

RLF II Stillwell, LLC. v Riley

2022 NY Slip Op 34578(U)

March 7, 2022

Supreme Court, Bronx County

Docket Number: Index No. 810905/2021E

Judge: Kenneth L. Thompson, Jr.

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 _____ X

RLF II STILWELL, LLC.,
Plaintiff,

Index No: **810905/2021E**

-against-

DECISION

STEVEN RILEY, et al.,
Defendants

Present:
HON. KENNETH L. THOMPSON, JR.

_____ X

The following papers numbered 1 to read on this motion for summary judgment/ default judgment

No	On Calendar of November 29, 2021	PAPERS
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----		motion sequence #4 &5 NYSCEF
Answering Affidavit and Exhibits-----		motion sequence #4 NYSCEF
Memorandum of Law-----		motion sequence #4 NYSCEF

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Plaintiff, RLF II Stillwell, LLC, (RLF), moves pursuant to CPLR 3212 for summary judgment against defendant, Steven Riley, (Riley). Riley moves pursuant to CPLR 3215 for a default judgment against co-defendant, Safe Land & Lots Industries LLC a/k/a Safe Land and Lots Industries, LLC a/k/a Safe Land & Lots, LLC, (Safe Land). The motions are consolidated for purposes of decision and disposition.

RLF brought three causes of action as follows: 1) quiet title/remove cloud; 2) set aside the deed; 3) slander of title. RLF submitted evidence that Riley filed a fraudulent quitclaim deed, (deed), transferring the subject real property from RLF to Safe Land. Riley erroneously indicated that he was an executive officer of RLF on a quickclaim deed. RLF has established its *prima facie* entitlement to summary judgment.

The motion for summary judgment was unopposed when the motion was submitted on November 29, 2021. Without leave of Court, Riley submitted opposition on March 4, 2022, over three months untimely. Even if the untimely

opposition were considered, defendant fails to provide any evidentiary basis for his alleged position at RLF of “executive officer,” or documentation of his lien on the real property, or any legal basis for applying the UCC to real property. The untimely opposition is utterly without merit. It has been repeatedly held that:

[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegation or assertions are insufficient.

(Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]).

With respect to RLF’s motion for a default judgment against Safe Land, “The plaintiff submitted proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the appellant's default in answering or appearing.” (*Allstate Ins. Co. v. Austin, 48 A.D.3d 720 [2nd Dept 2008]*).

Accordingly, plaintiff’s motion for summary judgment on its complaint against defendant, Steven Riley, is granted on default. Plaintiff Motion for a default judgment against co-defendant, Safe Land & Lots Industries LLC a/k/a Safe Land and Lots Industries, LLC a/k/a Safe Land & Lots, LLC, is granted on default,

The foregoing constitutes the decision of the Court.

Settle order.

Dated: 3/7/2022



KENNETH L. THOMPSON JR. J.S.C.