

Beneficial Mtge. Corp. v Kirton

2025 NY Slip Op 32859(U)

July 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 40349/1997

Judge: Cenceria P. Edwards

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At an IAS Term, Part FRP1 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 17th day of July, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS, C.P.A.,

Justice.

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BENEFICIAL MORTGAGE CORPORATION,

Plaintiff(s),

-against-

ARLENE KIRTON a/k/a ARLENE HEWITT KIRTON, Individually and as Administratrix of the ESTATE OF PEARL BOYEA, and Successor Executrix of the ESTATE OF LESTELLE SLATER, ALLISON I. MAHON WILLIAMS a/k/a INGRID CHICHESTER, NALAN MAHON a/k/a NALANI MAHON, et al.,

Defendant(s).

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ORDER

Motion Cal. Date: 11/8/2023

Calendar #(s): 1

Index #: 40349/1997

Mot. Seq. #(s): 7

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion, Affidavits (Affirmations) and Exhibits _____

22-42

Opposing Affidavits (Affirmations) and Exhibits _____

43-44

Reply Affidavits (Affirmations) and Exhibits _____

45-47

This residential mortgage foreclosure action concluded with the sale of the mortgaged premises at a public auction on or about November 17, 2005, which generated a surplus of \$56,033.60, which was deposited by the Referee into the Court on or about April 20, 2006, and later transferred to the New York City Department of Finance. On March 3, 2021, the Office of the State Comptroller of the State of New York (“Office of the State Comptroller”) certified that in April of 2012, it received surplus funds in the amount of \$63,527.87 from the New York City Department of Finance and has held that amount “plus statutory interest” since then. (*See* NYSCEF Doc. #s 30, 31, and 36.)

Now, in motion sequence (“mot. seq.”) #7, Atlantis Asset Recovery LLC (“Atlantis”), purporting to act on behalf of Percivon Boyea and Ingrid Chichester (together, the claimants”)

pursuant to separate notarized asset recovery agreements (*see* NYSCEF Doc. # 37), moves for an order confirming the Referee's report of sale and directing the Office of the State Comptroller to disburse the surplus monies to Atlantis and the claimants.¹ Atlantis previously moved for the same relief in mot. seq. #6. By order entered October 14, 2022, the undersigned denied that motion with leave to renew upon submission of, inter alia, certified documents from the Surrogate's Court identifying the proper heirs to the estates of Lestelle Slater and mortgagor Pearl Boyea, both of whom jointly owned the mortgaged premises as tenants-in-common and predeceased this foreclosure action (*see* NYSCEF Doc. #21 [order], 25 [deed], 26-27 [respective death certificates]).

On the instant motion, Atlantis seeks to remedy the deficiencies identified in this Court's October 2022 order. Annexed as Exhibits "C" and "D" are copies of certified death certificates for Lestelle Slater and Pearl Boyea (*see* NYSCEF Doc. #s 26 and 27). Exhibit "Q" contains, inter alia, certified copies of various documents from the Surrogate's Court comprising, inter alia, the petition and supporting papers for probate of the will of Lestelle Slater (*see* NYSCEF Doc. #40, pp. 2-18); and the petition and supporting papers for administration of the estate of Pearl Boyea (*see id.*, pp. 19-34).

The death certificate for Lestelle Slater indicates that she died on June 11, 1993, she had never been married, and the informant was Pearl Boyea, identified as Slater's sister, who resided at 1253 New York Avenue, Brooklyn, NY (*see* NYSCEF Doc. #26). Pearl Boyea's death certificate indicates that she died on February 5, 1996, she was widowed, and the informant was Percivon Boyea, identified as her son, who resided at the same address (*see* NYSCEF Doc. #26).

The papers comprising the petition for probate of the will of Lestelle Slater show that a decree granting probate was issued on or about March 24, 1994, issuing Letters Testamentary to the petitioner and proposed executrix, Pearl Boyea (*see* NYSCEF Doc. #40, p. 18). In her will, Slater acknowledged that she and Pearl Boyea were, each, a 50% owner of the subject mortgaged premises, and Slater devised her ownership interest as follows: 50% (*i.e.*, 25% of the whole) to her sister, Pearl Boyea; 25% (*i.e.*, 12.5% of the whole) to her grandniece, Allison Ingrid Mahon; and 25% (*i.e.*, 12.5% of the whole) to Nalan Mahon, daughter of said grandniece (*see id.*, p. 14).

¹ Atlantis represents that the claimants on whose behalf it is acting here are the same persons named in the caption as defendants PERCIVON BOYEA and ALLISON I. MAHON WILLIAMS A/K/A INGRID CHICHESTER.

The papers comprising the petition for administration of the estate of Pearl Boyea show that Letters of Administration were issued to defendant ARLENE KIRTON A/K/A ARLENE HEWITT KIRTON on May 2, 1996 (*see* NYSCEF Doc. #40, pp. 20-21). The petition lists claimant Percivon Boyea as Pearl Boyea's son and sole distributee, and includes a family tree affidavit by Yvonne Quammie, who attests that Pearl Boyea was her aunt and that she was widowed at the time of her death, survived only by Percivon Boyea (*see id.*, pp. 23, 26-28).

In an affirmation of limited opposition, the Office of the State Comptroller takes no position as to whether Atlantis's evidence establishes that claimant Percivon Boyea is the sole distributee of Pearl Boyea. It does, however, contend that the evidence is insufficient to establish that the other claimant, "Ingrid Chichester," is the same person identified as devisee "Allison Ingrid Mahon" in the will of Lestelle Slater.

The Court finds that while Atlantis's evidence sufficiently establishes that claimant Percivon Boyea is the sole distributee and heir-at-law of mortgagor and premises co-owner Pearl Boyea, it does not establish that he is entitled to the relief sought. If the evidence in this record had conclusively shown that Pearl Boyea had died intestate in 1996, title to her initial 50% ownership interest of the subject mortgaged real property would have immediately vested in Percivon Boyea, not in Pearl Boyea's estate, thereby rendering defendant Arlene Kirton's appointment as administratrix of the estate irrelevant with respect to this asset (*see U.S. Bank Trust, N.A. v Gedeon*, 181 AD3d 745, 747 [2d Dept 2020]; *Matter of Blango*, 166 AD3d 767, 768 [2d Dept 2018]; *In re Estate of Torricini*, 249 AD2d 401, 402 [2d Dept 1998]). However, included as Exhibit "E" to this motion is an October 31, 2006 decision by the Hon. Frank Seddio of the Kings County Surrogate's Court, from *In the Matter of the Application for a Compulsory Accounting and Related Relief in the Estate of Pearl E. Boyea, Deceased*, under File No. 1563/1996, punishing Kirton for contempt because she failed to comply with "an order of this court directing her to render and cause to be judicially settled her account **as executor**" (NYSCEF Doc. #28 [emphasis added]). The Surrogate's Court granted the additional relief of revoking the "**letters testamentary** issued to Arlene Kirton," noting that the petitioner in that proceeding "also seeks revocation of the **executor's letters**" (*see id.* [emphasis added]). This indicates that Pearl Boyea may not have died intestate, and that a will may have been found and admitted to probate after the afore-mentioned administration petition was filed. The undersigned cannot assume that the Surrogate's Court's reference to Kirton as the executor of Pearl Boyea's

estate was a mere scrivener's error, since the decision does so multiple times and in each of its three paragraphs. In light of the conflicting evidence submitted by Atlantis, this Court cannot issue an order directing the Office of the State Comptroller to disburse Percivon Boyea's share of the surplus proceeds directly to him, as distributee and heir-at-law of Pearl Boyea, because he would only be entitled to same if she died intestate. In contrast, if Ms. Boyea died testate, as the Surrogate's Court's October 1996 decision suggests, then the proper person to receive said funds would be the executor of her estate, who would then distribute the assets to the devisees in accordance with the will.

The Court also finds that Atlantis has not established that the other "claimant" is entitled to relief. First, it must be noted that in its attorney's affirmation in support of the instant motion, Atlantis states: "[m]ovant Ingrid Chichester has filed a Notice of Claim to these funds, as the heir and beneficiary of Lestelle Slater; Percivon Boyea filed a Notice of Claim as the heir and beneficiary of Pearl Boyea and Lestelle Slater" citing Exhibit I to the motion as support (*see* NYSCEF Doc. #23, ¶11). However, said exhibit contains only one Notice of Claim on behalf of Percivon Boyea, and it includes "Allison I. Mahon Williams a/k/a Ingrid Chichester" among the intended recipients (*see* NYSCEF Doc. #32). Moreover, both the initial and updated certificates of claimants indicate that notices of claim were filed only by Arlene Kirton, on May 23, 2006, and by Percivon Boyea, on October 12, 2020 (*see* NYSCEF Doc. #s 33 and 41).² Absent proof that the Ingrid Chichester represented by Atlantis has actually filed a notice of claim, the Court cannot find that she is a proper claimant to whom any surplus funds could be released.

Second, the Court agrees with the Office of the State Comptroller that the record lacks sufficient evidence that the purported "Ingrid Chichester" represented by Atlantis is the same "Allison Ingrid Mahon" identified as a devisee in Lestelle Slater's will. Exhibit I to the motion includes copies of a certificate of marriage registration issued by the City of New York Office of the City Clerk Marriage License Bureau, showing that on December 22, 1975, a woman listed as "Ingrid Allison Deare," "Ingrid A. Deare," and "Ingrid Deare" married a man listed as both "Rigoberto Mahon" and "Rigoberto Antonio Mahon," each of whose dates of birth are redacted (*see* NYSCEF Doc. #40, pp. 35-36). Despite the similarities in the names, these documents, standing alone, do not establish that the devisee identified in Slater's will as "Allison Ingrid

² By order dated January 10, 2007, the Hon. David B. Vaughan denied Kirton's application, in mot. seq. #5, for distribution of the surplus funds, with leave to renew upon curing certain deficiencies (*see* NYSCEF Doc. #35).

Mahon” is also the bride identified on the certificate of marriage registration as “Ingrid Allison Deare,” “Ingrid A. Deare,” and “Ingrid Deare,” particularly since the registration is silent on whether the bride took the groom’s last name of “Mahon.” In response to the Office of the State Comptroller’s questioning “whether ‘Ingrid Chichester’ is the same individual as ‘Allison Ingrid Mahon,’” Atlantis’s counsel states in its reply papers, “we have confirmed that they are one and the same,” and reiterates that this person was named in the caption of this action as a defendant as “Allison Mahon Williams a/k/a Ingrid Chichester” (*see* NYSCEF Doc. #45, ¶7). This does not clarify matters, as the addition of a fourth potential surname presents, at best, another unexplained variation of this person’s name. In any event, an attorney’s affirmation is no substitute for an affidavit from the purported claimant herself, attesting, on penalty of perjury and with corroborating evidence, that she is the devisee named in Lestelle Slater’s will and explaining how she became associated with no less than four different names.

Third, and most importantly, none of the devisees under Lestelle Slater’s will is entitled to a direct distribution of the surplus funds. Rather, since Slater died testate and her will was admitted to probate, the person to whom her share of the surplus should be released is the executor of her estate, who will then be charged with distributing to the devisees. The original executor of Slater’s estate, Pearl Boyea, died in 1996 and this record does not provide any evidence as to who succeeded her and/or who is the presently appointed and authorized estate representative.

For the foregoing reasons, the above-referenced motion (mot. seq. #7) is DENIED without prejudice.

The foregoing constitutes the Decision and Order of this Court.

E N T E R,

Dated: July 17, 2025



Hon. Cenceria P. Edwards, JSC, CPA