

Mohammed v Rambharat
2022 NY Slip Op 30516(U)
February 16, 2022
Supreme Court, New York County
Docket Number: Index No. 158365/2021
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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THALIA MOHAMMED

Plaintiff,

- v -

PRADEEP RAMBHARAT,

Defendant.

-----X

INDEX NO. 158365/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISMISSAL

The motion to dismiss by defendant is granted in part and the cross-motion by plaintiff for a default judgment is denied.

Background

Plaintiff and defendant used to be married. In fact, they were first married in 1999, got divorced in 2000 and then got remarried in 2001. After nearly ten more years, although defendant claims they lived separately during this time period, the parties divorced again in June 2010. Defendant claims that plaintiff executed an affidavit in connection with the second divorce that stated she was not seeking equitable distribution. He insists that plaintiff's claims concerning her purported equitable interest in four of defendant's properties were waived as part of the second divorce. The complaint insists that plaintiff never signed anything in connection with the 2010 divorce and that she retains an interest in the four properties.

Defendant argues that plaintiff's five causes of action for breach of equitable distribution, declaratory judgment, quantum meruit, unjust enrichment and fraud are without merit. He argues the parties' 2010 divorce resolved all matters relating to each party's interests and speculates that this case is really about plaintiff's effort to continue living rent-free in one of defendant's properties. Defendant argues that to the extent plaintiff says she didn't know about the 2010 divorce, such a claim is absurd. He points out he remarried in 2011 to one of plaintiff's best friends and that plaintiff actually attended this wedding.

He acknowledges that he let plaintiff move into one of his properties with her cousin as tenants pursuant to a lease and that they paid rent for a time. Defendant contends that although plaintiff stopped paying rent, he did not try to evict plaintiff (or her parents who later moved in) out of compassion for plaintiff, who allegedly lost her job in 2018, but eventually defendant's patience ran out. He claims he tried to have plaintiff and her cohabitants leave the premises but various renter protections afforded due the to the pandemic have prevented him from removing plaintiff although defendant insists that plaintiff's efforts to get assistance were eventually denied.

Defendant observes that the property in question, where plaintiff lives, was purchased by defendant prior to their first marriage and that any interest plaintiff may have acquired in the property was addressed in the first divorce. He explains that the other three properties were acquired with no contribution from plaintiff and two of them were purchased after they were divorced a second time.

Plaintiff cross-moves for a default judgment and offers opposition to the motion to dismiss. In her affidavit, plaintiff contends she does not remember signing any document in connection with the 2010 divorce and argues that the issue of equitable distribution was never

adjudicated in that divorce judgment. Plaintiff focuses on the fact that defendant allegedly did not timely answer the complaint and demands an inquest on damages.

In reply and in opposition to the cross-motion, defendant insists that his counsel obtained a stipulation of the time to answer and that he was permitted to make the instant motion to dismiss. He emphasizes that plaintiff did not rebut any of the claims in defendant's moving papers. Defendant also points to a deed for the property where plaintiff lives that shows that he had a 99% interest in this property while plaintiff and her father had .5% interest each and that a second deed for this property shows that this one percent interest was later transferred to defendant in August 2000.

Discussion

“On a motion to dismiss, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Besen v Farhadian*, 195 AD3d 548, 549, 151 NYS3d 31 [1st Dept 2021] [internal quotations and citations omitted]). “[A] motion to dismiss on the ground that the action is barred by documentary evidence . . . may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]).

As an initial matter, the Court denies the branch of the cross-motion that seeks a default judgment. The parties entered into a stipulation that extended defendant's time to answer to

December 15, 2021 (NYSCEF Doc. No. 33) and the instant motion was made on that day (NYSCEF Doc. No. 4). That the stipulation did not specifically contemplate that defendant might make a motion is of no moment. The agreement did not forbid defendant from seeking to dismiss and plaintiff was afforded an opportunity to oppose the instant motion (in fact, defendant agreed to extend plaintiff's time to oppose [NYSCEF Doc. No. 18]). Cases should be decided on the merits and, here, defendant filed a timely motion to dismiss. Even if the Court could conceive of a way to credit plaintiff's argument that the instant motion was untimely, the Court would overlook such an error as any delay was miniscule and caused no prejudice to plaintiff.

Turning to the merits, the Court grants defendant's motion. Defendant met his prima facie burden by attaching an affidavit signed by plaintiff (and notarized) in connection with the 2010 divorce that states that she was "not seeking equitable distribution other than what was already agreed to in a written stipulation. I understand that I may be prevented from further asserting my right to equitable distribution" (NYSCEF Doc. No. 11). Plaintiff addresses this document by saying that she doesn't "recall signing any such document" (NYSCEF Doc. No. 29, ¶ 5). That is not sufficient to defeat the instant motion. Simply put, there is a document that purportedly shows that plaintiff waived her right to seek equitable distribution in connection with the 2010 divorce and plaintiff did not raise an issue of fact to defeat that contention.

The record on this motion shows that the parties divorced in 2010, plaintiff signed an affidavit in connection with the divorce in which she waived her right to equitable distribution and that any interest she may have had in the property in which she lives was transferred to defendant in August 2000 (NYSCEF Doc. No. 39). In other words, plaintiff cannot state a cause of action based on her purported equitable interest in any of the properties on this record.

The Court declines to award defendant any sanctions. Although the Court grants the motion to dismiss, there is no basis, on these papers, to find that there was any malicious conduct by plaintiff or her attorney. Simply because plaintiff has lost this case does not justify a request for sanctions.

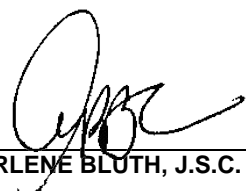
The Court also observes that plaintiff decided not to bring this application under either index number for the divorces; instead, she bought a new index number. And the RJI by defendant did not identify this case as a matrimonial matter nor did either party request that this case be sent to a matrimonial part. Nothing in this decision should be construed as having any effect on the previous judgments of divorce. This opinion only considers this newly filed action.

Accordingly, it is hereby

ORDERED that the motion by defendant to dismiss is granted only to the extent that the complaint is dismissed and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor, and denied to the extent the motion sought sanctions; and it is further

ORDERED that the cross-motion by plaintiff is denied.

2/16/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE