

Malcolm Blvd Group, Inc. v Smith

2024 NY Slip Op 30401(U)

January 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 504417/2022

Judge: Sharon A. Bourne-Clarke

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 75, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of January, 2024.

P R E S E N T:

HON. SHARON A. BOURNE-CLARKE,
Justice.

-----X

MALCOLM BLVD GROUP, INC.,
Plaintiff,

-against-

WILLIAM L. SMITH and MARGARET SMITH,
Defendants.

-----X

DECISION AND ORDER

Index No. 504417/22

Mot. Seq. Nos. 1-2

The following e-filed papers read herein:

NYSCEF Doc No.:

Notice of Motion/Cross Motion, Affidavits (Affirmations)
and Exhibits Annexed _____
Opposing Affidavits (Affirmations) and Exhibits Annexed _____
Affidavits (Affirmations) in Reply and Exhibits Annexed _____

9-17, 19-20; 22-33
34-42
43-44

In this action to quiet title to certain residential real property located at 323 Malcolm X Boulevard in Brooklyn, New York (the “property”), plaintiff Malcolm Blvd Group, Inc. (“plaintiff”) moves for leave to enter a default judgment as against defendants William L. Smith (“William”) and Margaret Smith (“Margaret” and collectively with William, the “Smiths”), whereas the Smiths’ daughter, Stephanie Smith-Warren (“Stephanie”), as the personal representative of Margaret’s estate in *Administration Proceeding, Estate of Margaret Smith*, File No. 2023-3799 (Sur Ct, Kings County), incorrectly suing herein as “The Estate of William L. Smith and The Estate of Margaret

Smith,” cross-moves for leave to intervene and, upon granting such leave, to dismiss this action, or, alternatively, permitting her to interpose an answer (motion sequence numbers 1 and 2, respectively).

FACTS

Before their respective deaths on February 20, 2019 and October 12, 2022, William and Margaret jointly owned the real property. Following William’s death on February 20, 2019, Margaret became the sole owner of the real property. Two years later in 2021, two deeds for the real property, one dated July 1, 2021 and the other, dated August 1, 2021, were purportedly executed and delivered for recording with the Office of the City Register of the City of New York (the “City Register”) by the already-deceased William and by the then-living Margaret (collectively, the “deeds”). In addition, a declaration of restrictions, dated July 1, 2021, was purportedly executed and delivered for recording with the City Register by the likewise already-deceased William and by the then-living Margaret, with both purportedly acting on plaintiff’s behalf (the “declaration”).

Both deeds, as well as the declaration, appear to have been forgeries for at least three reasons:

First, William could not have executed and delivered the deeds or the declaration because, as noted, he had already been dead.

Second, the title closer for the July 1, 2021 closing (and the one in which plaintiff advanced considerable proceeds to the impostors), attorney Abraham Hoschander, avers in his affirmation (at NYSCEF Doc No. 26) that the individuals who represented themselves

as the Smiths at the closing (and a photograph of whom he contemporaneously took) were impostors who presented him with fake identifications.

Third, Stephanie, as the personal representative of Margaret's estate and as the sole distributee of the real property under Margaret's will, avers in her affidavit (at NYSCEF Doc No. 25) that the real property was to pass to her (and that it did pass to her) under Margaret's will.

On February 11, 2022, or approximately eight months before Margaret's death, plaintiff commenced the instant action. Service of process on William and Margaret at 572 Prospect Avenue (rather than at the address of the real property at 323 Malcolm X Boulevard) was purportedly effectuated by the "nail and mail" method. After the Smiths failed to appear, plaintiff served the aforementioned motion for a default judgment. In response to plaintiff's motion, Stephanie (incorrectly suing herein as "The Estate of William L. Smith and The Estate of Margaret Smith") served the instant cross motion for leave to intervene and for other relief.

OPINION

Because William had died before this action was commenced, its commencement and continuation as against him are a nullity (*see Krysa v Estate of Qyra*, 136 AD3d 760, 760-761 [2d Dept 2016]).

Margaret's death during the pendency of this action has divested the Court of jurisdiction to act and automatically has stayed all "proceedings in the action pending the

substitution of” Stephanie as the personal representative for Margaret’s estate (*see Neuman v Neumann*, 85 AD3d 1138, 1139 [2d Dept 2011]).

Stephanie may (if she be so advised) move for an order, pursuant to CPLR 1015 (a) and 1021, requesting substitution as the representative of Margaret’s estate.

Plaintiff’s motion for leave to enter a default judgment is **DENIED**.

Stephanie’s motion (incorrectly suing herein as “The Estate of William L. Smith and The Estate of Margaret Smith”) for leave to intervene and for other relief is **DENIED**, with leave to move for substitution, pursuant to CPLR 1015 (a) and 1021.

This constitutes the Decision and Order of the Court.

ENTER



HON. SHARON A. BOURNE-CLARKE