

Southampton Equities LLC v Anekwe

2021 NY Slip Op 32518(U)

November 30, 2021

Supreme Court, Kings County

Docket Number: Index No. 509427/20

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30th day of November, 2021.

P R E S E N T:

HON. DEBRA SILBER,
Justice.
-----X

SOUTHAMPTON EQUITIES LLC,¹
Plaintiff,
-against-
ANNA KASIE ANEKWE, AS ADMINISTRATOR OF THE
ESTATE OF CATHERINE N. ANEKWE,
Defendant.
-----X

DECISION / ORDER

Index No.: 509427/20
Mot. Seq. # 1 & 2

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>8-18</u>	<u>21-23</u>
Opposing Affidavits (Affirmations) _____	<u>22-23</u>	<u>25</u>
Affidavits/ Affirmations in Reply _____	<u>25</u>	

Upon the foregoing papers, plaintiff Southampton Equities LLC moves in motion (mot.) sequence (seq.) 1 for an order, pursuant to CPLR 3212, granting it summary judgment against the defendant Anna Kasie Anekwe, as Administrator of the Estate of Catherine N. Anekwe, declaring that the contract of sale to sell the three – unit residential building at 24 Hampton Place, Brooklyn, New York 11213, Block 1244, Lot 23 to plaintiff is valid and enforceable, and directing defendant to comply with the defendant’s

¹ The court has used the spelling of the plaintiff’s name as it appears on the summons and complaint filed to commence the underlying action, with one “H,” although some of the documents spell it with two, as the registered name with the State of New York has one “H.”

obligations under the contract, including but not limited to seeking the Surrogate's Court approval of the sale.

Defendant opposes plaintiff's application and cross-moves, in mot. seq. 2, for an order, pursuant to CPLR 3212 dismissing the complaint and declaring that the contract of sale to sell the real property is "null and void."

Background

Cecilia N. Anekwe was appointed Administrator of decedent Catherine Anekwe's estate by decree dated March 12, 2013 in File 2012 – 4455. (Doc. 17). The decree explicitly limits Cecilia's authority and states that she is restrained from selling the decedent's real property without further order of the court. Catherine Anekwe bought the house in 1969 with her husband, who predeceased her in 1991.

On March 2, 2017, plaintiff entered into a contract to purchase the premises from Cecilia N. Anekwe, as Administrator of the estate, for \$1,060,000.00, with \$52,500.00 paid for a down payment and the remainder due at closing. There is no financing contingency. The closing date is described as 60 days following a notice to purchaser of Surrogate's Court approval: "subject to the approval of the Surrogate's Court. Seller shall apply for court approval within 30 days of the execution of this contract" (Doc 14, Page 10, ¶ 27).

Cecilia Anekwe passed away on March 19, 2019, before the Surrogate's Court approval of the sale was obtained. The successor administrator, defendant Anna Kasie Anekwe (Anna), was allegedly appointed Administrator *de bonis non* over the estate. Thereafter, Anna refused to continue the estate's efforts to obtain court approval of the sale. There is no copy of a Decree appointing her in the record, nor is there any proof that Cecilia Anekwe died. The only Certificate of Letters provided was the one issued to Cecilia.

Plaintiff commenced this action with the filing of a summons and complaint and notice of pendency on June 8, 2020 and seeks a declaratory judgment. Defendant filed an answer and has asserted various affirmative defenses.

The Parties' Contentions

Plaintiff seeks an order granting it summary judgment, declaring the contract for the sale of the premises to be valid, and directing defendant to comply with her obligations under the contract to seek court approval for the sale. Plaintiff claims that the defendant has refused to take the actions necessary to comply with the contract and close on the title. Defendant, it claims, as the successor administrator, is obligated to seek court approval for the sale and her refusal to do so has prevented the sale from closing. Plaintiff claims that the documentary evidence and its proof of the down payment clearly demonstrate the validity of the contract, and that defendant presents no defense for her attempts to avoid her obligations thereunder.

In opposition, defendant argues that material issues of fact exist regarding the validity of the contract, which bars summary judgment to plaintiff to enforce it. She argues that the prior administrator, Cecilia, lacked authority to enter into a contract to sell the property, given that the express language of Cecilia's appointing papers restrained her power to sell, transfer, mortgage, or otherwise encumber the decedent's property without further order of the court.

Additionally, defendant asserts that the plain terms of the contract render the agreement unenforceable, as the title insurer refuses to insure the title. Defendant claims that Old Republic Title Insurance Company said that it would withhold title insurance until the Surrogate's Court issues Letters of Administration dated within 6 months of the closing and a court order allowing the sale. Defendant highlights the fact that an order permitting the sale

was never issued, and further states “that there is no evidence that the proposed sale would advance any statutorily enumerated estate administration purpose as to the benefit of the estate beneficiaries, as required under New York estate law,” whatever that means. Furthermore, the defendant asserts that when she became the estate’s administrator after her sister’s death, her appointment documents similarly restrain her from selling the property without court approval.

In addition to opposing plaintiff’s motion for summary judgment, defendant cross-moves for summary judgment in her favor, arguing that the underlying facts clearly show that the contract of sale was never enforceable and should be declared “null and void.”

In reply, plaintiff argues that, although the original Administrator may not have been allowed to sell the property without court approval, Cecilia Anekwe was permitted to enter into the contract. Plaintiff points out that the rider to the contract acknowledges that the sale is subject to Surrogate’s Court approval and expressly states that “seller shall apply for Court Approval within 30 days of execution of this contract of sale by all parties.” Plaintiff argues (without any evidence) that Cecilia fulfilled this obligation under the contract, and that the defendant, as the successor administrator, has acted in bad faith by trying to avoid her duty to continue or renew those efforts.

Discussion

On a motion for summary judgment the court’s function is issue finding, not issue determination (*see Trio Asbestos Removal Corp. v Gabriel & Sciacca Certified Pub. Accountants, LLP*, 164 AD3d 864, 865 [2d Dept 2018] [internal citations omitted]). “A party

moving for summary judgment must demonstrate that ‘the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment’ in the moving party’s favor” (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014], quoting CPLR 3212 [b]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]).

“In determining a motion for summary judgment, the evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences must be resolved in favor of the non-moving party” (*Santiago v Joyce*, 127 AD3d 954, 954 [2d Dept 2015] [internal citations omitted]). “To grant summary judgment *it must clearly appear that no material and triable issue of fact is presented*” (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957] [internal citation omitted] [emphasis added]). Further, “[s]ummary judgment is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues” (*Stukas v Streiter*, 83 AD3d 18, 23 [2d Dept 2011] [internal citation omitted]).

“When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations” (*Franklin Apt. Assoc., Inc. v Westbrook Tenants Corp.*, 43 AD3d 860, 861 [2d Dept 2007]). “Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms” (*Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]).

The Surrogate's Court Procedure Act allows an estate representative to dispose of the decedent's real property for certain purposes (*see* SCPA § 1902). Where the estate representative is restricted from selling the decedent's property in her appointing papers, she may petition the Surrogate's Court to remove the restriction upon a showing that the proposed sale would be in the best interests of the estate (*see Matter of Kahn*, 173 AD3d 744 [2d Dept 2019]). Pursuant to SCPA § 1912 (1) “[i]n the event of the death, removal or disqualification of all of the fiduciaries before the granting of an order directing disposition of the real property, their successor must be substituted, and the proceeding shall continue by or against the successor.” The successor must complete all unfinished matters that were required of his/her predecessors (SCPA § 1912[2]).

When considering a proposed sale, the Surrogate's Court reviews whether the decedent's personal property is insufficient to satisfy the debts and/or expenses to be paid by the estate and the characteristics of the estate, including the status of any mortgage and the identities of the potential distributees (*see Matter of Kahn*, 173 AD3d at 744.). If the Surrogate's Court disapproves the sale, then the contract between the parties is cancelled and the buyer may not seek specific performance thereof (*see Iorio v Read*, 143 AD2d 70 [2d Dept 1988]).

In accordance with the decree appointing her as Administrator of the estate, the prior administrator (Cecilia) was permitted to sell the decedent's real estate only if she obtained court approval. She was required to justify the sale to the Surrogate's Court by demonstrating that the decedent's personal property was insufficient to satisfy the debts owed by the estate and to show that the sale would be sufficiently beneficial to the distributees (*see* SCPA

§§§1901, 1902, 1903). Cecilia did not have the authority to close on the sale of the property without a court order removing the restrictions set forth in her appointing decree (*see Matter of Khan*, 102 NY3d at 746).

The contract duly executed by plaintiff and Cecilia as administrator directly addresses those limitations. It expressly states “[p]arties acknowledge that this is a[n] Estate Sale, and as such, is subject to the approval of Surrogates Court” (*see Rider ¶ 27*). Cecilia, as the seller, explicitly promised to apply for court approval within 30 days of the date the contract was executed and to complete such proceeding to move forward with the contract (*see Rider ¶ 9 and 27*). It is clear that Cecilia bound herself to make a bona fide attempt to obtain court approval of the contract (*see Willsey v Gjaraj*, 65 AD3d 1228, 1230 [2d Dept 2009]).

Defendant has failed to provide a sufficient basis for this court to declare the contract “null and void.” Defendant argues that the original estate administrator did not have the requisite authority to sell the property, and that the contract is unenforceable as the title insurer has refused to issue title insurance. This court, however, finds defendant’s arguments unavailing. Cecilia was permitted to petition the Surrogate’s Court for permission to sell the decedent’s real property (SCPA §§1901, 1907). In fact, in accordance with her duties as the estate’s fiduciary, Cecilia would have been obligated to make such a petition if she thought it was in the best interests of the estate. Further, defendant’s argument that the contract is wholly unenforceable in the absence of secured title insurance is misguided. Defendant admits that the title insurance company is withholding coverage until the underlying contract is approved by the court. The seller’s requirement to provide insurable title before the eventual closing is completely unrelated to the administrator’s application to Surrogate’s

Court for approval of the contract, and it is illogical to interpret the contract as requiring a title policy be issued prior to the court's approval of the fiduciary's application for court approval. Therefore, defendant fails to provide a sufficient basis for this court to grant summary judgment in her favor and to dismiss the complaint.

Plaintiff has met its prima facie burden on its motion for an order declaring the contract enforceable and directing the defendant to continue to seek Surrogate's Court approval of the sale. Cecilia Anekwe failed to obtain court approval of the underlying contract before her death. Pursuant to SCPA § 1912, however, Cecilia's death does not terminate any pending proceeding for court approval, which would ordinarily move forward once defendant was appointed as the Administrator *de bonis non* in Cecilia's place. It is not possible to determine the status of that application from the motion papers.

In response, defendant fails to rebut plaintiff's prima facie showing. Defendant does not dispute that she was appointed as successor Administrator, nor does she dispute that Cecilia passed away. While it would be ideal for proof of the facts to be provided, it is not necessary here for the requested relief. Defendant provides no evidence that the Surrogate's Court denied the application for approval of the sale and she fails to raise any triable issue of fact regarding any circumstances that would relieve her from her statutory obligation to continue to seek approval of the sale in Surrogate's Court. The likelihood of Surrogate's Court approval of this contract is not an issue before this court, but it is clear that defendant "stepped into the shoes" of the deceased administrator and cannot provide a relevant reason for her failure to fulfill her statutory fiduciary duties. Under these circumstances, summary judgment is justified in plaintiff's favor.

Conclusion

Based upon the foregoing, it is hereby

ORDERED, ADJUDGED AND DECLARED that that plaintiff's motion for summary judgment in mot. seq. 1 is granted: the contract of sale executed by the now-deceased Administrator is valid and enforceable, and the defendant is directed to, forthwith, comply with her obligations under the contract to, among other things, seek court approval in the Surrogate's Court of the sale of 24 Hampton Place, Brooklyn, New York 11213, Block 1244, Lot 23, in accordance with the contract of sale dated March 2, 2017 which was executed by plaintiff and the prior estate representative; and it is further

ORDERED that defendant's cross motion for summary judgment in mot. seq. 2 is denied.

Any requested relief not expressly granted herein is denied.

The foregoing constitutes the decision, order, and judgment of the court.

E N T E R :



Hon. Debra Silber, J.S.C.