

James v James

2021 NY Slip Op 31353(U)

April 12, 2021

Supreme Court, Kings County

Docket Number: 506718/17

Judge: Lawrence S. Knipel

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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12th day of April, 2021.

P R E S E N T:

HON. LAWRENCE KNIPFEL,

Justice.

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RAYMONA JAMES, As Trustee of the James Family Trust, HARVEY JAMES, JR., CYRAISSE JAMES a/k/a CYRAISSE LEGRAIR-CLARKE, RAYMONA JAMES, MADRESE JAMES and DIEDRE JAMES, as Life Tenants and Beneficiaries of the James Family Trust,

Plaintiffs,

Action No. 1

- against -

Index No. 506718/17

LAWRENCE JAMES,

Defendant.

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NYCTL 1998-2 TRUST successor in interest to NYCTL 2009-A TRUST and The Bank of New York Mellon as Collateral Agent and Custodian,

Plaintiffs,

Action No. 2

- against -

Index No. 501048/18

LAWRENCE JAMES, Individually and as alleged Executor for the Estate of Fannie J. Debose; RAYMONA JAMES, Individually and as Trustee of the "James Family Trust"; HARVEY JAMES, JR.; CYRAISSE JAMES A/K/A CYRAISSE LEGRAIR-CLARKE; MADRESE JAMES; DEIRDRE JAMES; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, CRIMINAL COURT OF THE CITY OF NEW YORK (KINGS); JACQUELINE GRANT; KINGS SUPREME COURT; LR CREDIT 10 LLC; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; PEOPLE

OF THE STATE OF NEW YORK; and “JOHN DOE #1” through “JOHN DOE #100”, inclusive the last 100 names being fictitious and unknown to the Plaintiffs, it being intended to designate fee owners, tenants or occupants of the liened premises and/or persons or parties, if any, having or claiming an interest in or lien upon the liened premises described in the complaint, if the aforesaid individual defendants are living, and if any or all of said individual defendants be dead, their heirs at law, next of kin, distributes, executors, administrators, trustees, committees, devisees, legatees, and the assignees, licitors, creditors and successors in interest of them, and generally all persons having or claiming under, by, through, or against the said defendants named as a class, of any right, title, or interest in or lien upon the premises described in the complaint herein,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed_____

41-48

Opposition (Affirmations) Annexed_____

49

Upon the foregoing papers, plaintiffs Raymona James (Raymona), individually and as Trustee of the James Family Trust, Harvey James, Jr. (Harvey), Cyraisse James a/k/a Cyraisse Legrain-Clarke (Cyraisse), Madrese James (Madrese) and Diedre James (Diedre), as Life Tenants and Beneficiaries of the James Family Trust (collectively, the James Family Trust) move, in Action No. 1 (in motion sequence [mot. seq.] three), for an order: (1) consolidating Action Nos. 1 and 2, pursuant to CPLR 602, and (2) substituting

the appointed referee for failure to perform his duties.

Background

Action No. 1

On April 4, 2017, the James Family Trust and its beneficiaries, Raymona, Harvey, Cyraisse, Madrese and Dierdre, commenced Action No. 1 against Lawrence James (Lawrence) seeking partition of the property at 2025 Strauss Street in Brooklyn (Property).

By a November 29, 2018 judgment and order (Judgment of Partition), this court determined that:

- “A. Plaintiffs and Defendant are each seized and possessed as tenants in common of the Subject Property, with Plaintiffs owning an undivided two-thirds (2/3) interest and Defendant an undivided one-thirds (1/3) interest;
- “B. Partition by sale is necessary since an actual partition of Subject Property cannot be had without prejudice to the owners, and accordingly that Subject Property be sold by and under the direction of the Court, and conveyance be given to the perspective purchaser;
- “C. Plaintiffs be paid the costs of this action and the sale;
- “D. The residue of the proceeds of the sale be distributed among the parties according to their respective interest in Subject Property, *after payment of all the outstanding liens, violations and judgment on the property as may be proven*, and of all lawful costs and expenses;
- “E. By the sale and conveyance of Subject Property, parties and all persons claiming through or under them subsequent to the filing of notice of pendency of this action be barred of all right, title and interest in the

property in possession . . .” (emphasis added).

In addition to ordering partition and sale of the Property, the court appointed a referee “to implement the terms of this judgment . . .”

Action No. 2

Meanwhile, on January 18, 2018, NYCTL 1998-2 Trust as successor in interest to NYCTL 2009-A Trust and the Bank of New York Mellon as Collateral Agent and Custodian (NYCTL) commenced Action No. 2 against Lawrence, individually and as alleged Executor for the Estate of Fannie J. Debose, Raymona, individually and as Trustee of the James Family Trust, Harvey, Cyraisse, Madrese, Dierdre and others seeking to foreclose a tax lien on the Property.

On November 20, 2020, NYCTL moved for an order appointing a referee, for summary judgment and other relief, which is currently pending before the court (Partnow, J.).

The James Family Trust’s Motion to Consolidate

The James Family Trust now moves, in Action No. 1, for an order, pursuant to CPLR 602, consolidating Action Nos. 1 and 2 on the grounds that:

“Both actions involve similar facts, issues of law, and parties. All of the parties and both actions seek to have relief against the same real property. The ultimate relief that is sought in both actions is the sale of the underlying real property. Allowing the two actions to proceed independently would be duplicative and a waste of judicial resources. Furthermore,

allowing two actions to proceed independently may cause an unacceptable situation where the subject property may be sold twice to two different buyers. . . .”

The James Family Trust also asserts that “[o]ne Referee to access each party’s interest from the sale proceeds will better serve the interests of all the parties in both actions” and “[h]aving two separate referees will cause unnecessary overlap, double the expenses and fees as well as further delay.”

Regarding the referee appointed in Action No. 1, the James Family Trust seeks an order substituting “another referee who will be more active in his or her attempts to resolve this matter.” According to plaintiffs’ counsel, the last conference with the appointed referee took place on November 27, 2019, and plaintiffs’ counsel has written to the court and the appointed referee “to encourage the referee to start actively working on the matter.” Notably, the James Family Trust’s notice of motion reflects that the appointed referee was not served with the motion.

NYCTL, in opposition, asserts that “[a]lthough the actions involve the same parcel, the instant case is a partition action seemingly brought to Judgment . . . and NYCTL’s action seeks to foreclose a tax lien completely unrelated to partition of the property or claims of ownership determined thereunder.” NYCTL further argues that “[t]here are no common issues that need to be resolved, as the partition action has been reduced to Judgment, and the parties have all but admitted the failure to pay the tax lien.”

Discussion

“A motion for consolidation is addressed to the sound discretion of the court, and absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact” (*RCN Constr. Corp. v Fleet Bank, N.A.*, 34 AD3d 776, 777 [2006]). “A motion to consolidate should be granted absent a showing of prejudice to a substantial right by a party opposing the motion” (*Hanover Ins. Group v Mezansky*, 105 AD3d 1000, 1001 [2013]).


Here, consolidation is not warranted because Action No. 1, the partition action, has already been decided on the merits and reduced to a final judgment, which finally determined the James Family Trust’s and Lawrence’s ownership interests in the Property. There are no common issues of law or fact to be determined in Actions No. 1 and No. 2. The James Family Trust and its beneficiaries, which are defendants to Action No. 2, the tax lien foreclosure action, may assert its ownership interest in that tax lien foreclosure action, as set forth in the Judgment of Partition.

Given the fact that the appointed referee was not served with this motion, and was not provided an opportunity to respond to the James Family Trust’s allegations, that branch of the James Family Trust’s motion seeking to substitute the appointed referee in Action No. 1 is denied. Accordingly, it is hereby

ORDERED that the James Family Trust's motion in Action No. 1 (in mot. seq. three) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.
JON BRONKOWICZ-KAPPEL
ADMINISTRATIVE JUDGE