

Villa v Villa

2025 NY Slip Op 31986(U)

June 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 510589/2021

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2nd day of June 2025

PRESENT: HON. ANNE J. SWERN, J.S.C.

DAISY C. VILLA and DIANA VILLA,

Plaintiff(s).

-against-

HERBERT VILLA,

Defendant(s).

DECISION & ORDER

Index No.: 510589/2021

Calendar No.: 50 & 51

Motion Seq.: 003 & 004

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 54-89).....	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 91-93).....	3
Reply Affirmation and Exhibits (NYSCEF 94-95).....	4
Notice of Cross-Motion, Affirmation, Affidavits and Exhibits (NYSCEF 74-90).....	3, 4
Affirmation and Exhibits in Opposition (NYSCEF 94-95).....	5
Reply Affirmation and Exhibits (NYSCEF 96).....	6

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is a partition action pursuant to RPAPL § 901 [1] for the partition and sale of 172 10th Street, Brooklyn, New York 11215. Plaintiffs have now moved for summary judgment seeking an order directing a partition and sale of the property.

The parties are the children of Gloria Rodriguez, deceased. Before her demise, Gloria transferred title in the property to her children. This deed contained the following condition:

This conveyance is made upon the express condition, and the parties of the second part covenant that this property shall not be sold or conveyed before August 30, 2029. Each of

the parties of the second part shall share equally in the cost, maintenance, upkeep, and all expenses to operate the property. *Should any party of the second part default and fail to contribute his/her share for a period of one year, then that party's interest shall transfer to the remaining two parties. (italics added).*

In 2010, a RPAPL Article 15 proceeding was commenced against Herbert, Daisy and Diana to void the deed based on fraud when Gloria took title. This action bearing Index #21042/2010 was settled in 2019. Pursuant to the settlement, the plaintiffs relinquished all claims to the property in exchange for a confession of judgment signed by Herbert in the amount of \$500,000.00 to settle all claims against the three of them.

As part of the settlement, Diana and Daisy executed general releases in favor Herbert in August 2019 and October 2020. In 2020, Diana and Daisy each executed a quitclaim deed in favor of Herbert. They allege that Herbert led them to believe that it was part of the settlement in the 2010 lawsuit. Once Daisy and Diana realized their belief was incorrect, they refused to sign any further documents to effectuate the transfer of title to Herbert. The attorneys who prepared the quitclaim deeds represented Herbert, Daisy and Diana in the separate lawsuit. While the 2010 action was pending, Herbert as the Executor of Gloria's estate conveyed title to himself, Daisy and Diana. It is through this deed that Daisy and Diana claim title to the property.

Defendant served an answer denying these allegations and asserting a counterclaim pursuant to RPAPL § 1501 for an order and judgment compelling plaintiffs to execute the necessary documents to complete the transfer of the property to him. Defendant has now cross-moved for judgment on his counterclaim and dismissal of plaintiffs' complaint.

Defendant commenced a separate action against Daisy and Diana under Index #516225/2020 for the relief requested in his counterclaim. Defendant argues that releases and quitclaim deeds were part of global settlement of the 2010 action and his action against Daisy

and Diana. It is defendant's position that plaintiffs agreed to relinquish their interest in the property in exchange for defendant paying the \$500,000.00 settlement from his own funds.

Both motions are denied. Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

While plaintiffs met their *prima facie* burden, defendant established that a question of fact exists whether plaintiffs are entitled to an order and judgment of partition. Defendant has established that a jury must determine the credibility of the parties that defendant led them to believe that the quitclaim deeds were to settle the action commenced against all of them rather than surrendering their interest to the property for no value. Plaintiffs' allegations are further rebutted by the fact that when the general releases were executed after the commencement of Herbert's lawsuit against them for the same relief requested in his counterclaim and then executed the quitclaims deeds in December 2020.¹ Therefore, a jury must determine whether their belief that they were not relinquishing their interest in the property for no value is credible.

There are also questions of fact concerning the 2016 Executor's Deed. The property was transferred to the parties before Gloria's death. Therefore, the 2016 Executor's Deed appears to be a nullity since the property was transferred *inter-vivos* outside of Gloria's estate. If this deed is a nullity, Daisy and Diana may have forfeited their interest in the property under the terms of the 2009 deed by failing to pay their equal share of the \$500,000.00 settlement. The Court cannot speculate as to the facts and circumstances surrounding this deed.

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied (MS 001), and it is further

¹ Herbert's action is still pending.

ORDERED that defendant's cross-motion to dismiss the complaint is denied.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated 6/2/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____