

**Gilkes v Secretary of Hous. & Urban Dev. of
Washington D.C.**

2023 NY Slip Op 33609(U)

October 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 509723/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 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 12th day of October 2023

HONORABLE FRANCOIS A. RIVERA

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ESTATE OF JACQUELINE GILKES AND
KIMBERLY THOMAS AND ANTHONY PIERRE, AS
CO-ADMINISTRATORS OF THE ESTATE OF
JACQUELINE GILKES

DECISION AND ORDER
Index No. 509723/2023

Plaintiffs

-against-

THE SECRETARY OF HOUSING AND
URBAN DEVELOPMENT OF WASHINGTON D.C.
a/k/a UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT (HUD)

Defendant.

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the notices of motion of plaintiffs the Estate of Jacqueline Gilkes, Kimberly Thomas and Anthony Pierre, as co-administrators of the Estate of Jacqueline Gilkes (hereinafter the plaintiffs) filed on April 23, 2023, under motion sequence three, for an order granting a judgment declaring that the plaintiffs are the rightful sole owner a certain property located in Brooklyn, New York, free and clear of any claimed interest by defendant the Secretary of Housing and Urban Development of Washington D.C. a/k/a the United States Department of Housing and Urban Development (hereinafter the defendant or HUD) based on the defendant's failure to appear or answer the complaint.

-Notice of Motion

BACKGROUND

On March 30, 2023, the plaintiffs commenced the instant action by filing a summons, verified complaint and an order to show cause with exhibits (hereinafter the commencement papers) with the Kings County Clerk's office. The Court directed personal service of the

commencement papers on the defendant on or before April 6, 2023. The plaintiffs complied with the Court's direction on service of the commencement papers.

The verified complaint alleges the following salient facts. Since January 5, 1973, The Estate of Jacqueline Gilkes is and has been the owner of a certain property located in Kings County in the State of New York (hereinafter the subject property). Jacqueline Pierre née Gilkes (hereinafter the decedent) was married to Joseph Pierre (hereinafter husband). This union produced five children namely: Kimberly Thomas née Pierre, Anthony Pierre, Selwyn Pierre, Annadeen Diggs, and Joanne Crosson née Pierre.

In 1973 the decedent and her husband acquired the subject property from defendant HUD. The subject property was a derelict property in much need of repair. After the acquisition of the subject property, the decedent and her husband repaired the property. In 1975, the decedent and the Pierre family moved into the subject property, which became the Pierre family home until the decedent died on September 11, 2007. During the purchase of the subject property the deed was transferred to HUD. The plaintiffs allege that after the decedent purchased the subject property, HUD was required to effectuate a transfer of the deed for the subject property to the decedent but failed to do so. From 1973 to 2007, the decedent resided at the subject-property with her family and paid the monthly mortgage, taxes, and all costs related to the upkeep of subject property.

On December 19, 1996, the decedent and her husband were divorced, and as part of the divorce settlement, the plaintiff-decedent's husband surrendered his equitable share in the subject property to the decedent. Consequently, thereafter rendering the decedent the sole owner of the subject property. On May 21, 1999, the decedent effectuated the transfer

of the deed for the subject property to herself. The plaintiffs allege that the mortgage on the subject property has been paid in full and there are no outstanding mortgages.

After the decedent's death in 2007, plaintiffs Anthony Pierre and Kimberly Thomas (hereinafter the Administrators) were appointed as co-administrators of the decedent's estate in 2008. On July 27, 2016, the Administrators transferred the deed to the subject property to themselves as administrators of the decedent's estate. On December 30, 2019, the Administrators entered into a contract for the sale of the subject property. To conclude the sale, a title search was conducted which revealed the following: the deed recorded in Reel 605 at Page 1911 shows the grantee as HUD. The next deed of record recorded in Reel 4485 at Page 781 shows the grantor as the decedent. There is no deed of record from HUD to the decedent. This discrepancy must be resolved prior to closing. The plaintiffs allege that HUD has no claim, interest, rights, or title to the subject property. The decedent's estate is the sole owner in fee simple of the subject property. However, the decedent is not in the devolution of the subject property. The plaintiffs seek to quiet title against the claims, if any, by the defendant. The plaintiffs seek to quiet title in the subject property solely in their name, free and clear of any claimed interest by the defendant and seek to quiet title as of the date of the commencement of this action such that the defendant should be barred from all claims to the subject property.

LAW AND APPLICATION

Plaintiffs seeks an order pursuant to CPLR 3215 granting a default judgment on its claim for a declaratory judgment against defendant HUD. CPLR 3215(a) permits a plaintiff to seek default when the defendant has failed to appear. On motion for leave to enter a

default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting plaintiff's claim, and proof of the defaulting party's default in answering and appearance (*Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649, 651 [2d Dept 2011]). CPLR 3215(f) states that upon any application for a judgment by default, proof of the facts constituting the claim, the default, and the amount due are to be set forth in an affidavit "made by the party" (*HSBC Bank USA, N.A. v Betts*, 67 AD3d 735, 736 [2d Dept 2009]).

Defendant's Alleged Default

A plaintiff seeking to assert jurisdiction over a defendant must "bear the ultimate burden of proving by a preponderance of the evidence that jurisdiction over the defendant was obtained by proper service of process (*Gottesman v Friedman*, 90 AD3d 608, 609 [2d Dept 2011], quoting *Santiago v Honcraft*, 79 AD3d 847, 848 [2d Dept 2010]).

The affidavits of Mark Hagood, plaintiffs' process server, has established prima facie proof of proper service of the commencement papers upon the defendant.

Plaintiffs' next hurdle is a showing that HUD failed to appear or answer the complaint (*see* CPLR 3215). Pursuant to CPLR 320, a defendant appears by serving an answer or notice of appearance, or by making a motion which has the effect of extending time to answer. An appearance shall be made within twenty days after service of the summons is complete (CPLR 320[a]). The affirmation of Stephen Knights, plaintiffs' counsel, establishes that HUD did not appear or interpose an answer to the complaint.

Declaratory Judgment

Assuming proper service of the commencement papers, a plaintiff is required to set forth the facts constituting the elements of the claim to succeed on a motion to hold a defendant in default (*see* CPLR 3215[f], *HSBC Bank USA*, 67 AD3d at 736). In the case at bar the instant complaint is verified by plaintiff Anthony Pierre. Consequently, the verified complaint may serve as an affidavit of merit pursuant to CPLR 105(u). The plaintiffs also submitted a separate affidavit of Anthony Pierre. The verified complaint and additional affidavit demonstrate that the plaintiffs have a viable claim.

Pursuant to CPLR 3001, the Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a “justiciable controversy” whether further relief is or could be claimed. To constitute a justiciable controversy there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect (*see Chanos v MADAC, LLC*, 74 AD3d 1007, 1008 [2d Dept 2010]).

The primary purpose of a declaratory judgment is to stabilize an uncertain or disputed jural relationship with respect to present or prospective obligations (*Village of Woodbury v Brach*, 99 AD3d 697, 699 [2d Dept 2012], citing *Chanos*, 74 AD3d at 1008). “Where there is no necessity for resorting to the declaratory judgment it should not be employed” (*Hesse v Speece*, 204 AD2d 514, 515 [2d Dept 1994], citing *James v Alderton Dock Yards*, 256 NY 298, 305 [1931]).

Furthermore, a declaratory judgment is *ex vi termini* a judgment on the merits (*Dupigny v St. Louis*, 115 AD3d 638, 640 [2d Dept 2014]). Until disputed questions of fact

necessary to be determined before judgment can be rendered are settled, it is plain that rights and legal relations cannot be determined, defined, and declared (*id.*).

“A default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that plaintiffs establish a right to a declaration” against a defendant (*Dole Food Co., Inc. v Lincoln General Ins. Co.*, 66 AD3d 1493 [4th Dept 2009]; *see also Levy v Blue Cross and Blue Shield of Greater New York*, 124 AD2d 900, 902 [3rd Dept 1986], citing *Nat. Sur. Corp. v Peccichio*, 48 Misc 2d 77, 78 [Sup Ct, Albany County 1965]). This does not mean that the defendant can frustrate the plaintiff's claim just by defaulting, which would amount to an absurdity, or, on the other hand, that the defendant will be dragged into court (Connors, Practice Commentaries, McKinney's Cons Laws of NY, Book 7, CPLR 3001:23). Rather it means that the plaintiff must nonetheless take the stand to attest to all parts of the claim (*id.*). In ordinary actions, however, proof on a default application can be made solely on paper (*id.*).

In the instant motion, the only admissible testimony in support of a declaratory judgment are the allegations of fact set forth in the verified complaint and the additional affidavit of Anthony Pierre. The documentary evidence submitted with the commencement papers corroborated many, but not all, of the allegations of fact alleged in the verified complaint. Consequently, although the plaintiffs have established that HUD is in default in answering the complaint, and that HUD has no interest in the subject property, it has not established its right to a declaration that it owns the subject property in fee simple, free of any encumbrances (*see Dole Food Co., Inc.*, 66 AD3d at 1493).

CONCLUSION

The motion of the Estate of Jacqueline Gilkes, Kimberly Thomas, and Anthony Pierre, as co-administrators of the Estate of Jacqueline Gilkes, for a declaratory judgment against defendant the Secretary of Housing and Urban Development of Washington D.C. a/k/a the United States Department of Housing and Urban Development based on its default in answering the complaint is granted in part and denied in part.

It is granted to the extent that:

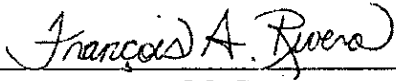
it is the Decision, Order, and Judgment of this Court that defendant the Secretary of Housing and Urban Development of Washington D.C. a/k/a the United States Department of Housing and Urban Development has no interest in the subject property.

To the extent that the plaintiffs the Estate of Jacqueline Gilkes, Kimberly Thomas, and Anthony Pierre, as co-administrators of the Estate of Jacqueline Gilkes also seek a judgment declaring that the plaintiffs are the sole owner of the subject property in fee simple free of any encumbrances, this application is denied.

Plaintiffs the Estate of Jacqueline Gilkes, Kimberly Thomas, and Anthony Pierre, as co-administrators of the Estate of Jacqueline Gilkes are directed to file a note of issue and present its proof on this issue at an inquest.

The foregoing constitutes the decision and order of this court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.