

Lewis v Reeves

2023 NY Slip Op 32334(U)

July 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 507479/2013

Judge: Karen B. Rothenberg

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At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of July, 2023.

P R E S E N T:

HON. KAREN B. ROTHENBERG,
Justice.

-----X
ROLAND LEWIS and KK GREENE, LLC,

Plaintiffs,

- against -

Index No. 507479/13

STACY REEVES and U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE CSMC MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2007-3,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) _____

663-671 702-753 803-836

Opposing Affidavits (Affirmations) _____

702-753 759-778 843

Reply Affidavits (Affirmations) _____

759-778 838-839

Upon the foregoing papers in this consolidated action¹ to quiet title to the property at 365 Greene Avenue in Brooklyn (Block 1954, Lot 48), a brownstone with seven residential units (the Property), and for related declaratory relief, defendant U.S. Bank National Association, as Trustee on Behalf of the Holders of the CSMC Mortgage-Backed

¹ By a February 20, 2020 decision and order, the court (Knipel, J.) consolidated the 2016 action commenced by plaintiffs Roland Lewis (Lewis) and KK Greene LLC (collectively, plaintiffs) under Kings County index No. 522890/16 (2016 Action) with the “main” 2013 action commenced by Lewis under Kings County index No. 507479/13 (2013 Action) (*see* NYSCEF Doc No. 376).

Pass-Through Certificates, Series 2007-3 (US Bank) moves (M.S 25) for an order, pursuant to CPLR 3025 (b), granting it leave to serve a third amended answer with counterclaims, in the form annexed (*see* NYSCEF Doc No. 665) “to reflect the [August 19, 2020] decision by the Appellate Division, Second Department [NYSCEF Doc No. 666] which, *inter alia*, reinstated four affirmative defenses previously dismissed by the Court . . .” (the first [failure to state a cause of action], seventh [unclean hands], tenth [ratification] and sixteenth [laches, waiver and/or estoppel]) (NYSCEF Doc No. 663).

Plaintiffs Lewis and KK Greene LLC cross-move (M.S. 28) for an order: (1) granting Lewis summary judgment on the first cause of action in the 2013 complaint against defendant Stacy Reeves (Reeves) for a judgment declaring that he is the rightful owner of the Property and that the October 2, 2003 deed (2003 Deed) transferring the Property from Lewis to his former wife, Mary Jean Holliman (Holliman), “was a fraudulent and void conveyance and that all subsequent deeds, mortgages and liens are void and cancelled, rescinded, vacated, and set aside, and that [Lewis] be adjudged the true and lawful owner . . . free and clear of all mortgages and liens subsequent to the fraudulent and void conveyance and directing the Register of the City of New York to void the deed[.]” pursuant to CPLR 3212 (e); (2) granting plaintiffs summary judgment against defendant US Bank and issuing a judgment declaring that US Bank has no right to or interest in the Property and voiding the December 8, 2006 mortgage encumbering the Property, pursuant to CPLR 3212 (e); (3) denying US Bank’s motion for leave to file a third amended answer; (4) granting plaintiffs summary judgment on defendants’ adverse possession counterclaim,

pursuant to CPLR 3212 (e); and (5) striking Reeves' answer and counterclaims for his failure to comply with the court's (Knipel, J.) September 27, 2022 discovery order² and, then, granting plaintiffs summary judgment against Reeves, pursuant to CPLR 3212 (e) (NYSCEF Doc No. 702). US Bank also moves (M.S. 29) for an order, pursuant to CPLR 3212, granting it summary judgment dismissing the 2016 complaint.

Background

Lewis allegedly inherited an interest in the Property and obtained sole title to the Property by a May 31, 1991 deed. Beginning in 1992, Lewis resided at the Property with his wife, Holliman, but moved out of the Property in or about 2003 due to marital discord while Holliman continued to reside at the Property with Lewis' consent.

Meanwhile, on or about March 18, 1999, Lewis commenced a divorce action against Holliman in Kings County Supreme Court captioned *Roland Lewis v Mary Lewis*, Kings County index No. 9225/99 (New York Matrimonial Action). A transcript of a May 21, 2001 inquest in the New York Matrimonial Action reflects that Lewis defaulted yet had notice of the inquest, a divorce was granted in favor of Holliman based on cruel and inhuman treatment, *Holliman was awarded the Property* as a distributive award and Lewis was awarded the commercial property in Tuskegee, Alabama (*see* NYSCEF Doc No. 427).

By an October 3, 2003 deed (2003 Deed), title to the Property was purportedly transferred from Lewis to Holliman. About three years later, by a December 8, 2006 deed,

² See NYSCEF Doc Nos. 699 and 700.

Holliman transferred the Property to her son from a prior marriage, Reeves, who funded his purchase with a \$649,000.00 mortgage, which was later assigned to US Bank.³

The Consolidated 2013 and 2016 Actions

In November 2013, Lewis commenced the 2013 Action against Holliman and Reeves to quiet title to the Property. The November 26, 2013 complaint alleges that Lewis' signature on the 2003 Deed is a forgery and the first cause of action seeks a judgment declaring that the 2003 Deed pursuant to which the Property was transferred to Holliman is null and void. Holliman died on December 18, 2013, about one month after Lewis commenced the 2013 Action. Rather than substitute Holliman's estate, Lewis discontinued the 2013 Action as against Holliman without prejudice.

In December 2016, Lewis and KK Greene LLC⁴ commenced the 2016 Action against US Bank to determine their competing claims to the Property, including the validity of US Bank's mortgage encumbering the Property and Lewis' assertion that his signature was forged on the 2003 Deed.

US Bank answered the 2016 complaint. On March 22, 2017, US Bank filed a first amended answer asserting 37 affirmative defenses and a counterclaim for fraud. On June 5, 2017, plaintiffs moved to dismiss US Bank's 37 affirmative defenses and counterclaim.

³ US Bank commenced an action under Kings County index No. 30554/08 to foreclose the Property, which is stayed pending a resolution of this consolidated action.

⁴ Lewis transferred one-third of his interest in the Property to plaintiff KK Greene LLC.

US Bank cross-moved for leave to file a second amended answer adding an affirmative defense and a second counterclaim for adverse possession.

The January 2018 Order

By a January 17, 2018 decision and order (January 2018 Order), this court granted those branches of plaintiffs' motion dismissing and striking all of US Bank's 37 affirmative defenses with the exception of the twenty-ninth (US Bank was not named as a defendant in the 2013 Action) and the thirty-sixth (US Bank has a valid existing lien on the Property) (NYSCEF Doc No. 669 at 3). The January 2018 Order denied plaintiffs' motion to dismiss US Bank's fraud counterclaim (*id.* at 4). The January 2018 Order also denied US Bank's cross motion to amend its answer to add a thirty-eighth affirmative defense and a second counterclaim alleging that its mortgage encumbering the Property is valid based on adverse possession of Reeves, the mortgagor (*id.* at 5).

The parties appealed and cross-appealed from the January 2018 Order.

The February 2020 Consolidation and Amendment

On November 13, 2019, Lewis moved, by order to show cause, to consolidate the 2013 and 2016 Actions. On January 7, 2020, US Bank cross-moved for leave to amend its amended answer to reflect the affirmative defenses dismissed by the January 2018 Order and a counterclaim for adverse possession, subject to the pending appeal (*see* NYSCEF Doc No. 328 at Fn.11).

By a February 20, 2020 decision and order, the court (Knipel, J.) consolidated the 2013 and 2016 Actions, granted US Bank leave to amend, deemed its second amended

answer filed as of February 20, 2020 and ordered that “the pleadings in each action shall stand as the pleadings in the consolidated action . . .” (NYSCEF Doc No. 376).

The Appellate Division’s August 19, 2020 Decision and Order

On August 19, 2020, the Appellate Division, Second Department, ***ordered*** that the January 2018 Order “is ***modified***, on the law”:

“(1) by deleting the provisions thereof granting those branches of the plaintiffs’ motion which were, in effect, pursuant to CPLR 3211 (b) to dismiss the defendant U.S. Bank National Association’s first, seventh, tenth, and sixteenth affirmative defenses, and substituting therefor provisions denying those branches of the plaintiffs’ motion, and (2) by deleting that provision thereof denying that branch of defendant U.S. Bank National Association’s cross motion which was for leave to amend its first amended answer, *and* substituting therefor a provision granting that branch of the cross motion; ***as so modified, the order is affirmed*** insofar as appealed and cross-appealed from, without costs or disbursements” (NYSCEF Doc No. 494 [emphasis added]).

Thus, the Second Department modified the January 2018 Order to reinstate US Bank’s first (failure to state a cause of action), seventh (unclean hands), tenth (release and ratification) and sixteenth (laches, waiver and/or estoppel) affirmative defenses. The Second Department also granted US Bank leave to file its proposed amended answer.

Notably, in reinstating US Bank Trust’s seventh, tenth and sixteenth affirmative defenses, the Second Department explained that:

“[w]ith respect to the defendant’s seventh affirmative defense, alleging unclean hands, waiver, and estoppel, it is well established that a party may ‘remedy any defects’ in a pleading by submitting evidence in opposition to a motion to dismiss . . . Here, the defendant submitted particularized allegations of

fraud, coupled with evidence that Lewis should have been aware that the divorce court awarded the subject property to the decedent after an inquest in 2001, that he did nothing to assert his purported interest in the subject property until 2013 when he commenced an action against Reeves and the decedent [Holliman] only, and in the meantime enjoyed the benefits of the equitable distribution to him of a large commercial property in Alabama. . . .” (*id.* at 3 [citations omitted]).

Regarding US Bank’s cross motion to amend its answer, the Second Department held that “[t]he Supreme Court should have granted the defendant’s cross motion for leave to amend its first amended answer to assert an affirmative defense alleging adverse possession” and US Bank “as mortgagee, is entitled to assert ‘a cause of action to quiet title pursuant to RPAPL 1501 based on its claim that the mortgage encumbered the entire premises because the mortgagor acquired title to the entire premises by adverse possession’” (*id.* at 4 [citations omitted]).

In a related appellate decision and order also issued on August 19, 2020, the Second Department discussed Reeves’ adverse possession counterclaim in the 2013 Action based on Holliman’s occupancy of the Property. While the appellate court agreed that Lewis met his prima facie burden of establishing that there was no *adverse* possession because Holliman’s possession of the Property was consensual, it concluded that there was a “triable issue of fact, based upon evidence that in a divorce action commenced by the plaintiff in 1999, a decision was made in 2001 to award the decedent the subject property as her distributive award, thus *evidencing that her possession thereafter was under claim of right*” (NYSCEF Doc No. 734 at 2-3 [emphasis added]).

US Bank's Instant Motion to Amend

US Bank now moves for an order granting it leave to file a third amended answer with counterclaims in the form annexed as NYSCEF Doc No. 665. Defense counsel asserts that the amendment is necessary “to reflect the [August 19, 2020] decision by the Appellate Division, Second Department which, inter alia, reinstated four affirmative defenses previously dismissed by the Court” (NYSCEF Doc No. 664 at ¶¶ 2 and 21).

Plaintiffs' Summary Judgment Cross Motion

Plaintiffs cross-move for an order granting Lewis summary judgment against Reeves on his first cause of action in the 2013 complaint alleging that the 2003 Deed is a forgery, declaring that Lewis is the rightful owner of the Property and adjudging that the 2003 Deed was a fraudulent and void conveyance and that all subsequent deeds, mortgages and liens are void, cancelled, vacated and set aside. Lewis submits a 2015 affidavit previously submitted, in which he attests that he did not sign the 2003 Deed and that Holliman took possession of the Property upon their separation with his express consent. Plaintiffs also submit an expert handwriting affidavit regarding Lewis' allegedly forged signature on the 2003 Deed and an affidavit from the notary who denied notarizing Lewis' signature on the 2003 Deed.

US Bank's Summary Judgment Motion

US Bank moves for summary judgment dismissing the 2016 complaint based on its affirmative defense that Holliman was awarded the Property as a distributive award during the 2001 inquest in the 1999 New York Matrimonial Action (NYSCEF Doc No. 803).

Discussion

(1)

US Bank's Motion to Amend

US Bank's motion to further amend its answer to reflect the Second Department's August 19, 2020 decision and order is granted. This court's January 2018 Order was *modified* on appeal by the Second Department granting US Bank leave to amend its answer to assert a counterclaim for adverse possession and to reinstate the first, seventh, tenth and sixteenth affirmative defenses and held that "as so modified, the order is affirmed . . ." (NYSCEF Doc No. 494 at 2).

Plaintiffs fail to present any ground to deny US Bank's motion to amend. Because US Bank's third amended answer merely conforms its pleading to the Second Department's August 19, 2020 decision and order, US Bank's motion to amend is granted.

(2)

The Summary Judgment Motion and Cross Motion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). "The proponent of a motion for summary judgment 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" (*Manicone v City of New York*, 75 AD3d 535, 537 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320,

324 [1986]; *see also* *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

The parties’ respective motion and cross motion for summary judgment are both denied because there are triable issues of material fact precluding such relief, including, but not limited to, whether Holliman was awarded the Property in the 1999 New York Matrimonial Action, as reflected in the 2001 inquest transcript (*see* NYSCEF Doc No. 626) and, as noted by the Second Department, whether Holliman’s possession and occupancy of the Property became hostile under claim of right after she was awarded the Property at the 2001 inquest in the 1999 New York Matrimonial Action (NYSCEF Doc No. 734). Accordingly, it is hereby

ORDERED that US Bank’s motion (mot. seq. 25) for leave to file its third amended answer in the form proposed as NYSCEF Doc No. 665 is granted and the following four affirmative defenses are hereby reinstated in accordance with the Second Department’s August 19, 2020 decision and order: (1) failure to state a cause of action; (2) unclean hands; (3) ratification; and (4) laches, waiver and estoppel. US Bank’s proposed third amended answer with counterclaims is deemed to be filed as of the date of this decision and order; and it is further

ORDERED that plaintiffs' cross motion for summary judgment and for other relief⁵ (mot. seq. 28) and US Bank's summary judgment motion (mot. seq. 29) are both denied in their entirety.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

⁵ Plaintiffs' contention regarding outstanding discovery has been considered and is rejected as a ground to strike Reeves' answer (*see* CPLR 3212 [f]; NYSCEF Doc No. 754 at 3).