19, 2021
Supreme Court, Kings County
Docket Number: 3650/2007E
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 9**

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**WILLIAM JAMES MCMURREN,**  
**Plaintiff,**

**DECISION / ORDER**

**-against-**

**Index No. 3650/2007E  
Motion Seq. No. 4  
Date Submitted: 2/11/21**

**ERIC DECOSTA BROWN, HAROLD BROWN,  
FELICIA BROWN, et al,**

**Defendants.**

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*Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion to extend the lien of the judgment and for related relief.*

<b>Papers</b>	<b>NYSCEF Doc.</b>
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>2-12</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>13</u>
Reply Affirmation.....	<u>15</u>

**Upon the foregoing cited papers, the Decision/Order on this motion is as follows:**

Plaintiff judgment creditor moves to extend the lien of the judgement entered in Kings County on August 18, 2010 pursuant to CPLR 5203 (b), which permits such extension for a period of time “necessary to complete advertisement and sale of real property in accordance with CPLR 5236, where an execution was delivered to a sheriff prior to the expiration of ten years from the filing of the judgment roll.” The judgment was entered against defendants Eric Decosta Brown, Harold Brown, and Felicia Brown, jointly and severally.

Plaintiff also seeks to amend the caption and the judgment to reflect that the plaintiff has died, and to substitute his surviving spouse as estate representative as plaintiff, and to

also amend the caption and the judgment to reflect that defendant Felicia Brown has died, and to substitute her estate representative as a defendant.

Defendants' attorney opposes the motion, and claims that the lien expired on August 17, 2020, so hand delivering the execution to the sheriff on August 20, 2020 was ineffective as the lien had expired, and also that this motion had to be made prior to the expiration of the lien, and it was not.

Plaintiff responds that he was unable to file the motion prior to August 17, 2020 as at that time, due to the COVID-19 Pandemic, the court was not accepting papers unless they were electronically filed. So, he obtained a stipulation from defendants' counsel to convert the case to electronic filing on September 3, 2020 and was then able to electronically file the motion.

The court determines here that the motion was not filed late, as plaintiff had until November 3, 2020 to make this motion, which was one day after this motion was filed, making this motion timely. In March 2020, Governor Cuomo's Executive Order 202.8 provided that "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020." The toll was extended through November 3, 2020 by subsequent Executive Orders.

With regard to the defendants' claim that the lien expired on August 17, 2020, counsel is similarly incorrect. As clearly explained in *Emerald Servs. Corp. v Empire Core Group LLC* (2021 NY Slip Op. 30394(U), 2021 WL 465978 [Sup Ct NY County 2021]), where a lien would

have automatically expired by operation of law during the tolling period created by the Governor's Executive Order issued during the Pandemic (from March 20, 2020 through November 3, 2020), but such lien could have been extended pursuant to an applicable statute by a motion filed before the lien expired, a motion to extend the lien filed during the toll, and thus before the November 3, 2020 deadline, is not untimely. Under Executive Order 202.8 and the subsequent Executive Orders which extended the tolling period, the deadline to file a "notice, motion, or other process or proceeding" which fell within the tolling period was extended until November 3, 2020.

However, the branch of the motion seeking to amend the caption and the judgment cannot be granted. The "letters" for the deceased plaintiff are not letters which may be used here, not because ancillary letters are required, as it is a money judgment and not an interest in property, but because the Circuit Court in Florida (Doc 8) issued an "Order of Summary Administration" which reflects that the decedent's estate "qualifies for summary administration" as the decedent William McMurren left no assets other than his home in Florida (Paragraph 1) to which his wife was entitled. Therefore, in order for the plaintiff's attorney to proceed with the sheriff's sale, actual letters will have to be obtained in Florida, so a check issued to the Estate of William McMurren can be legally deposited into an estate account.

With regard to decedent Felicia Brown, the "letters" provided at Doc 6 are not actual letters, and are not issued to Jenai Brown, but merely indicates there was an application for a Small Estate order, under SCPA Article 13, that Raeshaun Brown – one of her five children – could collect a check for \$10,367.50 from an insurance company as he represented that "the value of the entire personal property of the decedent . . . does not exceed \$30,000" and that the decedent owned no real property. This was not true, as she owned a one-sixth interest in

the real property at issue here, assuming the complaint is correct, and plaintiff and defendants' mother were the only distributees of Fannie McMurren. Now that Felicia Brown has died without a will, and more than eighteen months have expired since her death in 2012, approval of the Surrogate's Court to execute against her interest in the real property is not required (see CPLR 5208). There is no need to amend the judgment.

Finally, the court notes that there is a tax lien foreclosure pending against this property, Index No. 1955/14, *NYCTL 1998-2 Trust v McMurren, et al.*, and the plaintiff's motion for an order of reference is currently returnable on 6/15/21 (in Part FRP2). In addition, there are several other tax lien sale certificates recorded, as well as a lien from the NYC Department of Social Services, for Medicaid provided to Fannie McMurren, plaintiff's deceased mother, who died in 2005. The three defendants and judgment debtors are the three surviving children of Fannie McMurren's daughter (who predeceased her) according to the complaint in this action.

Accordingly, it is **ORDERED** that the motion is granted to the extent that the lien of the judgment is hereby extended for a period of 180 days from the date of this Order, a period of time which the court deems is necessary to obtain letters from the Florida court and to complete the advertisement and sale of the real property in accordance with CPLR 5236, and it is further

**ORDERED** that this order shall be effective from the time it is filed with the Clerk of Kings County and an appropriate entry is made upon the docket of the judgment.

This constitutes the decision and order of the court.

Dated: April 19, 2021

ENTER:



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Hon. Debra Silber, J.S.C.