

**Hunte v Fordice**

2024 NY Slip Op 30273(U)

January 22, 2024

Supreme Court, Kings County

Docket Number: Index No. 520434/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

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 22<sup>nd</sup> day of January 2024

HONORABLE FRANCOIS A. RIVERA

-----X  
DESNA HUNTE and DOREEN HAYNES,

Plaintiff,

- against -

LINDSAY FORDICE

Defendants.

-----X

By notice of motion filed on November 1, 2022, under motion sequence number one, defendant Lindsay Fordice, seeks an order: (1) pursuant to CPLR § 313 and 3211(a)(8) dismissing the complaint of plaintiffs Desna Hunte and Doreen Haynes for lack of personal jurisdiction, and in the event the instant motion to dismiss is denied, (2) granting defendant thirty (30) days to interpose responsive papers to the complaint.

The motion is opposed.

**BACKGROUND**

On July 19, 2022, the plaintiffs commenced the instant action for a partition and an accounting by filing a summons and verified complaint (hereinafter commencement papers) with the Kings County Clerk’s office (KCCO).

The verified complaint alleges the following salient facts. On July 29, 2020, Deslyn M. Fordice passed away. Deslyn M. Fordice, also known as Deslyn Yorke, was the mother of plaintiffs Desna Hunte and Doreen Haynes and of the defendant Lindsay

**DECISION & ORDER**

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Fordice. Both plaintiffs reside in Florida and the defendant resides in Trinidad and Tobago.

By Deed dated November 7, 2007, Deslyn M. Fordice, a/k/a Deslyn Yorke, as the life tenant, and Defendant Lindsay Fordice, as the tenant in remainder, granted a reversionary interest in the premises to plaintiffs Desna Hunte and Doreen Haynes and defendant Lindsay Fordice in equal shares as tenants in common. With the passing of their mother, plaintiffs Desna Hunte and Doreen Haynes and Defendant Lindsay Fordice own, as tenants in common, the real property located at 1258 East 3862 Street, Brooklyn, New York, designated as Block 7637, Lot 58 on the Tax Maps of the City of New York, in the County of Kings (hereinafter the Premises).

The Deed terminates the remainder interest of defendant Lindsay Fordice. As of July 29, 2020, the life estate retained by Deslyn M. Fordice, a/k/a Deslyn Yorke, extinguished and her children, plaintiffs Desna Hunte and Doreen Haynes and defendant Lindsay Fordice became fee simple owners of the premises as tenants in common. Plaintiffs Desna Hunte and Doreen Haynes each owns and possesses an undivided one-third interest in the premises and possesses fee simple title to the premises. Defendant Lindsay Fordice also owns and possesses an undivided one-third interest in the premises and possesses fee simple title to the premises.

No agreement exists between plaintiffs Desna Hunte and Doreen Haynes and defendant Lindsay Fordice governing the partition of the premises. The premises constitutes heirs' property within the meaning of § 993(e) of the Uniform Partition of Heirs Property Act. The premises is a legal three-family home with approximately 2,268

square feet of living space. The premises has two stories with three units. Each unit has four rooms. There are two bedrooms and one bathroom in each 762-square-foot unit. The premises has been appraised and, as of November 23, 2021, has a fair market value of nine hundred thousand dollars (\$900,000.00).

On or about February 3, 2022, plaintiffs Desna Hunte and Doreen Haynes offered to sell their combined two-thirds interests in the premises to defendant Lindsay Fordice at fair market value. Defendant Lindsay Fordice accepted the buy-out offer on or about March 30, 2022, but has failed to make a good faith effort to proceed with the sales transaction.

Upon information and belief, tenants or occupants have resided at the premises since July 29, 2020. Upon information and belief, defendant Lindsay Fordice has collected rent from the tenants or occupants and maintained exclusive possession of such rental income from July 29, 2020, to the present. Upon information and belief, defendant Lindsay Fordice has failed to account for all rental income received from the tenants or occupants completely and properly. Upon information and belief, defendant Lindsay Fordice has failed to produce proof of insurance coverage for the premises. The premises cannot be partitioned physically between plaintiffs Desna Hunte and Doreen Haynes and defendant Lindsay Fordice according to their respective rights and interests without causing great prejudice to the parties. The Court has personal jurisdiction over the defendant pursuant to CPLR § 302(a)(4) as defendant owns, uses, and possesses real property within the State of New York.

## LAW AND APPLICATION

On October 10, 2022, plaintiffs filed an affidavit by Anthony Ako A. Blackman (hereinafter Blackman), their process server, with the KCCO. Blackman averred the following facts. Blackman gave his address at a location on the island of Trinidad of the Republic of Trinidad and Tobago. He averred that he was a licensed bailiff and process server with Blackman's Paralegal & Associates Services T&T Limited of No. 51 Orchid Drive, Wallerfield, Arima in the island of Trinidad of the Republic of Trinidad and Tobago. He further averred that he served the commencement papers upon the defendant Lindsay Fordice by personally delivering it to the defendant on September 20, 2022, at 10:15 a.m. at the defendant's residence located at 90 Nos' 52-54 (North) Auchenskeoch Buccoo Bay Road, Carnbee, in the island of Tobago of the Republic of Trinidad and Tobago.

Defendant Lindsay Fordice has moved to dismiss the action pursuant to CPLR §§ 313 and 3211(a)(8) for lack of personal jurisdiction due to improper service of the commencement papers upon the defendant. The defendant's motion is premised on an erroneous interpretation of the requirements of CPLR 313. The defendant contends that Blackman is not a resident of the State of New York and is therefore not authorized to make service within the State of New York. Defendant further contends that Blackman is not authorized to make service in the Republic of Trinidad and Tobago because he is not a duly qualified attorney, solicitor, barrister, or equivalent in the Republic of Trinidad and Tobago. Defendant contends that Part 76 of Trinidad and Tobago's Civil Proceeding Rules, which deals with service on a person in Trinidad and Tobago of any process in

connection with civil or commercial proceedings sets forth the exclusive procedures for such. Defendant further contends that Blackman is not qualified to effectuate service of process in a civil proceeding under this Statute. Defendant also contends that Blackman's affidavit does not comply with CPLR 2309(c), and is inadmissible because it was sworn to out of State without a certificate of conformity.

CPLR § 313 authorizes service of process outside the State of New York on persons domiciled in the state or subject to the jurisdiction of New York courts under CPLR §§ 301 or 302. Service is proper under CPLR § 313 when the summons is served without the state in the same manner as service is made within the state, by any person authorized to make service within the state who is a resident of the state or by any person authorized to make service by the laws of the state, territory, possession or country in which service is made or by any duly qualified attorney, solicitor, barrister, or equivalent in such jurisdiction.

The plaintiffs have correctly contended that the omission of a certificate of conformity with the affidavit of service of Anthony Ako A. Blackman is not a fatal defect. It may be corrected nunc pro tunc. Moreover, pursuant to CPLR 2001, the Court may disregard mistakes, omissions, defects, or irregularities at any time during an action where a substantial right of a party is not prejudiced (*Midfirst Bank v Agho*, 121 A.D.3d 343 {2<sup>nd</sup> Dept 2014}). There was no prejudice to the defendant by this omission. It is therefore disregarded.

In opposition to the motion to dismiss the plaintiffs presented an affirmation Shalini R. Campell (hereinafter Campell), an attorney from the Island of Trinidad of the

Republic of Trinidad and Tobago, who is from the firm hired to effectuate service of the commencement papers on the defendant. Campell offered an expert opinion on the laws of Trinidad and Tobago pertaining to the service of commencement papers on the defendant. Campell averred, among other things, that Blackman was authorized to serve process as a baliff.

Ordinarily, a process server's affidavit of service establishes a prima facie case as to the method of service and, therefore, gives rise to a presumption of proper service (*HSBC Mortg. Corp. (USA) v Dickerson*, 150 A.D.3d 968 [2<sup>nd</sup> 2017]). It is noted that the defendant did not submit an affidavit in support of the motion. Consequently, there was no rebuttal of Blackman's allegations of fact regarding service of the commencement papers upon the defendant. The Court finds that the service of the commencement papers upon the defendant was properly made in accordance with CPLR § 313.

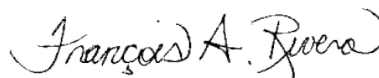
## CONCLUSION

The motion by defendant Lindsay Fordice for an order pursuant to CPLR § 313 and 3211(a)(8) dismissing the complaint of plaintiffs Desna Hunte and Doreen Haynes is denied.

The defendant has thirty days from notice of entry of the instant decision and order to interpose an answer to the complaint.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.