

**604 Willoughby LLC v Clayton**

2023 NY Slip Op 31013(U)

March 27, 2023

Supreme Court, Kings County

Docket Number: Index No. 515171/2020

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 21<sup>st</sup> day of March 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF KINGS

Index No: 515171/2020

-----X  
604 WILLOUGHBY LLC,

Plaintiff(s)

-against-

**ORDER**

OZENER CLAYTON and WILLOUGHBY 604 CORP.,

Defendant(s)

-----X

The following e-filed papers considered herein:  
Notice of Motion/Affirmation in Support/Exhibits Annexed.....

NYSCEF E-filed docs  
21-38

Plaintiff 604 Willoughby LLC ("Plaintiff") commenced this action, to quiet title against Ozener Clayton and Willoughby 604 Corp. (Defendants"), by Summons and Complaint filed August 18, 2020. Thereafter, a Supplemental Summons and Verified Amended Complaint were served on Defendant Clayton on February 25, 2022, and on Defendant Willoughby 604 on February 28, 2022. Defendants have failed to appear or answer and the relevant time to file a responsive pleading, and/or otherwise move with respect to Plaintiff's Verified Supplemental Complaint has expired.

Plaintiff now moves (Motion Seq. 2) for an Order pursuant to CPLR § 3215(a) directing the entry of a default judgment in favor of Plaintiff and against Defendants cancelling, discharging, and/or declaring a deed to be fraudulent and a memorandum of contract to be unenforceable. Plaintiff also moves for an Order declaring that Plaintiff holds absolute legal title to 604 Willoughby Avenue Brooklyn, New York 11206 Block No. 1768 Lot No. 18 ("Subject Premises") free and clear from any estate, encumbrance, trust, or other interest of Defendants, and all persons or entities claiming under and/or acting in concert with the Defendants. Additionally, Plaintiff seeks to permanently enjoin Defendants, and/or any of their agents, affiliates, representatives, partners, members, employees, and anyone else acting on their behalf or under their control, from selling, transferring, encumbering, entering into leases or otherwise disposing of the Premises.

Motion #2

In its attorney's affirmation, Plaintiff states that by deed dated April 26, 1966 and recorded April 28, 1966, in the Office of the City Register. Lula Bell Woodberry, William Clayton and Carrie Clayton (née Woodberry) held title to the parcel of real property at issue, with Woodberry owning one-half interest (50%), and the Claytons owning the other one-half interest (50%). Plaintiff claims that on June 2, 2014, a deed dated May 28, 2014, was recorded in the Office of the City Register, wherein non-party Phyllis A. Smith purportedly transferred the Subject Premises to nonparty 604 Willoughby Realty LLC. for consideration of \$15,000.00.

Plaintiff alleges that after the death of Lula Bell Woodberry and William and Carrie Clayton, non-party Horace Barnes, as sole heir of Lula Bell Woodberry, held interest in one-half of the Subject Premises, and Defendant Ozener Clayton, as sole heir of William and Carrie Clayton, was entitled to the other half interest. Plaintiff maintains that on or about March 7, 2017, Defendant Clayton and non-party Barnes entered into a signed Letter of Agreement wherein the parties agreed to sell any and all interest they possessed in the Subject Premises to non-party Myrmissa A. Stone-Sumair for the sum of \$400,000.00. Pursuant to the Letter of Agreement, Plaintiff states that on or about March 7, 2017, Barnes executed a deed which was recorded on March 28, 2017, in the Office of the City Register. Plaintiff claims that this deed transfers his one-half interest in the Subject Premises to Stone-Sumair in consideration of "\$1.00 and other good and valuable consideration." Plaintiff further states that on June 12, 2017, Defendant Clayton executed a deed and recorded it on June 26, 2017, in the Office of the City Register, transferring his one-half interest in the Subject Premises to Stone-Sumair in consideration of \$10.00. Plaintiff states that to ensure that full title was transferred to Plaintiff, on June 13, 2017, Stone-Sumair and non-party 604 Willoughby Realty LLC executed a deed to Plaintiff in consideration of \$10.00. The deed was recorded on June 26, 2017, in the Office of the City Register. It is this transference that plaintiff claims accorded him full title to the property.

Plaintiff argues that despite the March 17, 2017, Letter of Agreement, Defendant Clayton has refused to accept payment of the amounts that would have been due to him and has also refused to remove himself or any of his belongings from the property. Plaintiff claims that on or about May 8, 2018, Defendant Clayton executed a fraudulent deed and recorded it in the Office of the City Register on May 21, 2018. In the deed, Defendant Clayton purportedly transferred one-half ownership of the Subject Premises from himself, as sole heir of William and Carrie Clayton, to himself as an individual in consideration of \$10.00. That same day, May 8, 2018,

Plaintiff alleges that Defendant Clayton executed a Memorandum of Contract, with Defendant Willoughby 604 Corp., which indicated that Defendant Clayton had sold the Subject Premises to Defendant Willoughby 604 Corp. for an unspecified valuable consideration. The Memorandum of Contract was recorded in the Office of the City Register on August 9, 2018. Plaintiff argues that based on the transfer history of the property and by virtue of the deed dated June 13, 2017, and recorded on June 26, 2017, Plaintiff became and remains the sole and exclusive owner of the Subject Premises and that Defendant Clayton's conveyances and Memorandum of Contract are fraudulent. In support of its motion, Plaintiff submits an affirmation from Leah Bloom, a member of Plaintiff 604 Willoughby LLC who gives a recounting of events almost identical to what was stated by Plaintiff's attorney.

Pursuant to CPLR § 3215(a), a party may obtain a default judgment against another if the defaulting party fails to plead in a timely manner. In order to establish entitlement to a default judgment, a plaintiff is required to submit proof of (1) valid service of the summons and the complaint, (2) the facts constituting the claim and (3) the default (see CPLR § 3215(f); *Woodson v Mendon Leasing Corp.*, 100 NY2d 62 [2003]; *Atlantic Cas., Ins. Co. v RJNJ Services, Inc.*, 89 A.D.3d 649 [2d Dept. 2011]; *Allstate Ins. Co. v Austin*, 48 A.D.3d 720 [2d Dept. 2008]). To demonstrate facts constituting the claim, the movant need only to submit sufficient proof to enable a court to determine that a viable cause of action exists (*Woodson* at 71). This may be accomplished by the filing of an affidavit by the moving party detailing the facts constituting the claim or a verified complaint may be submitted instead of the affidavit when the complaint has been properly served (see CPLR 3215(f); *Deutsche Bank National Trust Company v Hossain*, 196 A.D.3d 631 [2d Dept. 2021]; *Hazim v Winter*, 234 A.D.3d 422 [2d Dept. 1996]). An affidavit asserting personal knowledge based on an inspection of business records that fails to attach said business records constitutes as inadmissible hearsay and is insufficient to demonstrate proof of the facts constituting the claim (*Deutsche Bank National Trust Company v Hossain*, 196 A.D.3d 631 [2d Dept. 2021]; *Deutsche Bank National Trust Company v Elshiekh*, 179 A.D.3d 1017 [2d Dept. 2020]; *Deutsche Bank National Trust Company v Gulati*, 188 A.D.3d 999 [2d Dept. 2020]).

While a default judgment constitutes an admission of the factual allegations of the complaint and the reasonable inferences which may be made therefrom, where a valid cause of action is not stated, the moving party is not entitled to the requested relief, even on default (see

*Woodson; Cree v Cree*, 142 A.D.2d 538 [2d Dept. 1986]; *Gagen v Kipany Productions Ltd.*, 289 A.D.2d 844 [3d Dept. 2001]; citing *Dyno v Rose*, 260 A.D.2d 694 [3d Dept. 1999]). Moreover, courts have held, that a default judgment in a declaratory judgment action will not be granted on the default and pleads alone, as the moving party must establish a right to a declaration (*JBBNY, LLC v Dedvukaj*, 171 A.D.3d 898; *Dole Food Co., Inc. v Lincoln Gen. Ins. Co.*, 66 A.D.3d 1493 [4th Dept. 2009]; quoting *Merchants Ins. Co. of New Hampshire, Inc. v Long Island Pet Cemetery, Inc.*, 206 A.D.2d 827 [4th Dept. 1994]).

RPAPL 1501(1) provides that any person who claims an estate or interest in real property “may maintain an action against any other person... to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records,...that the defendant might make.” RPL 329 permits in relevant part, that “an owner of real property...may maintain an action to have any recorded instrument in writing relating to such real property or interest therein ...canceled of record as to said real property.”

To maintain an equitable quiet title claim, a plaintiff must allege actual or constructive possession of the property and the existence of a removeable cloud on the property, which is an apparent title, such as a deed or other instrument, that is actually invalid or inoperative (see *RPAPL 1515; Carbone v Deutsche Bank Nat. Trust Co.*, 145 A.D.3d 848 [2d Dept. 2016] *Acocella v Wells Fargo Bank, N.A.*, 139 A.D.3d 647 [2d Dept. 2016]). The New York Recording Act inter alia, protects a good faith purchaser for value from an unrecorded interest in a property, provided such a purchaser's interest is first to be duly recorded (see, Real Property Law §§§ 290, 291, 294; *Bello v Ouellette*, 211 AD3d 784 [2d Dept. 2022]; *Chen v Geranium Dev. Corp.*, 243 A.D.2d 708 [2d Dept. 1997]). If the purchaser fails to use due diligence in examining the title, he or she is chargeable, as a matter of law, with notice of the facts which a proper inquiry would have disclosed (*Bello* at 785; quoting *436 Franklin Realty, LLC v U.S. Bank National Association*, 188 AD3d 960 [2d Dept. 2020]). Therefore, the status of good faith purchaser for value cannot be maintained by a purchaser with either notice or knowledge of a prior interest or equity in the property, or one with knowledge of facts that would lead a reasonably prudent purchaser to make inquiries concerning such (*Id.* at 709; *Barrett v Littles*, 201 AD2d 444 [2d Dept. 1994]; *United Matura Realty, Inc. v Reade Industries, Inc.*, 155 A.D.2d 660 [2d Dept. 1989]). In order to establish itself as a bona fide purchaser for value, a party has the burden of proving that it purchased the property for valuable consideration and did not have knowledge of

facts that would lead a reasonably prudent purchaser to make a proper inquiry (*Bello* at 785; *TCJS Corp. v Koff*, 74 A.D.3d 1188 [2d Dept. 2010]).

To plead cause of action for permanent injunction, the movant must allege (1) a violation of a right presently occurring, or threatened and imminent; (2) that the movant has no adequate remedy at law; (3) serious and irreparable harm will result if the injunction is not granted; and (4) that the equities are balanced in the movant's favor (see *Elow v. Svenningsen*, 58 A.D.3d 674, 674-75 [2d Dep't 2009]). A permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction (*Aponte v Estate of Aponte*, 172 A.D.3d 970 [2d Dept. 2019]; *Merkos L'Inyonei Chinuch, Inc., v Sharf*, 59 A.D.3d 403 [2d Dept. 2009]). A permanent injunction is embodied in a final judgment which may be granted after a trial on the merits (*Byrne Compressed Air Equipment Co., Inc. v Sperdini*, 123 A.D.2d 368 [2d Dept. 1986]; *Weissman v Kubasek*, 112 A.D.2d 1086 [2d Dept. 1985]; *Oppenheim v Thanasoulis*, 123 A.D. 494 [1st Dept. 1908]).

In the instant action, while Defendants have failed to appear or submit any papers, Plaintiff has not established a prima facie case for entitlement to a default judgment against them. By Plaintiff's own documents and recitation of the transfers, it is unclear as to whether there has been a clear transfer of title among the parties.<sup>1</sup> Foremost is the question of whether Defendant Clayton and non-party Barnes are heirs to Lula Bell Woodberry, William and Carrie Clayton. Assuming arguendo that the alleged heirs had an interest in the property, there has been no showing of when they received such interest as there have been no documents submitted showing when the original owners of the property died or how their interest was transferred after their deaths. Moreover, Plaintiff's own recital of the history of transfers of this property shows that the property had been recorded as being sold in 2014 by Phyllis A. Smith to 604 Willoughby Realty LLC. If this conveyance was valid then the property was not available for transfer by either Barnes and Clayton to Myrnisssa Stone-Sumair in 2017. Neither Bloom's or Plaintiff's attorney's affirmation addresses who Smith is or what authority she had to transfer the property to a nonparty with a nearly identical name as Plaintiff. It is only stated in a conclusory fashion that 604 Willoughby Realty LLC is a not a party to this action.

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<sup>1</sup> See attached chart demonstrating flow of transfers.


With respect to the Letter of Agreement between Barnes and Defendant Clayton and the subsequent deed transfers to Stone-Sumair, it remains unknown when proceeds of the sale were transferred or how. It is also unclear as to why the net proceeds were to be split into four equal parts, when only two individuals sold their interest. As a result of the deed transfers from Barnes and Defendant Clayton, Stone-Sumair purportedly retained 100% interest in the property. However, if the Smith transfer in 2014 was a valid transfer of the entire premises, no other individual would have an interest to transfer, calling into question the authority of the deed purportedly executed by Stone-Sumair and 604 Willoughby Realty LLC to the Plaintiff.

Plaintiff has also failed to establish that it was a bona fide purchaser for valuable consideration with respect to the property, calling into question its legal entitlement to it. Plaintiff argues that Defendant Clayton's transfer is fraudulent partially because it was made for no consideration, yet several of the transfers in the property's history as reflected in the documents submitted by Plaintiff, were completed in exchange for nominal consideration, including the conveyances from Smith to 604 Willoughby Realty LLC and from Stone-Sumair and 604 Willoughby Realty LLC to Plaintiff. The documents submitted in this matter include in part, the verified complaint, Plaintiff's attorney's affirmation, copies of the relevant deeds, and an affidavit by Bloom, whose personal knowledge of the facts is based upon her inspection of business records. Noticeably absent however, are documents, such as contracts to support Plaintiff's claim that it is good faith purchaser for valuable consideration. Without said records, Plaintiff's attorney, and Bloom's conclusory statements that Plaintiff is a bona fide purchaser of valuable consideration is insufficient.

Plaintiff's complaint demands permanent injunctive relief against the Defendants. However, the Court finds that a permanent injunction is not warranted at time.

Accordingly, Plaintiff's motion for a default judgment is hereby denied.

This constitutes the decision and order of the Court.



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Hon. Ingrid Joseph  
Hon. Ingrid Joseph  
Supreme Court Justice