

Hasin v Hasin

2024 NY Slip Op 34845(U)

September 19, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 614881/2022

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

INDEX No. 614881/2022

CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 07/25/2024
SUBMIT DATE 09/05/2024
Mot. Seq. # 01 - MG

-----X
CLIFFORD HASIN,

Plaintiff,

-against-

RHONDA KIM HASIN,

Defendant.
-----X

KEVIN J. ABRUZZESE

Attorney for Plaintiff
16 Middleneck Road #656
Great Neck, NY 11021

DOUGLAS M. REDA, ESQ.

Attorney for Defendant
180 Froehlich Farm Boulevard
Woodbury, NY 11797

Upon the following papers numbered 16 - 28, 31 - 37 read on this motion to dismiss affirmative defenses and for summary judgment and other relief; Notice of Motion/ Order to Show Cause and supporting papers 16 - 28; ~~Notice of Cross Motion and supporting papers~~; Answering Affidavits and supporting papers 31 - 32; Replying Affidavits and supporting papers 33 - 27; ~~Other~~; (and after hearing counsel in support and opposed to the motion) it is,

The plaintiff, Clifford Hasin, moves for an order pursuant to CPLR 3211(b) dismissing the defendant's affirmative defenses and pursuant to CPLR 3212 granting plaintiff summary judgment. The plaintiff also moves for an order directing the defendant, Rhonda Kim Hasin, to execute and file a proper deed for the subject premises located at 6 Arleigh Road, East Northport, New York and compelling the defendant to obtain hazard insurance for the subject premises. Finally, plaintiff moves for an order awarding the plaintiff attorney's fees in the amount of \$3,500.00 plus costs and disbursements in the amount of \$651.00. The defendant opposes plaintiff's applications in all respects.

The plaintiff commenced this action for breach of fiduciary duty alleging that defendant, the executor of the Estate of Jordan B. Hasin (the parties deceased father), owed and continues to owe a fiduciary duty to plaintiff and that defendant has breached that duty by wrongfully converting and encumbering the subject premises despite the directives of decedent's Last Will and Testament (hereinafter "the Will"). The plaintiff specifically alleges that the Will devised a life estate to the defendant in the subject premises, but upon termination of the life estate, the Will bequeathed fifty percent of the proceeds from the sale of the subject property to defendant and the remainder of the proceeds in equal shares to defendant, plaintiff, Jody Hasin, and Jamie Zipnick. The plaintiff claims that despite the Will's directives, the defendant improperly filed a deed transferring the subject premises to herself as sole grantee without naming the other remaindermen. The defendant filed an answer in this action that includes three affirmative defenses.

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Motion to Dismiss Affirmative Defenses

Pursuant to CPLR 3211(b), “[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.” When moving to dismiss an affirmative defense, the plaintiff bears the burden of demonstrating that the affirmative defense is “without merit as a matter of law” (*Vita v New York Waste Servs., LLC*, 34 AD3d 559, 559 [2006]; see *Ramanathan v Aharon*, 109 AD3d 529, 531 [2013]). The plaintiff’s motion will be granted if they can demonstrate that the “defenses are without merit as a matter of law because they either do not apply under the factual circumstances of [the] case, or fail to state a defense.” *Bank of Am., N.A. v. 414 Midland Ave. Assoc., LLC*, 78 A.D.3d 746, 911 N.Y.S.2d 157 (2d Dept. 2010). “In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference” (*Fireman's Fund Ins. Co. v Farrell*, 57 AD3d 721, 723 [2008]; see *Mazzei v Kyriacou*, 98 AD3d 1088, 1089 [2012]) (*Bank of N.Y. v. Penalver*, 125 A.D.3d 796, 797, 1 N.Y.S.3d 825 (2d Dept. 2015)).

Defendants answer states as follows:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Court lacks jurisdiction over the defendant because service was defective.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. The relief requested in Plaintiff’s Complaint is barred by the doctrine of Laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. The relief requested in Plaintiff’s Complaint is barred by the Statute of Limitations.

Where affirmative defenses “merely plead conclusions of law without any supporting facts,” the affirmative defenses should be dismissed pursuant to CPLR 3211(b) (*Bank of America, N.A. v. 414 Midland Ave. Associates, LLC*, 78 A.D.3d 746, 750, 911 N.Y.S.2d 157, 161 (2d Dept. 2010)). In opposition to plaintiff’s motion, defendant failed to allege any facts in support of her affirmative defense of statute of limitations. Additionally, defendant failed to make a 3211(e) motion regarding improper service within 60 days of her answer or within 60 days of plaintiff’s service of the complaint. Moreover, while defendant did allege facts to support her affirmative defense of laches by submitting documentary evidence showing that plaintiff may have known of the recorded deed by defendant since 2011, but did not file the instant action until 2022, she failed to allege any facts showing prejudice to her as a result of plaintiff’s alleged inaction. Accordingly, plaintiff’s motion to dismiss all of defendant’s affirmative defenses is granted.

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Motion for Summary Judgment

CPLR §3212(b) states that a motion for summary judgment “shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admission.” If an attorney lacks personal knowledge of the events giving rise to the cause of action or defense, his ancillary affidavit, repeating the allegations or the pleadings, without setting forth evidentiary facts, cannot support or defeat a motion by summary judgment (*Olan v. Farrell Lines, Inc.*, 105 AD 2d 653, 481 NYS 2d 370 (1st Dept., 1984; aff’d 64 NY 2d 1092, 489 NYS 2d 884 (1985)); *Spearman v. Times Square Stores Corp.*, 96 AD 2d 552, 465 NYS 2d 230 (2nd Dept., 1983); Weinstein-Korn-Miller, *New York Civil Practice* Sec. 3212.09)).

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790 [1979]). To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must “show facts sufficient to require a trial of any issue of fact” CPLR3212 [b]; *Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (*Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (*see S.J. Capelin Associates v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (*Prunty v Keltie's Bum Steer*, 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned and there is nothing to be tried, then summary judgment should be granted (*Prunty v Keltie's Bum Steer, supra*, citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 239 NE2d 725 [1968]; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd*, 66 NY2d 701, 496 NYS2d 425, 487 NE2d 282).

In order to establish a breach of fiduciary duty, a plaintiff must prove the existence of a fiduciary relationship, misconduct by the defendant, and damages that were directly caused by the defendant’s misconduct. *Kurtzman v. Bergstol*, 40 A.D.3d 588, 835 N.Y.S.2d 644 (2d Dept. 2007). Based upon a review of the motion papers, the Court concludes that the plaintiff has established his entitlement to judgment as a matter of law. In opposition, the defendant failed to raise a triable issue of fact. Therefore, plaintiff’s motion for summary judgment is granted.

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ORDERED that a copy of this order shall be served by the plaintiff on defendant's attorney by regular mail on or before October 11, 2024; and it is further

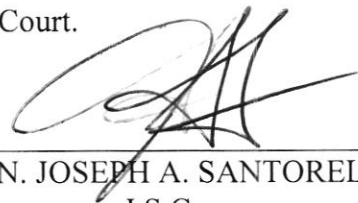
ORDERED that defendant is hereby directed to execute and file a deed transferring the subject property to the remaindermen for their respective shares and retaining a life estate for herself in accordance with the Will on or before November 29, 2024; and it is further

ORDERED that defendant is hereby directed to obtain hazard insurance for the subject property naming the remaindermen as insureds on or before November 29, 2024 and defendant shall serve plaintiff and the remaindermen with a copy of such hazard insurance policy by December 6, 2024 and thereafter provide defendant and the remaindermen of any renewal or termination of said insurance within twenty days thereafter; and it is further

ORDERED that defendant shall pay plaintiff's attorneys fees in the amount of three thousand five hundred dollars (\$3,500.00), together with costs and disbursements in the amount of six hundred fifty one dollars (\$651.00), to plaintiff within thirty (30) days of service of a copy of this order.

The foregoing constitutes the Decision and Order of this Court.

Dated: September 19, 2024



HON. JOSEPH A. SANTORELLI
J.S.C.

X FINAL DISPOSITION NON-FINAL DISPOSITION