

Lightfoot v McMillan
2025 NY Slip Op 35647(U)
January 6, 2025
Supreme Court, Bronx County
Docket Number: Index No. 807553/2024E
Judge: Veronica G. Hummel
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To commence the statutory
time for appeals as of right
(CPLR 5513[a]), you are
advised to serve a copy
of this order, with notice
of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 20

-----X
JOCELYN V. LIGHTFOOT

Plaintiff,

Index No. 807553/2024E

-against -
ARDILA MCMILLAN,

DECISION/ORDER
Motion Seq. 2

Defendant.

-----X
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all of the papers filed in NYSCEF regarding the motion of plaintiff JOCELYN V. LIGHTFOOT [Mot. Seq. 2], made pursuant to CPLR 2221, seeking to reargue this court's decision dated August 26, 2024 ("the Prior Decision") which granted *pro se* defendant ARDILA MCMILLAN's motion [Mot. Seq. 1] (defendant), for an order, pursuant to CPLR 3211(a)(5) and (10), dismissing the complaint.

This is an action to "vacate and set aside the November 13, 1975 Divorce Judgment" ("the Divorce Judgment") between plaintiff and deceased William Lightfoot ("the Decedent") because it was allegedly procured by fraud. An amended Summons with Notice was filed on May 23, 2024, almost fifty years after the Divorce Judgment was granted. A verified complaint was served thereafter in July 2024. The pleadings allege fraud, seek declaratory relief, and do not claim any monetary damages.

As stated, the Divorce Judgment was entered almost fifty (50) years ago in November 1975. Plaintiff's alleged husband, the Decedent, who allegedly committed the fraud, died in 2001. This action was commenced twenty- three (23) years after his death in May 2024.

Defendant, allegedly the offspring of the Decedent, is not a party to the Divorce Judgment nor is defendant an administrator, executor, or representative of the Decedent's estate or interests. The pleadings do not allege that defendant participated in any fraud and in fact defendant was not born at the time of the divorce. Furthermore, while the complaint

allegedly quotes limited portions of the 1974 Divorce Decree, no copy of the divorce decree is submitted on the record.

Plaintiff argues on this motion [Mot. Seq. 2] that the Court overlooked information contained in the complaint and summons [Mot. Seq. 1] and reiterates that the action for fraud is not time-barred. Since plaintiff submitted no new facts to support the renewal motion [Mot. Seq. 2] – it is a motion to reargue. *Lee v. Consolidated Edison Co. of New York*, 40 A.D.3d 481, 481-782 (1st Dep’t 2007) *see also* CPLR 2221.

“A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law.” *Foley v. Roche*, 68 A.D.2d 558, 567 (1st Dep’t 1979). A motion to reargue is not a vehicle by which the losing party can relitigate issues already decided. *Id.*

For the reasons set forth herein the Court grants reargument, vacates the Prior Decision, and upon vacatur again grants the underlying motion for dismissal for the reasons set forth in the Prior Decision and on new grounds generated by the Court’s revisiting the original motion.

As for the original grounds, movant does not establish that the court overlooked or misapprehended the relevant facts or misapplied controlling law. On a motion to dismiss pursuant to CPLR 3211(a)(5) - statute of limitations - the moving defendant bears the initial burden of demonstrating, *prima facie*, that the time within which to commence the cause of action has expired. *Stein Industries, Inc. v. Certilman Balin Adler & Hyman*, 149 A.D.3d 788, 789 (2d Dep’t 2017). Based on the vague allegations in the complaint, the court finds that this action based in fraud is time-barred.¹

In addition, the action is dismissed based on the failure to name necessary parties. Necessary parties are those “who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action”. CPLR 1001[a]; *Ji Juan Lin v. Bo Jin Zhu*, 191 A.D.3d 652 (2d Dep’t 2021). Vacating the divorce decree almost 50 years after it was issued will have traumatic legal impact on numerous family members of the deceased Lightfoot who are therefore necessary parties to this action. CPLR 3211(a)(10).

¹ Of note, Plaintiff does not address the potential issues possibly raised by the Dead Man’s Statute. CPLR 4519.

In addition to the original grounds set forth in the Prior Decision, the Court now finds that dismissal is warranted other reasons arising from the fact that the named defendant is not the proper defendant.

Firstly, in terms of fraud, the pleadings do not set forth any allegations of fraudulent misrepresentations on the part of defendant, who was not born at the time of the Divorce Judgment, nor does plaintiff alleged that plaintiff reasonably relied on any allegedly fraudulent representation by defendant. As such, a cause of action for fraud is not stated as against the specifically named defendant.

Furthermore, the remedy for fraud allegedly committed during the course of a legal proceeding must be exercised in that lawsuit by moving to vacate the civil judgment (CPLR 5015)(a)(3). An action to collateral attack a divorce decree is appropriately pursued in the matrimonial court which is the proper forum under the Domestic Relations Law in which to address the motion to vacate and not by another plenary action collaterally attacking the judgment. *Peter C. v. Lisa F.*, 118 A.D.3d 631 (1st Dep't 2014); see *D.S. v. M.S.*, 84 Misc. 3d 1237 (A) (Sup. Ct. Westchester County 2024); *Eyon v. Monica G.*, 81 Misc. 3d 446 (Sup. Ct. Kings County 2023).

Finally, and most importantly, the appropriate parties in an action to vacate a divorce decree are, of course, the formerly married individuals. As such, this attack on the Divorce Judgment on the basis of fraud requires that the former spouses be parties to the action. As such, service of process on the executor or administrator of the Decedent's estate, appointed by a Surrogates Court, as the proper defendant with standing to represent the Decedent's interests is required. As defendant is not appointed to represent the Decedent's estate, defendant is not a proper party and the necessary party is not named or served. The complaint is therefore appropriately dismissed.

Furthermore, a motion to vacate a divorce judgment on the ground of fraud pursuant to CPLR 5015(a)(3) must be made within a reasonable time. *Augustin v. Augustin*, 79 A.D.3d 651 (1st Dep't 2010). This divorce decree was entered 1975 and the vague justifications set forth in the complaint for the delay in moving for vacatur for 50 years are insufficient to survive the motion to dismiss. The original motion to dismiss is therefore granted.

Accordingly, it is hereby

ORDERED that the part of the motion of plaintiff JOCELYN V. LIGHTFOOT [Mot. Seq.2], made pursuant to CPLR 2221, that seeks an order granting reargument of this Court's decision, dated August 26, 2024 ("the Prior Decision"), which granted *pro se* defendant ARDILA MCMILLAN's motion [Mot. Seq. 1] (defendant), for an order pursuant to CPLR 3211(a)(5) and (10), dismissing the complaint is granted; and it is further

ORDERED that the Prior Decision [Mot. Seq. 1] is vacated and replaced by this decision; and it is further

ORDERED that, upon vacatur, the motion [Mot. Seq. 1] for an order dismissing the complaint is granted for the reasons set forth in the Prior Decision and the additional reasons set forth in this decision; and it is further

ORDERED that the Clerk shall enter judgment dismissing the complaint; and it is further

ORDERED that the Clerk shall mark the motion 2 decided and the action disposed in all court records; and it is further

ORDERED that plaintiff's attorney shall serve a copy of this Decision/Order with notice of entry upon *pro se* defendant by regular mail by February 15, 2025, and upload proof of said service to NYSCEF by February 28, 2025.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

January 6, 2025

E N T E R,

Hon.  _____

HON. VERONICA G. HUMMEL, A. J.S.C.

1. CHECK ONE.....	☒ CASE DISPOSED IN ITS ENTIRETY	CASE STILL ACTIVE
2. MOTION 2 is granted and on reargument motion 1 is granted.....	☒ GRANTED	DENIED GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER ☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE