

**Genuth v Genuth**

2023 NY Slip Op 33962(U)

October 31, 2023

Supreme Court, Kings County

Docket Number: Index No. 522991/17

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

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 31<sup>st</sup> day of October, 2023.

P R E S E N T:

HON. KAREN B. ROTHENBERG,

Justice.

-----X

RUTH GENUTH and ERICA HAREL,

Plaintiffs,

- against -

Index No. 522991/17

SOL GENUTH and RIVKAH BLACHMAN,

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) Annexed\_\_\_\_\_

112-126 128-158 161-180  
200, 203-216 246-261, 263

Opposing Affidavits (Affirmations)\_\_\_\_\_

181, 219-222 224, 226-233

Reply Affidavits (Affirmations)\_\_\_\_\_

185-199 238-241

Upon the foregoing papers in this action between siblings regarding their ownership interest in the real property at 1657 46<sup>th</sup> Street in Brooklyn (Block 5434, Lot 64) (Property), a three-story, multi-family dwelling, plaintiffs Ruth Genuth (Ruth) and Erica Harel (Erica) (collectively, plaintiffs or the Genuth Sisters) move (M.S. 4) for an order, pursuant to CPLR 6513, extending the Amended Notice of Pendency that they filed against the Property on August 7, 2018 for an additional three years (NYSCEF #112).

Plaintiffs redundantly move (M.S. 7), by order to show cause, for an order, pursuant to CPLR 6613, extending the duration of their Amended Notice of Pendency which was

filed with the Kings County Clerk on August 7, 2018, for an additional three (3) years to August 7, 2024 (NYSCEF # 200). In addition, plaintiffs move (M.S. 8), by order to show cause, for an order, pursuant to CPLR 6513, extending the duration of their original Notice of Pendency which was filed with the Kings County Clerk on November 28, 2017, and was extended to November 28, 2023, for an additional three (3) years to November 28, 2026 (NYSCEF # 263).

Plaintiffs also move (in M.S. 5) for an order, pursuant to CPLR 3212, granting them partial summary judgment on the First, Second, Third, Fourth, Sixth, Seventh and Ninth causes of action asserted in the amended complaint (NYSCEF #128).

Defendants Sol Genuth (Sol) and Rivkah Blachman (Rivkah) (collectively, Defendants) move (M.S. 6) for an order, pursuant to CPLR 3212: (1) granting them partial summary judgment dismissing the First, Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh causes of action asserted in the amended complaint, and (2) granting them judgment on their first counterclaim (NYSCEF #161).

### **Background**

On November 28, 2017, the Genuth Sisters, Ruth and Erica, commenced this action against their brother Sol and his second wife, Rivkah, by filing a summons, a complaint and a notice of pendency against the Property (NYSCEF # 1-7). On August 7, 2018, plaintiffs filed an amended complaint and an amended notice of pendency against the Property (NYSCEF # 35 and # 42).

The amended complaint alleges that on or about March 17, 1997, Max and Violet Genuth, the parties' parents transferred ownership of the premises to Sol and Ruth subject to a life estate in favor of Max and Violet. The amended complaint further alleges that around 2003, Sol, Ruth and Erica agreed that they would each own a one-third interest in the Premises and thus, on November 12, 2003, Sol and Ruth transferred ownership to the Premises to Erica, Ruth and Rivkah as tenants in common. It is alleged that at Sol's request, his one-third (1/3) legal title to the Premises was placed in Rivkah's name (Sol's second wife), but Sol retained a "(1/3) equitable title to the Premises". The amended complaint further alleges, upon information and belief, that "legal title of Sol's one-third interest in the Property was placed in Rivkah's name because he was involved with litigation with his former wife and did not want assets in his name" (*id.* at ¶ 13).

The amended complaint further alleges that the parties thereafter executed deeds that did not reflect their private agreement regarding the true owners of the Property:

"In or about December, 2006 it was agreed between Ruth, Erica, Sol and Rivkah that *equitable title to the Premises would continue to be owned by Erica, Ruth, and Sol as tenants in common*, however, legal title to the Premises as reflected in the Office of the Register of the City of New York was going to be in the names of Erica and Rivkah.

"To this end, on or about December 9, 2006 Ruth executed a deed (the 'December 2006 Deed') to the Premises in favor of Erica and Rivkah with the understanding and agreement of the parties that *the transfer was for the convenience of the parties only* and that at any time upon Ruth's request, a new deed would be recorded reflecting Ruth's one-third interest in the Premises.

\* \* \*

“After the transfer contemplated by the March 2017 Deed, Rivkah continues to hold legal title to fifty percent (50%) of the Premises; however, consistent with Erica, Sol, Ruth and Rivkah’s [2003] Agreement that each of Erica, Sol and Ruth own one-third (1/3) of the Premises, one-third (1/3) of the fifty percent (50%) interest held by Rivkah is being held for the benefit of Ruth and two-thirds (2/3) of the fifty percent (50%) interest held by Rivkah is being held for the benefit of Sol” (*id.* at ¶¶ 14-15 and 27 [emphasis added]).

The Genuth siblings and Sol’s second wife, Rivkah, executed deeds on December 9, 2006 (2006 Deed), in October 2016 (2016 Deed), (which were allegedly given to Sol for recording), and again on March 27, 2017 (2017 Deed), which has never been recorded (*id.* at ¶¶ 14-26).

The amended complaint asserts 12 causes of action for: (1) specific performance of the parties’ agreement requiring Sol to record the 2016 Deed; (2) specific performance of the parties’ agreement requiring Rivkah to sign the October 2017 Deed and return it for recording; (3) a judgment declaring that Ruth is a one-third (1/3) tenant in common owner of the Property; (4) awarding plaintiffs an equitable lien of at least \$47,000.00 based on Ruth’s payment of the Property’s common expenses after her mother’s death on January 15, 2017, including real estate taxes, water, gas and electric; (5) enforcement of an equitable mortgage lien in the amount of \$211,400.00 as against Sol’s one-third (1/3) interest in the Property based on his alleged execution of a promissory note; (6) a judgment declaring that the promissory note executed by Sol is valid and enforceable; (7) a constructive trust; (8) a judgment declaring that Ruth is entitled to one-third (1/3) of the

proceeds from the sale of the Property; (9) breach of fiduciary duty based on Sol's failure to record the 2016 Deed upon his return to the United States; (10) fraud based on Sol's misrepresentation to Erica that he would record the 2016 Deed; (11) awarding plaintiffs possession of the Property; and (12) an accounting.

On September 7, 2018, Defendants answered the amended complaint, denied the material allegations therein, including the allegation that in 2003 Sol "was involved with litigation with his former wife and did not want assets in his name" (NYSCEF # 44 at ¶ 4). Defendants asserted affirmative defenses and three counterclaims for: (1) a judgment declaring that Rivkah is the owner of a 50% interest in the Property; (2) an order directing a judicial sale of the Property and a division of the proceeds amongst the parties in accordance with their respective rights and ownership interests; and (3) an accounting for the rent and/or use and occupancy that plaintiffs collected from tenants at the Property (*id.* at ¶¶ 57-63, 68 and 72). On January 28, 2021, plaintiffs filed a note of issue.

On March 8, 2021, prior to the expiration of the August 7, 2018 Amended Notice of Pendency, plaintiffs moved, pursuant to CPLR 6513, for an order extending its expiration to August 7, 2024 (NYSCEF # 117 at ¶¶ 6-17) or alternatively to extend their original November 28, 2017 notice of pendency, which was previously extended to November 28, 2023.

On March 23, 2021, plaintiffs moved for partial summary judgment on their First, Second, Third, Fourth, Sixth, Seventh and Ninth causes of action in the amended

complaint. On March 26, 2021, Defendants moved for partial summary judgment dismissing all but the Fourth and Twelfth causes of action in the amended complaint.

### Discussion

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]).

Here, no party is entitled to partial summary judgment at this juncture as the pleadings and testimony raise triable issues of fact that preclude such relief, including whether the 2003 Deed pursuant to which the parties transferred the Property from Sol and Ruth to Erica, Ruth and Rivkah was voidable as a fraudulent transfer. If so, the entire chain of title to the Property may be defective as of the 2003 Deed.

Indeed, Ruth testified at her deposition that the 2003 Deed transferred Sol's 1/3 ownership interest in the Property to Rivkah so Robin, Sol's first wife, would not have a claim to the Property (NYSCEF # 148 at 209:12-17). In addition, both Ruth and Erica testified in their affidavits that "Sol, for his personal convenience, placed his one-third (1/3) ownership interest in the Premises in his [second] wife's Rivkah's name" (NYSCEF # 152 at ¶ 5 and # 158 at ¶ 5). While Sol generally denied this allegation in his answer (NYSCEF # 44 at ¶4), he submits affidavits in which he fails to dispute or even address the Genuth Sister's testimony (NYSCEF # 164 and 221).

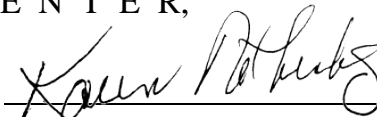
In addition, beginning in 2003, the record evidence reflects that the parties began executing a nebulous series of deeds while agreeing that they would retain their "equitable" 1/3 interest in the Property. At a minimum, this raises a serious question as to whether the parties have come to this court for equitable relief with unclean hands. Accordingly, it is

**ORDERED** that the parties' partial summary judgment motions (M.S. 5 and 6) are denied because there are issues of fact that preclude such relief; and it is further

**ORDERED** that plaintiffs' motions (M.S. 4, 7, and 8) are only granted to the extent that the original November 28, 2017, notice of pendency, which was previously extended to November 28, 2023, is hereby extended to November 28, 2026.

This constitutes the decision and order of the court.

E N T E R,

  
\_\_\_\_\_  
J. S. C.