

Stridiron v 4G6UI Holdings, LLC

2017 NY Slip Op 30953(U)

April 7, 2017

Supreme Court, Queens County

Docket Number: 707624/2016

Judge: Cheree A. Buggs

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MEMORANDUM

FILED
APR 18 2017
COUNTY CLERK
QUEENS COUNTY

SUPREME COURT : QUEENS COUNTY
IA PART 30

REMINGTON STRIDIRON,

INDEX NO. 707624/2016

Plaintiff,

MOTION SEQ. NO. 3

- against -

BY: Buggs, J.

4G6UI HOLDINGS, LLC., ET AL.,

DATED: April 7, 2017

Defendants.

_____ X

Plaintiff commenced this action pursuant to RPAPL article 15 for a determination of his claim of an ownership interest in the real property known as 146-11 Guy R. Brewer Boulevard, Jamaica, New York (the subject property) as an heir of Mary E. Stridiron, his mother, unencumbered by the mortgage dated June 25, 2007 and recorded on July 23, 2007, and the mortgage dated August 20, 2008 and recorded on September 10, 2008. Plaintiff alleges his father predeceased his mother, and that prior to his mother's death on February 26, 1990, she had been the sole fee owner of the subject property pursuant to a deed from Hedwig Wunderlich. Plaintiff also alleges that his mother died intestate and was survived by her children, i.e. plaintiff and his brothers, Conrad Stridiron, William Stridiron and Kermit Stridiron, and no probate or administration proceeding was

commenced in relation to her estate. Plaintiff further alleges that Kermit Stridiron never married, had no children, and died a few years after his mother. Plaintiff claims that upon Kermit Stridiron's death, he, Conrad Stridiron and William Stridiron each became vested with an undivided one-third ownership interest in the subject property as tenants in common. Conrad Stridiron allegedly forged the respective signatures of plaintiff and William Stridiron on power of attorney (POA) forms dated November 27, 2006 and dated November 29, 2006, and used the forged POA forms to obtain a mortgage loan from defendant Anthony Vecchio in the principal amount of \$175,000.00, plus interest. The mortgage, dated June 25, 2007 and recorded on July 23, 2007, encumbers the entire property. Plaintiff asserts he did not give a power of attorney over his affairs to anyone and was unaware of the mortgage transaction.

Plaintiff alleges that Conrad Stridiron subsequently forged plaintiff's and William Stridiron's signatures on a deed dated June 25, 2008 and recorded on September 10, 2008, which purportedly conveyed the ownership interests of plaintiff, William Stridiron and Conrad Stridiron, as surviving heirs at law of Mary Stridiron, to Conrad Stridiron. Plaintiff also alleges that he had no knowledge of this deed until recently. It is alleged that Conrad Stridiron, based upon the authority of the alleged forged deed, executed a gap mortgage dated August 20, 2008 and recorded on September 10, 2008, in the principal amount of \$75,000.00 to defendant Vecchio. Plaintiff alleges that William Stridiron died on January 13, 2012, and is survived by defendant Sherese Stridiron, William Stridiron's only child, and that Conrad

Stridiron died on May 23, 2014. Plaintiff also alleges that no probate or administration proceeding was brought regarding Conrad Stridiron's estate.

Defendants Conrad D. Stridiron and Damon Stridiron, the sons of Conrad Stridiron, executed a deed dated April 18, 2016 and recorded on May 19, 2016, purportedly conveying the property from defendants Conrad D. Stridiron, Damon Stridiron, Austin K. Stridiron, Eneishea C. Stridiron and Joaquin D. Stridiron, as heirs of Conrad Stridiron, deceased, to defendant 4G6U1. Plaintiff alleges that defendant 4G6U1 caused him to be served with a 30-day notice to vacate the subject property, prompting him to bring this action on June 28, 2016. Plaintiff asserts additional causes of action, including for unjust enrichment and to impress a constructive trust on the subject property and any funds received by defendants in connection with the deed transfers and mortgages, and seeks a judgment awarding declarative, injunctive and monetary relief.

Plaintiff moves to enjoin preliminarily defendants from commencing or prosecuting any summary proceeding or action, including a foreclosure action, to terminate or cancel his interest in the subject property, or enforcing any judgment of possession or warrant of eviction in relation to the subject property. Defendant 4G6U1 cross moves pursuant to CPLR 3211(a)(10) to dismiss the complaint insofar as asserted against it based upon plaintiff's failure to join necessary party defendants. Defendant Vecchio opposes the motion by plaintiff. Plaintiff opposes the cross motion, and offers, among other things, an

affidavit of defendant Sherese Stridiron¹ in support of his motion. The other defendants do not appear in relation to the motion or cross motion.

With respect to the cross motion by defendant 4G6U1, defendant 4G6U1 asserts the personal representatives of the estates of Conrad Stridiron and William Stridiron are necessary party defendants to this action because plaintiff claims the transfer of his ownership interest in the property was the product of a fraudulent conveyance by a forged deed dated June 25, 2008, and that hence the transfer of title into defendant 4G6U1 is invalid. According to defendant 4G6U1, the transferee of a fraudulent conveyance is a necessary party defendant in an action to set aside a fraudulent conveyance. Defendant 4G6U1 therefore contends that because Conrad Stridiron and William Stridiron were the other grantors on the June 25, 2008 deed, and they are deceased, the personal representatives of their estates should have been joined as necessary party defendants.

With respect to the cause of action brought under article 15 of the RPAPL against defendants, Conrad Stridiron and William Stridiron conveyed any interest they had in the property to Conrad Stridiron by virtue of the June 25, 2008 deed, prior to the commencement of the action. Under such circumstances, the personal representatives of their estates are neither necessary nor proper parties to the action (*see McGahey v Topping*, 255 AD2d 562 [2d Dept 1998]). Joinder of a party is necessary only when “it appears to the

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It is not clear from these papers whether defendant Sherese Stridiron has appeared or answered the amended complaint in this action. (There is no answer or notice of appearance on behalf of defendant Sherese Stridiron on file in the e-filed records for this action).

court that a person not a party to the action may have an estate or interest in the real property which may in any manner be affected by the judgment” (RPAPL 1511[2]; *see* CPLR 1001[a]; *Sorbello v Birchez Assoc., LLC*, 61 AD3d 1225, 1226 [2d Dept 2009]). If plaintiff herein is ultimately successful in proving his signature on the June 25, 2008 deed and the POA form dated November 29, 2006 are forgeries, the judgment will result in a declaration as to the validity of his ownership interest in the property, and the invalidity of defendants’ ownership and mortgage interests asserted vis-a-vis plaintiff’s interest. It will not effect the claimed ownership interest by defendant 4G6U1 or mortgage interests by defendant Vecchio, or claimed interests of the other defendants if any,² in the remainder of the property (*see* RPAPL 1521). A deed based on forgery is void ab initio, and a mortgage based on such a deed is likewise invalid (*see ABN AMRO Mtge. Group, Inc. v Stephens*, 91 AD3d 801 [2d Dept 2012]). A deed, however, can be valid in part and invalid in part, as, for example, where one cotenant signs his or her own name but forges the names of his or her cotenants (*see Kraker v Roll*, 100 AD2d 424, 431 [2d Dept 1984]). Similarly, if the principal’s signature on a power of attorney is forged, any deed or mortgage executed by the purported attorney-in-fact pursuant to the power of attorney is void, but only with respect to the

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Plaintiff has failed to allege in his amended complaint, the nature of any adverse claim of any estate or interest in relation to his purported one-third ownership interest in the subject property by defendants Conrad D. Stridiron, Austin K. Stridiron, Joaquin D. Stridiron, Damon Stridiron, Eneishea Stridiron or Sherese Stridiron (*see* CPLR 1515[1][b]). He makes no claim that there is any such estate or interest held by those defendants which appears of record. It appears, however, from the prayer for relief in the amended complaint that plaintiff recognizes some right by defendant Sherese Stridiron to possess the subject property.

conveyance of the principal's interest in the property (*see First Natl. Bank of Nev. v Williams*, 74 AD3d740, 741 [2d Dept 2010]; *Hoffman v Kraus*, 260 AD2d 435, 436 [2d Dept 1999]; *see also CitiFinancial Co. [DE] v McKinney*, 27 AD3d 224 [1st Dept 2006]). Defendant 4G6U1 additionally has failed to show that any imposition of a constructive trust against the property will affect any interest of the estate of Conrad Stridiron or estate of William Stridiron in the property.

Plaintiff's second cause of action is not one based upon a claim that the deed dated April 18, 2016 is a fraudulent conveyance predicated upon fraudulent inducement or duress, or that such deed was obtained by false pretenses or a misrepresentation made to him by Conrad Stridiron or William Stridiron as to the contents of the deed or the November 29, 2006 POA form. Rather, plaintiff re-alleges that his signatures appearing on the November 29, 2006 POA form and June 25, 2008 deed were forged by Conrad Stridiron, and additionally alleges that Conrad Stridiron falsely represented to others that the instrument (dated June 25, 2008) is a deed transferring the property from Conrad Stridiron, William Stridiron and plaintiff to Conrad Stridiron, and caused the City Register to record a "false" instrument. By these allegations, the second cause of action and the first cause of action, are claims sounding in equity based upon the alleged forged signatures on the June 25, 2008 deed and the November 29, 2006 POA form.

To the extent defendant 4G6U1 asserts that the personal representatives of the estates of Conrad Stridiron and William Stridiron are necessary party defendants because plaintiff seeks to impose a constructive trust upon any proceeds from the conveyances, plaintiff claims that he, Conrad Stridiron and William Stridiron agreed that any decision to sell the property would be made together, and that they would divide the proceeds equally. Plaintiff, however, makes no claim that Conrad Stridiron or William Stridiron received any payment pursuant to the transfer of the property by deed dated June 25, 2008. To the extent plaintiff alleges Conrad Stridiron and William Stridiron received the proceeds of the mortgage loans, plaintiff makes no claim that such proceeds were in Conrad's or William's possession at the time of their deaths. Therefore, defendant 4G6U1 has failed to demonstrate the need to join the personal representatives of the estate of Conrad Stridiron or William Stridiron as party defendants in relation to the claim to impress a constructive trust upon such any proceeds.

The cross motion by defendant 4G6U1 pursuant to CPLR 3211(a)(10) to dismiss the complaint insofar as asserted against it based upon the failure to join the personal representatives of the estates of Conrad Stridiron and William Stridiron as necessary party defendants is denied.

However, to the degree plaintiff asserts his mother was the sole fee owner of the subject property, his father predeceased his mother, his mother died intestate, and his

brothers Kermit, Conrad and William Stridiron survived his mother, it appears that plaintiff, Kermit, Conrad and William each inherited an undivided one-fourth ownership interest in the property upon their mother's death (*see* EPTL 4-1.1³). It is unclear from the submissions whether Kermit Stridiron died intestate or with a will. If Kermit Stridiron died intestate with no parents, spouse or issue, his undivided one-fourth ownership interest in the property devolved upon his death, directly to plaintiff, Conrad Stridiron and William Stridiron, as statutory distributees of Kermit without the necessity of any act by an administrator of Kermit Stridiron's estate (*see* EPTL 4-1.1; *Matter of Roberts*, 214 NY 369 [1915]; *Kraker v Roll*, 100 AD2d 424 [2d Dept 1984]; *Deutsche Bank Natl. Trust Co. v Torres*, 24 Misc 3d 1216[A] [Sup Ct, Suffolk County, 2009]). If, on the other hand, if Kermit Stridiron died with a will, it is unclear based upon these submissions, as to whom Kermit's one-fourth ownership interest in the property passed under the terms of such will.⁴ Thus, it appears that a person

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It is unclear from the papers submitted herein the actual date of Kermit Stridiron's death. The law of intestate succession (EPTL 4-1.1) was most recently amended, effective September 1, 1992 (L 1992, c 595, § 8), and before that, had been amended in 1978 (L 1978, c 423, § 1). Assuming for the purpose of this motion that Kermit Stridiron died after his parents, was unmarried and without issue at the time of his death, and survived by his brothers Conrad Stridiron, William Stridiron and plaintiff, only, then under either version of the intestacy law in effect since 1978, Conrad Stridiron, William Stridiron and plaintiff were his sole statutory distributees.

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Title to real property devised under the will of a decedent vests in the beneficiary at the moment of the testator's death, subject only to such powers as the executor has under the law and the terms of the will (*see Waxson Realty Corp. v Rothschild*, 255 NY 332 [1931]; *Barber v Terry*, 224 NY 334 [1918]; *DiSanto v Wellcraft Marine Corp.*, 149 AD2d 560 [1989]; *OneWest Bank, FSB v Byam*, 41 Misc 3d 1217[A] [Sup Ct, Queens Co 2013]; *Deutsche Bank Natl. Trust Co. v Torres*, 24 Misc 3d 1216[A] [Sup Ct, Suffolk Co 2009]). Unless otherwise directed by the will, the executor

not a party to the action may have an estate or interest in the subject property, which may be affected by a judgment herein to the extent a determination is sought by plaintiff that he is the owner of an undivided one-third share in the property, and to impose a constructive trust on the property.

Accordingly, the court, on its own motion, directs that plaintiff join, as a necessary party defendant, the person or persons (or entities) who may have an estate or interest in the subject property by virtue of a last will and testament of Kermit Stridiron, deceased, within 30 days of service of a copy of this order with notice of entry, unless within such 30-day period, plaintiff serves defendants and files with the court proof that Kermit Stridiron died intestate, without parents, spouse or issue at the time of his death.

With respect to the motion by plaintiff, a movant to be entitled to a preliminary injunction must establish (1) the likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor (*see W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604 [2d Dept 2004]; *Hightower v Reid*, 5 AD3d 440 [2d Dept 2004]). "The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual" (*Ruiz v Meloney*, 26 AD3d 485, 486

takes no title to the property of the testator (*see Matter of Rich*, 27 Misc 2d 364, 371 [Sup Ct, New York Co 1960]; *Matter of Herrmann*, 193 Misc 466 [Sup Ct, New York Co 1948]; *see also Estate of Horton v Commr*, 388 F2d 51 [2nd Cir 967]).

[2d Dept 2006]). The decision to grant or deny a preliminary injunction rests within the sound discretion of the court (*see Arcamone-Makinano v Britton Prop., Inc.*, 83 AD3d 623 [2d Dept 2011]).

Plaintiff has failed to allege or establish that defendants Austin K. Stridiron, Joaquin D. Stridiron, Eneishea Stridiron or Sherese Stridiron have taken any steps to remove him from the subject property or to foreclose his purported interest therein. To the degree plaintiff asserts that defendants Conrad D. Stridiron and Damon Stridiron have interfered with his quiet enjoyment of the premises, he has failed demonstrate that there has been any recent such interference, or efforts by them to remove him from the premises or foreclose his alleged interest in the property. The temporary order of protection dated December 18, 2015 obtained by plaintiff against Conrad D. Stridiron expired by its terms on February 3, 2016, and plaintiff has made no showing that such order was extended. In addition, although plaintiff asserts that in 2015, he petitioned for an order of protection as against Damon Stridiron, plaintiff has failed to show that he obtained such an order.

Plaintiff, however, has shown that defendant 4G6U1 seeks to remove him from the premises, insofar as 4G6U1, as the purported landlord of the premises, caused him to be served with a 30-day notice to terminate his “tenancy,” and brought a holdover summary proceeding, entitled *4G6U1 Holdings LLC v Stridiron* (Queens County, Civil Court, Index No. 6931/2016 [L&T]), against him, claiming he is a month-to-month tenant, and that “John

Does” and “Jane Does” are undertenants/occupants. Defendant Vecchio commenced an action entitled *Vecchio v Stridiron* (Supreme Court, Queens County, Index No. 19491/2012) to foreclose the “consolidated” mortgage lien in the total amount of \$250,000.00, plus interest, against the subject property. Contrary to the assertion by defendant Vecchio, a review of the copy of the summons and complaint in that action on file with the records of the County Clerk reveals that Remington Stridiron is a named party defendant, and Vecchio seeks to foreclose Remington Stridiron’s interest, if any, in the property.

A preliminary injunction in favor of plaintiff and against defendants 4G6U1 and Vecchio is particularly appropriate in this action where plaintiff seeks to quiet title to the real property in which he has resided since before defendant 4G6U1 obtained title to it. Plaintiff will suffer irreparable injury if forced to leave his home absent a preliminary injunction (*see Jiggetts v Perales*, 202 AD2d 341 [1st Dept 1994]; *see also Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]). Although a document with a certificate of acknowledgment raises the presumption of due execution (*see ABN AMRO Mtge. Group, Inc. v Stephens*, 91 AD3d 801, 803; *Son Fong Lum v Antonelli*, 102 AD2d 258, 260–261 [2d Dept 1984], *affd* 64 NY2d 1158 [1985]; *Countrywide Home Loans, Inc. v Gomez*, 138 AD3d 670 [2d Dept 2016]), conclusive proof to overcome it is not required at this stage of the litigation (*see Ruiz v Meloney*, 26 AD3d 485 [2d Dept 2006]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 605 [2d Dept 2014]). It is notable that plaintiff’s address

on both the POA form and the June 25, 2008 deed is the subject property, whereas plaintiff states he lived in Brooklyn in 2006, and moved to the premises only after Conrad Stridiron's death in 2014. It is also notable that notwithstanding there are three purported signatories to the June 25, 2008 deed, i.e. Conrad Stridiron, William Stridiron and plaintiff, only two certificates of acknowledgment are attached to the deed, subscribed by a notary public.⁵ The first certificate indicates that Conrad Stridiron, William Stridiron and plaintiff personally appeared before the notary to acknowledge their signatures, but the second certificate does not identify the person whose signature was being acknowledged. Defendant Sherese Stridiron states in her affidavit submitted in support of plaintiff's motion, that the signatures of her father on the POA form dated November 27, 2006, and the June 25, 2008 deed are forgeries.⁶ Lastly, to the extent plaintiff was in possession of the subject property when defendant 4G6U1 obtained title to the property, actual possession of real estate generally gives notice to the world of the existence of any right that person in possession is able to establish (*see 1426 46 St., LLC v Klein*, 60 AD3d 740 [2d Dept 2009]; *see also Phelan v Brady*, 119 NY 587, 591–592 [1890]).

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The same notary public subscribed the certificate of acknowledgment on the POA form dated November 29, 2006, purportedly appointing Conrad Stridiron as the attorney-in-fact for plaintiff.

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The court notes that notwithstanding defendant Sherese Stridiron asserts her father's signatures are forged, she has not joined plaintiff in bringing this action. The court also notes that both plaintiff and Sherese Stridiron are silent as to whether William Stridiron had a will, whether William had any estate proceedings or whether Sherese Stridiron is William Stridiron's sole heir.

Under such circumstances, and in an exercise of discretion, the court concludes that plaintiff has demonstrated a reasonable likelihood of success on the merits, and that equity is balanced in favor of maintaining the status quo pending the resolution of the underlying dispute herein.

The motion by plaintiff for a preliminary injunction is granted only to the extent of enjoining defendants 4G6U1 and Vecchio, their agents, servants, employees and all persons acting on their behalf, preliminarily from commencing or prosecuting any summary proceeding or action, including a foreclosure action, to terminate or cancel plaintiff's interest in the subject property, or enforcing any judgment of possession or warrant of eviction in relation to the subject property until this action is resolved or until further order of the court, upon condition that plaintiff file an undertaking pursuant to CPLR 6312 in the amount set forth in the order to be entered hereon. Upon settlement of the order, the parties are to submit proof and recommendations as to the amount of the undertaking to be fixed.

Settle order.

Dated: April 7, 2017



Hon. Chereé A. Buggs, JSC

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