

Van Bergen v Lefferts-St. Marks Ave. LLC

2024 NY Slip Op 31885(U)

May 8, 2024

Supreme Court, Kings County

Docket Number: Index No. 507561/2022

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 57 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 8th day of May, 2024.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

LESLEY RAMESHWAR VAN BERGEN, AS
PRELIMINARY EXECUTOR OF THE ESTATE OF
KENNETH VAN BERGEN,

Plaintiff,

- against -

Index No. 507561/22

LEFFERTS-ST. MARKS AVE LLC, CONSTITUTION
CREDIT LLC, LORETTA VAN BERGEN, THE NEW
YORK STATE DEPT. OF TAXATION & FINANCE and
THE NEW YORK CITY DEPT. OF FINANCE,

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)_____

18-26 31-73

Opposition (Affirmations)_____

32-73 74

Upon the foregoing papers in this action involving the real property at 101 Lefferts Avenue in Brooklyn (Block 1318, Lot 68) (Property), non-party Reigo Securitization Sponsor 2021-1, LLC (Reigo), as “assignee of and successor” to defendant Constitution Credit LLC (Defendant Constitution) moves (in motion sequence [mot. seq.] one) for an order, pursuant to CPLR 3215: (1) granting a default judgment in favor of Defendant Constitution and against plaintiff Lesley Rameshwar Van Bergen (Plaintiff or Rameshwar), as Preliminary Executor of the Estate of Kenneth Van Bergen (Decedent or

Kenneth), for the relief demanded in Defendant Constitution's counterclaim; (2) granting a default judgment in favor of Defendant Constitution and against defendant Lefferts-St. Marks Ave LLC (Defendant LLC) for the relief demanded in Defendant Constitution's cross-claims; (3) granting a default judgment in favor of Defendant Constitution and against defendant Loretta Van Bergen (Loretta) for the relief demanded in Defendant Constitution's cross-claims; and (4) substituting Reigo as a defendant in the place of Defendant Constitution and amending the caption accordingly.

Plaintiff Rameshwar cross-moves (in mot. seq. two) for an order, pursuant to CPLR 1001-1003 and 5015 (a) (1)-(3): (1) consolidating this action with a 2022 action to foreclose a mortgage encumbering the Property, captioned *Reigo v Lefferts-St. Marks*, Kings County index No. 531467/22 (the Foreclosure Action), and, upon consolidation, amending the caption; (2) vacating her default in failing to file a timely reply to Reigo's counterclaim in this action; (3) granting her leave to file a late reply to Reigo's counterclaim and deeming her proposed reply served and filed; (4) dismissing the Foreclosure Action as against her for lack of personal jurisdiction or, alternatively; (5) vacating her default in the Foreclosure Action; and (6) granting her leave to file a late answer in the Foreclosure Action.¹

¹ Rameshwar's Notice of Cross-Motion also requests "such other or further relief as this Court may find just and proper, including . . . severing Reigo's Counter-Claims . . . and referring them to the Kings County Surrogate . . ." (NYSCEF Doc No. 31 at 3).

Background

On March 15, 2022, Rameshwar commenced this action as “Preliminary Executor” of the Estate of her “late husband,” Kenneth Van Bergen, by filing a summons, a verified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-3). The complaint alleges that “[a]t the time of his death [in 2009], the late Mr. Van Bergen and Mrs. Rameshwar Van Bergen resided together at [the Property] subject to this action” and “Loretta Van Bergen, was and is the divorced wife of the late Kenneth Van Bergen” (NYSCEF Doc No. 2 at ¶¶ 2 and 5).

The complaint alleges that Kenneth and Loretta took joint title to the Property in 1970 as husband and wife, but Kenneth divorced Loretta in 1998 in South Carolina and married Rameshwar in 1999 (*id.* at ¶¶ 9-11). Kenneth died in 2009 leaving a 2008 Will naming Rameshwar as Executor. Thereafter, the Kings County Surrogate’s Court issued Preliminary Letters Testamentary to Rameshwar in 2010 (*id.* at ¶¶ 12-14). Loretta allegedly “filed Objections to Probate before Preliminary Letters were issued. . . and her Letters, as extended in 2013, limited [Rameshwar’s] authority . . .” pending resolution of Loretta’s objections (*id.* at ¶ 15). The complaint specifically alleges that:

“Loretta . . . essentially, asserted in the Surrogate’s Court that she automatically became the full, 100%, owner of [the Property] upon Mr. Van Bergen’s death in 2009 because his 1998 Divorce Decree was null and void for failure to obtain personal jurisdiction over her at the time.

“Mrs. Rameshwar . . . in opposition, asserted that the South Carolina divorce was lawfully obtained and, as a consequence, title to [the Property] automatically was separated upon their

divorce in 1998, into a 50% interest in title to the late Mr. Van Bergen and a 50% interest in title to [Loretta]" (*id.* at ¶¶ 17-18).

In March 2011, the Surrogate's Court "assumed full jurisdiction over disputes flowing from [Loretta's] Objections . . ." and "[t]he South Carolina Court remanded all disputes concerning the validity of the divorce to the Kings Co[unty] Surrogate's Court by Order issued in 2016" (*id.* at ¶¶ 16 and 20). The complaint also describes Loretta's prior action for partition of the Property commenced on February 25, 2020 against Rameshwar in the Kings County Supreme Court,² and alleges that "[i]n the middle of 2021 the Supreme Court denied Loretta Van Bergen's motion for summary judgment on the grounds that the Surrogate had sole jurisdiction over the estate and title disputes at bar" (*id.* at ¶¶ 22-27).

The complaint alleges that Loretta, "eleven days later" "signed a Deed fabricated to create the appearance that she was transferring 100% of 'her' title to [the Property] to the lead Defendant-LLC . . ." (*id.* at ¶ 30). The Defendant LLC, in alleged collusion with Loretta, allegedly took out a \$900,000.00 mortgage from Defendant Constitution in November 2021, which paid off the Decedent's old mortgage encumbering the Property (*id.* at ¶¶ 33-36). The Defendant LLC allegedly advised Rameshwar that "it 'purchased' her home from Ms. Loretta Van Bergen and [as a] consequence to that purchase it proposed to evict her" (*id.* at ¶ 44).

² See *Loretta Van Bergen v Leslie Rameshwar*, Kings County index No. 586/20 (NYSCEF Doc No. 62).

Rameshwar's complaint asserts six causes of action for: (1) an order "amending her prior Preliminary Letters Testamentary and extending her limited authority as Preliminary Executor to prosecut[e] this action" (*id.* at ¶ 53); (2) an order "directing that all of the Defendants to this action be and hereby are deemed to be claimants, counter-claimants or interested parties in the estate and title disputes presently pending before the Kings Co. Surrogate . . ." (*id.* at ¶ 57); (3) a judgment declaring "both the Deed and the Mortgage to be void *ab initio*, pending ultimate resolution by the Kings County Surrogate of the estate and title disputes presently under its exclusive jurisdiction" (*id.* at ¶ 64); (4) an order granting an injunction "barring [Defendant LLC] from transferring, selling or encumbering title for [the Property] presently subject to the Surrogate's jurisdiction without final resolution of the disputes before the Surrogate or without an Order or Decree approving sale, transfer or encumbrance from the Surrogate" (*id.* at ¶ 69); (5) an order imposing punitive damages upon defendants for "title fraud, title theft and tax fraud committed or co-committed for the purpose of enriching the Defendants at the expense of Mrs. Rameshwar Van Bergen" (*id.* at ¶¶ 71-74); and (6) an order "remanding any and all remaining issues of fact and law to the Kings County Surrogate for final adjudication" (*id.* at ¶ 78).

Reigo's Answer, Counterclaim and Cross-claims

On August 4, 2022, Reigo, as "assignee of and successor to" Defendant Constitution answered the complaint, denied the material allegations therein and asserted affirmative defenses, including that "[t]he Supreme Court is a court of general jurisdiction[.]"

“Defendant is an innocent bona fide purchaser for value [.]” “Defendant is entitled to a priority equitable mortgage lien on the Premises to the extent that the proceeds from the loan were used to pay and satisfy prior liens and taxes for the benefit of the Premises” and “[t]his Court does not have the right to amend or modify decrees and orders from the Surrogate’s Court” (NYSCEF Doc No. 10 at ¶¶ 9-10, 15 and 20). Reigo’s answer also asserts a counterclaim against Rameshwar for “a judgment declaring Defendant’s mortgage to be a priority lien encumbering the Premises” (*id.* at ¶ 39), a cross-claim against Defendant LLC for indemnification and cross-claims against Loretta for fraudulent misrepresentation and fraudulent inducement (because she allegedly misrepresented that she was married to the Decedent continuously until his 2009 death) (*id.* at ¶¶ 53-63) and breach of the covenant of title in the deed to the Property (*id.* at ¶¶ 70-74).

Reigo’s Instant Motion

On March 13, 2023, Reigo, as assignee of and successor to Defendant Constitution, made the instant motion seeking, among other things, a default judgment on its counterclaim against plaintiff and substituting it in place and stead of Defendant Constitution in this action (NYSCEF Doc No. 18). Reigo submits an attorney affirmation asserting that Reigo is entitled to a default judgment “declaring Reigo’s mortgage to be a priority lien encumbering the Premises” because its counterclaim “allege[s] that Reigo is a bona fide encumbrancer of the Premises since Loretta Van Bergen was the rightful owner of the Premises when she conveyed title to Reigo’s mortgagor, [Defendant LLC]” (NYSCEF Doc No. 19 at ¶¶ 11-13).

Reigo also seeks default judgments against Defendant LLC and Loretta, both of which failed to appear or reply to Reigo's cross-claims. This branch of Reigo's motion is unopposed.

Rameshwar's Cross-Motion

On August 15, 2023, Rameshwar opposed Reigo's motion and cross-moved for an order vacating her default in failing to timely reply to Reigo's counterclaim based on her counsel's law office failure when he was "distracted by medical emergencies at home" (NYSCEF Doc No. 32 at ¶¶ 20-21). Rameshwar also seeks an order vacating her default in the Foreclosure Action on the ground that she was not properly served with process, or, alternatively, dismissing the Foreclosure Action for lack of personal jurisdiction (NYSCEF Doc No. 33 at ¶¶ 17-26) and an order consolidating this action with the Foreclosure Action.

Discussion

(1)

A party seeking to vacate a default in appearing pursuant to CPLR 5015 (a) (1) must demonstrate a reasonable excuse for the default and a potentially meritorious defense . . .” (*92-18 149th Street Realty Corp. v Stolzberg*, 152 AD3d 560, 562 [2017] [internal quotations omitted]). “Whether an excuse is reasonable is a determination within the sound discretion of the Supreme Court” (*Crevecoeur v Maitam*, 172 AD3d 813, 814 [2019] [quoting *Walker v Mohammed*, 90 AD3d 1034, 1034 (2011)]). Furthermore, where a default in appearing results from law office failure, the court may “exercise its discretion

in the interest of justice to excuse delay or default . . .” pursuant to CPLR 2005 (*JP Morgan Chase Bank, N.A. v Russo*, 121 AD3d 1048, 1049 [2014]).

Similarly, pursuant to CPLR 3012 (d),³ “[i]n light of the public policy favoring the resolution of cases on their merits, the Supreme Court may compel a [counterclaim] plaintiff to accept an untimely [reply] (*see* CPLR 2004, 3012 [d]) where the record demonstrates that there was only a short delay in appearing or answering the [counterclaim], that there was no willfulness on the part of the [counterclaim] defendant, that there would be no prejudice to the [counterclaim] plaintiff, and that a potentially meritorious defense exists” (*Yongjie Xu v JJW Enterprises, Inc.*, 149 AD3d 1146, 1147 [2017]).

Here, where the failure to timely reply to Reigo’s counterclaim was the result of law office failure due to counsel’s family illness, this action is in its early stages, Rameshwar has a potentially meritorious defense to Reigo’s counterclaim based on Loretta’s allegedly fraudulent conveyance of the Property to the Defendant LLC, and there is no discernable prejudice to Reigo, that branch of Rameshwar’s cross-motion to excuse her delay in replying to Reigo’s counterclaim and deeming her proposed reply (NYSCEF Doc No. 56) served and filed is granted.

Consequently, that branch of Reigo’s motion seeking a default judgment on its counterclaim asserted against Rameshwar is denied.

³ Although Rameshwar specifically cross-moves pursuant to CPLR 5015, her cross-motion also requests “such other or further relief as this Court may find just and proper . . .”

(2)

“A motion for consolidation is addressed to the sound discretion of the court, and absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact” (*RCN Constr. Corp. v Fleet Bank, N.A.*, 34 AD3d 776, 777 [2006]). “A motion to consolidate should be granted absent a showing of prejudice to a substantial right by a party opposing the motion” (*Hanover Ins. Group v Mezanisky*, 105 AD3d 1000, 1001 [2013]).

Here, consolidation of the Foreclosure Action and this proceeding regarding the Property is manifestly warranted because they involve identical questions of law and fact, including the threshold issues of: (1) the validity of the Decedent’s 1998 divorce from Loretta; (2) Loretta’s ownership interest, if any, in the Decedent’s Property upon his 2009 death; (3) the validity of the deed transferring the Property from Loretta to the Defendant LLC; and (4) the validity of the mortgage executed by the Defendant LLC allegedly encumbering the Property. Further, failure to consolidate could result in inconsistent rulings.

(3)

The Supreme Court and the Surrogate’s Court have concurrent jurisdiction over matters which involve decedents’ estates (*see Ruiz v Ruiz*, 262 AD2d 392 [1999]). Pursuant to Article VI, §12 of the New York State Constitution, the jurisdiction of the Surrogate’s Court extends to “all actions and proceedings relating to the affairs of decedents, probate

of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto.” SCPA 202 provides that the Surrogate’s Court is “empowered in any proceeding, whether or not specifically provided for, to exercise any of the jurisdiction granted to it by this act or other provisions of law, notwithstanding that the jurisdiction sought to be exercised in the proceeding is or may be exercised in or incidental to a different proceeding.” As is also relevant here, SCPA 209 (4) provides that the Surrogate’s Court is authorized to determine a decedent’s interest in any property claimed to constitute a part of his gross estate and to determine the rights of any persons claiming an interest therein, as against the decedent, or as between themselves, and to construe any instruments made by him affecting such property (*Carmel v. Shor*, 250 AD2d 475 [1998]). Further, it is the general rule that “the Supreme Court ordinarily refrains from exercising the concurrent jurisdiction where all the relief requested may be obtained in the Surrogate’s Court and where the Surrogate’s Court has already acted” (*H & G Operating v Linden*, 151 AD2d 898, 900 [1989], quoting *McCoy v. Bankers Fed. Sav. & Loan Assn.*, 131 AD2d 646, 648-649 [1987], quoting *Dunham v Dunham*, 40 AD2d 912, 913 [1972]). Finally, where the affairs of an estate are involved, the “interests of judicial economy dictate a strong preference for removal” to the Surrogate’s Court (*Birnbaum v Central Trust Co.*, 156 AD2d 309, 309 [1989]).

As recognized by this court and by the Kings County Surrogate’s Court, the threshold issues and disputes regarding the Decedent’s estate and title to the Decedent’s Property are within the exclusive jurisdiction of the Kings County Surrogate’s Court

(NYSCEF Doc Nos. 40 and 63). Transfer of the Foreclosure Action to the Kings County Surrogate's Court along with this action, as consolidated, is warranted since the validity of the mortgage executed by Defendant LLC in favor of Reigo's alleged predecessor hinges on the validity of the Decedent's 1998 divorce from Loretta and Loretta's ownership interest, if any, in the Decedent's Property upon his 2009 death. Indeed, it is axiomatic that "[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" (*Cruz v Cruz*, 37 AD3d 754, 754 [2007]). If the Kings County Surrogate's Court finds that Loretta lacked an ownership interest in the Decedent's Property because her divorce from the Decedent was valid, her transfer of the Property to Defendant LLC would be void and the mortgage invalid. Accordingly, it is hereby

ORDERED that Reigo's motion (in mot. seq. one): (1) for an order substituting Reigo in place of Defendant Constitution is granted and the caption is hereby amended accordingly; (2) for a default judgment on its counterclaim asserted against Rameshwar is denied; and (3) for a default judgment on its cross-claims asserted against Defendant LLC and Loretta is denied without prejudice to renewal before the Surrogate's Court as such underlying issues relate directly, or in part, to the Decedent's estate; and it is further

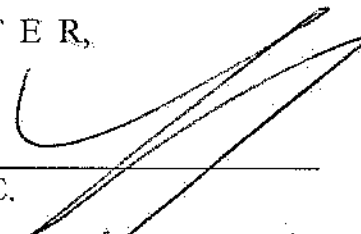
ORDERED that Rameshwar's cross-motion (in mot. seq. two) is only granted to the extent that: (1) Rameshwar's default in failing to timely reply to Reigo's counterclaim is vacated and her proposed reply is deemed to be served and filed (NYSCEF Doc No. 56), and (2) this action is consolidated for all purposes with the Foreclosure Action under Kings

County index No. 507561/22. Those branches of Rameshwar's cross-motion seeking to vacate her appearance default in the Foreclosure Action or dismissing the Foreclosure Action are denied without prejudice to renewal before the Surrogate's Court; and it is further

ORDERED that this consolidated action is hereby transferred to the Kings County Surrogate's Court, which has exclusive jurisdiction to determine the merits of Loretta's objections regarding the Decedent's estate and title to the Property. Thus, these matters are hereby transferred in their entireties to the Surrogate's Court, King County, for disposition. Upon service of a copy of this order with notice of entry, the Clerk of this court is directed to forward the files on these consolidated actions to the Clerk of the Surrogate's Court.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE