

Wynn v Wynn-Wright

2023 NY Slip Op 30645(U)

March 3, 2023

Supreme Court, Kings County

Docket Number: Index No. 18690/2004

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 18690/2004
Seq. 016

Part 91

DECISION/ORDER

WILLIAM H. WYNN, individually and as Administrator
of the Estate of Isaac Cornealious Wynn, AND
WAYMAN WYNN,

Recitation, as required by CPLR §2219 (a), of the papers
considered in the review of this Motion

Plaintiffs,

Papers Numbered

Table listing papers numbered: Notice of Motion and Affidavits Annexed (1), Order to Show Cause and Affidavits Annexed (2), Answering Affidavits (3), Replying Affidavits (3), Exhibits, Other.

against

NINA WYNN-WRIGHT, CALVIN WRIGHT, AND
HOUSEHOLD FINANCE REALTY CORPORATION OF NEW
YORK,

Defendants.

Upon the foregoing papers, defendant Household Finance Realty Corporation of New
York ("HFRC")'s motion for summary judgment (Seq. 016) is decided as follows:

Introduction

This action, commenced in 2004, concerns the validity of a deed that was transferred
from Isaac Wynn solely to Isaac Wynn and Nina Wynn-Wright¹, his daughter, as joint tenants in
1995. By extension, this action seeks to challenge the validity of a mortgage on the property
held by HFRC. The plaintiffs, also children of Isaac Wynn, brought this action to invalidate the
mortgage on the property located at 85 Quincy Street, Brooklyn, NY 11238 on the grounds that
Isaac Wynn did not have the capacity to transfer the property to Nina Wynn, due to both a
history of alcoholism and Alzheimer's disease.

1 At oral argument, Ms. Nina Wynn indicated to the court that her name is no longer "Wynn-
Wright." For the sake of clarity, this decision will refer to Ms. Wynn by her marital surname
only when discussing events that occurred in the past, like this transfer.

The defendant deed-holder, HFRC, now moves for summary judgment. Notably, a related action was commenced by HFRC in 2015 in Kings County Supreme Court. That expungement action was captioned *Household Finance Realty Corporation of New York v Calvin Wright*, (Sup Ct, Kings County, Vaughn, J., index 500638/2015). The gravamen of that action was to reinstate the mortgage that HFRC held on the premises on the basis that it was improperly vacated. Justice David Vaughn issued a final order and judgment in that action on July 26, 2018 which held, *inter alia*, that HFRC's "mortgage in the amount of \$641,349.38 . . . recorded in the office of the City Registrar of the City of New York and CFRN 200600362857 is a valid and subsisting mortgage lien on premises commonly known as 85 Quincy Street, Brooklyn, New York 11238, Block 1970, Lot 52."

Factual Background

It is undisputed that, in January 1995, an indenture for the property from Isaac Wynn to Isaac Wynn and Nina Wynn-Wright, as joint tenants, was recorded in the Kings County Clerk's Office. Based on that deed, Isaac Wynn, Nina Wynn-Wright, and Calvin Wright (Nina's then-husband) incurred a series of mortgage loans in 1998, 1999, 2004, and 2005, which transferred certain rights in the property to HFRC. Isaac Wynn passed away on October 18, 2002.

The disputed fact in this action is that of Isaac Wynn's capacity in 1995 to transfer the property to his daughter. The plaintiffs contend that Isaac Wynn suffered from Alzheimer's Disease and alcoholism, both of which rendered him unfit to transfer his property (William Wynn Aff. at ¶ 7). The plaintiffs also point to testimony from Nina Wynn-Wright and Calvin Wright, in a second related action, captioned *Contimortgage Corp. v Isaac C Wynn*, (Sup Ct, Kings County, index 11707/1996). In that action, Nina Wynn-Wright provided an affidavit which acknowledged that her father was diagnosed with Alzheimer's Disease and expressed the

opinion that “in December 1993 . . . Isaac Wynn was incapable of applying for a mortgage loan, incapable of consummating any complex transaction” (Nina Wynn-Wright Aff. in Index 11707/1996 at ¶¶ 3, 11). Calvin Wright’s affidavit was substantially the same (Calvin Wright Aff. in Index 11707/1996 at ¶¶ 3, 6).

Defendant HFRC provides the affidavit of David Britton, an attorney² and notary public, who claims to have notarized the 1995 Indenture and acknowledged Isaac Wynn’s signature at Isaac Wynn’s home on May 12, 1995 (Britton Aff. at ¶ 10). Mr. Britton contends that Mr. Wynn was a former client and that Mr. Wynn explained that he had previously signed the indenture before Mr. Britton arrived (Britton Aff. at ¶¶ 11–12; Uniform Law on Notarial Acts [1982] § 2 [c], [f]). The deed was also acknowledged by notary public Deloris Stalnaker, a notary public duly commissioned by the State of Florida in 2005 (Stalnaker Aff. at ¶ 4). Although Ms. Stalnaker does not have specific memory of notarizing the 1995 Indenture, she attests to her regular practice of confirming that any individual seeking notarization of a document “appeared of sound mind, memory and understanding, not under any restraint or in any respect incompetent to make the Indenture” (*id.* at ¶ 10).

Finally, defendant claims that the plaintiff cannot authenticate Isaac Wynn’s putative medical records. HFRC provides a letter from Brooklyn Hospital Center, issued in response to a subpoena from HFRC, stating that Isaac Wynn’s medical records were not retained due to the “statute of limitations.” There is, therefore, no way to authenticate Isaac Wynn’s medical records (HFRC’s Statement of Undisputed Material Facts at ¶¶ 71–73; Response to Statement of

² Mr. Britton was disbarred in the State of New York from 1997 to 2020, when he was reinstated by the Appellate Division, Second Department.

Undisputed Material Facts at ¶¶ 71–73 [although the plaintiffs indicate that ¶ 71 is disputed, they do not cite to any evidence in the record upon which that disputation rests]).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant’s showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

First, HFRC argues that the same arguments were made by the plaintiffs in this action in the related expungement action, index 500368/2015, and that Justice Vaughn’s decision in that matter has a preclusive effect in this one. “Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action. . . . As a general rule, once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*Parker v Blauvelt Volunteer Fire Co., Inc.*, 93 NY2d 343 [1999]).

HFRC points to the affirmation from William Wynn in the expungement action which stated that the 1995 Deed was the product of undue influence and fraud committed by Nina Wynn-Wright, and that Isaac Wynn was not competent to transfer property. HFRC argues that, as these issues were raised in that action, and because Justice Vaughn’s order and judgment was not appealed, re-litigation of those issues is precluded here.

The plaintiffs contend in opposition that the underlying expungement action only concerned canceling and discharging an inadvertently filed satisfaction of mortgage. The plaintiffs argue that their inclusion of arguments and evidence about Isaac Wynn’s capacity in

their opposition papers was merely for the purpose of background, and that these contentions did not change the character or ultimate issue at dispute in that action. The court should, on the plaintiffs' rationale, not find Justice Vaughn's order and judgment to have a preclusive effect on the issue of the legitimacy of the 1995 Deed. Rather, they contend, the only issue decided in that action was whether the 2014 satisfaction of mortgage should be expunged or not.

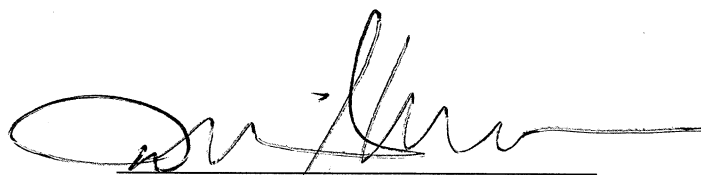
Ultimately, the court need not reach the balance of defendant's arguments. In opposition to HFRC's motion for summary judgment in the related action, William and Wayman Wynn raised the issue of Isaac Wynn's capacity, challenging the legitimacy of the mortgage by challenging the legitimacy of the underlying deed. Once those arguments were made in opposition papers, the issue of Isaac Wynn's competence was properly before Justice Vaughn. Justice Vaughn's decision, therefore, found the arguments about Isaac Wynn's competence to be unpersuasive and ruled that HFRC's mortgage lien on the property is valid.

Conclusion

Defendant HFRC's motion (Seq. 016) is granted; the plaintiffs' claims are dismissed.

This constitutes the decision and order of the court.

March 3, 2023
DATE


DEVIN P. COHEN
Justice of the Supreme Court