

Rhiney v Rhiney

2024 NY Slip Op 30444(U)

February 2, 2024

Supreme Court, Kings County

Docket Number: Index No. 519132/2021

Judge: Francois A. Rivera

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 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 2nd day of February 2024

HONORABLE FRANCOIS A. RIVERA

X

SHANISE RHINEY,

Plaintiff,

-against-

DECISION & ORDER

Index No. 519132/2021

Mot. Seqs. 3, 4, 5, 6

DENISE E. RHINEY and WELLS FARGO BANK, N.A.,
1/23/2024

Oral Argument:

Defendants.

X

By notice of motion filed on April 28, 2023, under motion sequence number three, defendant, Wells Fargo Bank, NA (hereinafter WFB) has moved for an order granting partial summary judgment in its favor: (1) dismissing the tenth and eleventh causes of action asserted in the complaint of plaintiff Shanise Rhiney based upon WFB’s first affirmative defense that it is a bona fide lender for value and its eight affirmative defense that these claims are barred by the statute of limitations; (2) on its counterclaim seeking to quiet title via a declaratory judgment from the Court that the a certain mortgage is a valid encumbrance to the extent of half of a specific property; and (3) dismissing the first nine causes of action to the extent that they are even asserted against WFB for failure to state a cause of action or as being barred by the statute of limitations.

By notice of cross motion filed on June 20, 2023, under motion sequence number four, plaintiff has moved for an order pursuant to CPLR 3212 granting summary judgment in plaintiff’s favor on the cause of action to quiet title on the property and premises located at 1016 Bedford Avenue, Brooklyn, New York ("hereinafter the subject premises") pursuant to R.P.A.P.L. Article 15, and declaring that the deed dated May 14, 2004, by Defendant Denise E. Rhiney transferring the Property is void ab initio, and

removing WFB's mortgage from the subject premises and restoring sole ownership of the subject premises to the plaintiff.

By notice of motion filed on June 20, 2023, under motion sequence number five, defendant Denise E. Rhiney has moved for an order pursuant to CPLR 3212 granting summary judgment in Rhiney's favor and dismissing the complaint as asserted against Rhiney as time barred.

By notice of cross motion filed on August 22, 2023, under motion sequence number six, plaintiff has moved for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the cause of action asserted against defendant Denise E. Rhiney.

By order dated November 1, 2023, the Court directed the plaintiff to file a corrected complaint which made no changes to the written allegations of fact but rather amending the numbering of each allegation of fact. The original complaint did not have the allegations of fact properly numbered sequentially. The Court also directed the plaintiff to clarify which caused of action were asserted against which defendant. The corrected complaint was to be filed by November 23, 2023.

The plaintiff complied. Each defendant was permitted to amend their respective motions to account for the change in the complaint without changing the substance of their respective motions. The court would utilize the filing date of the original motions in assessing the timeliness of the respective filings.

LAW AND APPLICATION

The following documents filed in the NYSCEF system numbered forty-seven through one hundred and sixty-one were reviewed in determining motion sequence number three, four, five and six. After reviewing the parties motion papers and hearing oral argument the decision and order of the Court is as follows for the reason set forth herein.

As a preliminary matter, Defendant Denise E. Rhiney's motion for summary judgment, Motion Sequence five, was filed on June 20, 2023. Pursuant to the Preliminary Conference Order in this action, NYSCEF Doc. No. 18, summary judgment

motions were to be made within sixty days of the filing of the Note of Issue. The Note of Issue in this action, NYSCEF Doc. No. 46, was filed by Plaintiff on February 27, 2023. The deadline for making summary judgment motions was therefore April 28, 2023. While the Preliminary Conference Order permits the late filing of a summary judgment motion upon request with good cause shown, the Court does not find a demonstration of good cause for defendant Rhiney's filing of her motion on June 20, 2023, and as such the Court declines to consider Motion Sequence five, which is denied as untimely.

With respect to defendant WFB's motion for summary judgment, under motion sequence four and plaintiff's cross-motion for summary judgment under motion sequence number six, the Court finds that the plaintiff's cross-motion is a mirror image of WFB's motion for summary judgment, and accordingly will entertain plaintiff's motion in the exercise of its discretion. The remaining motions are resolved as follows.

There does not appear to be any genuine dispute over the following facts. Floribel Nelson ("Floribel") passed away leaving a last will and testament with plaintiff Shanise Rhiney ("Shanise") as the sole surviving beneficiary of Floribel's estate. Pursuant to the express provisions of Floribel's will, the entirety of Floribel's estate, including the subject premises was bequeathed to Shanise Rhiney. Denise Rhiney, as duly appointed Administrator C.T.A. of Floribel's estate, via an Administrator's Deed dated May 14, 2004, and recorded in the City Register of the City of New York, CFRN 2004000350774, on May 17, 2004, deeded the Premises to Shanise Rhiney and herself as joint tenants with right of survivorship. Only Denise Rhiney signed this deed. Denise Rhiney later, on or

about June 4, 2004, executed a Note and Mortgage, CFRN 2004000494607, in favor of defendant WFB. The Note was signed by Denise Rhiney. The Mortgage bears Denise Rhiney's endorsed signature and, additionally, bears what purports to be Shanise Rhiney's endorsed signature.

Wells Fargo concedes that Shanise did not sign the mortgage, but alleges without substantiation that she was aware of the mortgage. Shanise has proven by clear and convincing evidence, which was un rebutted, that she was outside of the United States at the time these instruments were executed. The Court finds that Shanise has overcome the presumption of due execution that attaches to notarized documents, and that the signature on the Mortgage is not Shanise's. Both the Note and the Mortgage, therefore, are void with respect to Shanise. For the reasons given below, the Mortgage is entirely void.

A deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid (*Selene Fin., L.P. v. Jones*, 203 A.D.3d 1191, 1194 (2d Dep't 2022)). If a document purportedly conveying a property interest is void, it conveys nothing, and a subsequent bona fide purchaser or bona fide encumbrancer for value receives nothing (*Id.*).

Contrary to WFB's arguments, the Administrator's Deed purporting to convey the subject premises to Shanise and Denise is not merely voidable, but is void ab initio, as it was obtained by fraud. There is no indication that Denise sought or had the consent of the Surrogate's Court to transfer any interest in the subject premises to herself. Because the Administrator's Deed is void, it is not subject to Shanise's ratification. A forged

deed, however, cannot convey good title, and it is legally impossible for anyone to become a bona fide purchaser of real estate, or a purchaser at all, from one who never had any title, and that is this case (see *Faison v Lewis*, 25 NY3d 220 [2015]). A purchaser who takes title through a forged deed cannot be a bona fide purchaser, even if the purchaser did not have knowledge of the forgery (*id.*).

The statute of limitations is not a defense to Shanise's claims with respect to the deed to the subject premises (See, *Faison v. Lewis*, 25 N.Y.3d 220, 226 (2015). WFB may not claim to be a good faith encumbrancer for value based on a deed which was void ab initio. *Id.* at 225.] Accordingly, since the Deed was obtained by fraud, the deed and the Mortgage, and its lien, are void in their entirety.

It is therefore ORDERED, ADJUDGED, and DECREED that:

1. Shanise Rhiney is the sole title holder of the property known as and located at 1016 Bedford Avenue, Brooklyn, New York (Block 1942, Lot 35); and,
2. Denise E. Rhiney has no title, interest, or claim to the property known as and located at 1016 Bedford Avenue, Brooklyn, New York (Block 1942, Lot 35).
3. The City Register of the City of New York is hereby ORDERED to cancel the Administrator's Deed for the property known as and located at 1016 Bedford Avenue, Brooklyn, New York (Block 1942, Lot 35), CFRN 2004000350774.
4. The Mortgage made in favor of Wells Fargo Bank, N.A., dated June 4, 2004, and any lien it purports to lodge against the property known as and located at 1016 Bedford Avenue, Brooklyn, New York (Block 1942, Lot 35) is void.

5. The City Register of the City of New York is hereby ORDERED to cancel the Mortgage, CFRN 2004000494607; and,
6. The Note made on or about June 4, 2004, in favor of Wells Fargo is declared to have no binding effect as to Shanise Rhiney only, and Wells Fargo Bank, N.A. is forever barred from asserting any claim related to said Note as against Shanise Rhiney.
7. Pursuant to RPAPL § 1521(1), the Defendant, Denise E. Rhiney, is hereby ORDERED, at her sole expense, within ten (10) days of the entry of this Order, to deliver to the plaintiff, Shanise Rhiney, a duly written, executed, and endorsed Administrator's Deed, in recordable form, granting the property known as and located at 1016 Bedford Avenue, Brooklyn, New York (Block 1942, Lot 35) to Shanise Rhiney alone in fee simple absolute. All relief not specifically addressed by this Order has been considered and denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.