

<b>519 Myrtle Ave., LLC v Bazile</b>
2021 NY Slip Op 32272(U)
October 26, 2021
Supreme Court, Kings County
Docket Number: Index No. 521586/2020
Judge: Francois A. Rivera
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At an I.A.S./Motion Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse thereof, located at 360 Adams Street, Brooklyn, New York on the 26<sup>th</sup> day of October 2021.

P R E S E N T : Hon. FRANCOIS A. RIVERA,  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
519 MYRTLE AVENUE, LLC,

Index No.: 521586/2020

Plaintiff,

- against -

**DECISION AND ORDER**

MARIE BAZILE,

Defendant.

-----X

Plaintiff, 519 MYRTLE AVENUE, LLC (“Plaintiff”), having moved this Court for the following relief (Motion Seq. 1) under CPLR 3212, granting summary judgment in favor of Plaintiff and against defendant, MARIE BAZILE (“Defendant”), for the relief sought in Plaintiff’s Verified Complaint: (i) pursuant to CPLR §3001 and RPAPL §1501, a declaratory judgment quieting title, by cancelling, removing and discharging from record a Sundry Agreement, dated April 17, 2010 and recorded April 16, 2012 under CRFN 2012000149728 (“Sundry Agreement”) against the subject real property located in the County of Kings and commonly known as 519 Myrtle Avenue, Brooklyn, New York, 11205 (also known as 111 Grand Avenue, Brooklyn, New York), designated as Block 1893, Lot 61 on the Tax Map of Kings County (“Property”), and more particularly described as follows:

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Myrtle Avenue with the easterly side of Grand Avenue; running

THENCE easterly along the northerly side of Myrtle Avenue, 25 feet; running

THENCE northerly parallel with Grand Avenue, 100 feet; running

THENCE westerly parallel with Myrtle Avenue, 25 feet to the easterly side of Grand Avenue; running

THENCE southerly along the easterly side of Grand Avenue, 100 feet to the point or place of BEGINNING

and directing the Kings County Office of the New York City Register to record such judgment so that the real property records of Kings County accurately reflect that the Sundry Agreement is not enforceable, does not encumber the Property and is no longer a cloud upon title to the Property, and that the ownership and interest of the Plaintiff, 519 Myrtle Avenue, LLC, in the Property is free and clear of the Sundry Agreement; and (ii) dismissing Defendant's Answer with affirmative defenses in its entirety; and

Defendant having opposed the Plaintiff's Motion for Summary Judgment (Motion Seq. 1) and having cross-moved to amend her answer by filing Defendant's Cross-motion to Amend Answer (Motion Seq. 2); and

Upon all papers submitted in support of and in opposition to Plaintiff's Motion for Summary Judgment (Motion Seq. 1) as well as upon all papers submitted in support of and in opposition to Defendant's Cross-Motion to Amend Answer (Motion Seq. 2); and

Upon the Summons and Verified Complaint duly filed in this action on November 3, 2020 (NYSCEF Doc. Nos. 1 and 2), the Answer of the Defendant, Marie Bazile, duly filed on February 19, 2021 (NYSCEF Doc. No. 7), and all proceedings thereon; and

Upon reading Plaintiff's Notice of Motion for Summary Judgment, dated and filed on June 28, 2021 (NYSCEF Doc. No. 10), the Affirmation of Jamie Lynn Plisner, Esq., dated and filed on June 28, 2021 (NYSCEF Doc. No. 11), the Affidavit of Robert Palmese, sworn to on June 25, 2021 and filed on June 28, 2021 (NYSCEF Doc. No. 12), all the exhibits annexed thereto and in support thereof filed on June 28, 2021 (NYSCEF Doc. Nos. 13 through 32 inclusive); the Statement of Material Facts filed on June 28, 2021 (NYSCEF No. 13), and the Plaintiff's Memorandum of Law dated and filed on June 28, 2021 (NYSCEF Doc. No. 14), all in support of Plaintiff's Motion for Summary Judgment (Motion Seq. 1); and

Upon reading the Defendant's Notice of Cross-Motion to Amend Answer (Motion Seq. 2) (NYSCEF Doc. No. 42); the Affidavit of the Defendant, Marie Bazile, in opposition to Plaintiff's Motion for Summary Judgment (Motion Seq. 1) and in support of Defendant's Cross-Motion to Amend Answer (Motion Seq. 2) sworn to on September 23, 2021 and filed on September 23, 2021 (NYSCEF Doc. No. 39), and the Defendant's Memorandum of Law in Support of the Cross-Motion and in Opposition to the Plaintiff's Motion dated and filed on September 23, 2021 (NYSCEF Doc. No. 41), and the Defendant's Proposed Amended Answer and Counterclaim annexed as an exhibit thereto (NYSCEF Doc. No. 40), all in support of the Defendant, Marie Bazile's, Cross-Motion to Amend answer (Motion Seq. 2) and in opposition to Plaintiff's Motion for Summary Judgment (Motion Seq. 1); and

Upon the Plaintiff's Reply Memorandum of Law in further support of Plaintiff's Motion for Summary Judgment and in opposition to Defendant's Cross-Motion to Amend Answer dated and filed on September 29, 2021 (NYSCEF Doc. Nos. 45 and 46) and;

Motion Seq. 1 and Motion Seq. 2 having come on to be duly heard by the Court on September 30, 2021 and on that date having been argued by counsel for the Plaintiff and for the Defendant and having been heard by and submitted to the Court for determination; and

The Court upon due deliberation, having made its findings of fact after viewing the evidence in the light most favorable to the Defendant, as follows:

(i) On or about December 8, 2014, the Defendant commenced an action against Plaintiff (as Defendant) and others in the Supreme Court, Kings County, under Index No. 17031/2014, entitled *Marie Bazile v. Gamil M. Saleh, et al.* ("Sundry Agreement Action") seeking, *inter alia*, to enforce the Sundry Agreement and the mortgage referred to therein and to vacate, divest and /or adversely affect Plaintiff's title to and ownership of the Property; and

(ii) On May 30, 2019, by Order of the Supreme Court of the State of New York, the Hon. Lizette Colon, J.S.C. Presiding, granted, upon Defendant's default, Plaintiff's motion to dismiss the Defendant's Complaint pursuant to CPLR 3126 because of Defendant's failure to comply with four (4) Orders rendered by the Supreme Court in the Sundry Agreement Action directing Defendant to comply with outstanding discovery obligations ("Dismissal Order"); and

(iii) On June 4, 2019, Defendant was served with the Dismissal Order with Notice of Entry; and

(iv) Defendant has not appealed the Dismissal Order, has not sought to vacate the Dismissal Order, the Defendant has not taken any other action to reverse or modify the

Dismissal Order, and the Defendant has not commenced a new action within one year after the Dismissal Order being served upon Defendant with Notice of Entry or anytime thereafter; and

(v) The maturity date of the Sundry Agreement and of the mortgage referred to in the Sundry Agreement as securing an indebtedness to the Defendant, including Defendant's time to enforce the Sundry Agreement and mortgage referred to therein, accrued on April 17, 2013, at the latest; and

(vi) There is no evidence: that the indebtedness secured by the Sundry Agreement and the mortgage referred to therein was re-acknowledged; that the maturity date thereof was de-accelerated or changed; or that any action was commenced or conducted to revive such indebtedness; and

(vii) The six-year statute of limitations to enforce the Sundry Agreement expired on April 17, 2019; and

(viii) The Sundry Agreement is a cloud on Plaintiff's title to the Property that must be discharged and/or cancelled of record; and

After due deliberation, the Court having rendered its Decision and Order on September 30, 2021 (and filed on October 4, 2021 under NYSCEF Doc. No. 49) granting Plaintiff's Motion for Summary Judgment to cancel the Sundry Agreement from record against the property (Motion Seq. 1) on statute of limitations grounds, thereby rendering it unnecessary for the Court to reach Plaintiff's alternative grounds for such relief, and denying Defendant's Cross-Motion to Amend Answer as academic (Motion Seq. 2); and directing Plaintiff to settle a Decision and Order within thirty (30) days from the date thereof;

NOW, on motion of Solomon & Siris, P.C., attorneys for Plaintiff, it is

ORDERED, that Plaintiff's Motion for Summary Judgment (Motion Seq. 1) be and the same is hereby granted on the basis that the Defendant is barred from enforcing the Sundry Agreement because the applicable statute of limitations to enforce such Sundry Agreement has expired and thus the Sundry Agreement constitutes a cloud upon Plaintiff's title to the Property that must be cancelled and/or discharged from the record; and it is further

ORDERED, ADJUDGED and DECREED that the Sundry Agreement, dated April 17, 2010 and recorded April 16, 2012 under CRFN 2012000149728, is hereby cancelled and discharged from record and is no longer an encumbrance, lien, mortgage, claim, interest or other cloud upon title to the Property; and it is further

ORDERED, ADJUDGED and DECREED that Defendant, Marie Bazile, is hereby barred from all claim to any title, encumbrance, lien, mortgage, claim or interest in the Property above mentioned and described and that the estate, title and interest of Plaintiff, 519 Myrtle Avenue, LLC, in and to the Property is hereby adjudged free from the claims and interests of the Defendant, Marie Bazile, and from the Sundry Agreement and from any claim, lien, mortgage, interest and/or encumbrance referred to therein or arising therefrom; and it is further

ORDERED, ADJUDGED and DECREED that any claim that Defendant, Marie Bazile, may or might claim to have to the aforesaid Property is without validity and of no force and effect; and it is further

ORDERED, ADJUDGED and DECREED that Defendant, Marie Bazile, and every person or entity claiming under her by title accruing after the filing of the judgment roll, as prescribed by law, be and same hereby are forever barred and precluded from asserting such claims, the invalidity of which is established in this action, to an estate or interest in the Property above mentioned and described, or any kind of nature whatsoever; and it is further

ORDERED, ADJUDGED and DECREED that the Plaintiff's, 519 Myrtle Avenue, LLC's, ownership interest and title to the Property is free and clear of the Sundry Agreement and from any mortgage, claim, lien, interest and encumbrance referred to therein or arising therefrom; and it is further

ORDERED, that the Kings County Office of the New York City Register be and the same hereby is directed to record a certified copy of this Decision and Order and index same against the Property designated on the Tax Map of Kings County as:

Block 1893, Lot 61

to reflect the relief granted; and it is further

ORDERED, that the Kings County Office of the New York City Register further and otherwise reflect in its records and indices that the Sundry Agreement is cancelled, removed and/or discharged of record against the Property; and it is further

ORDERED, ADJUDGED and DECREED that the Cross-Motion to Amend the Answer of the Defendant is hereby denied as academic; and it is further

ORDERED and ADJUDGED that the Court expressly reserves the right upon notice to the attorneys for the parties who have appeared herein to add to this Decision and Order such further provisions and directions as it may deem proper and necessary to carry out and to put into effect the provisions hereof.

E N T E R:



FRANCOIS A. RIVERA, J. S. C.