

Diana v Delisa

2013 NY Slip Op 33812(U)

October 23, 2013

Supreme Court, Nassau County

Docket Number: 10-021170

Judge: Steven M. Jaeger

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

ANNA ROSA C. DIANA a/k/a ANNA ROSA
C. DELISA,

Plaintiff,

-against-

GAETANO DELISA a/k/a THOMAS DELISA,
and JOHN DELISA,

Defendants.

TRIAL/IAS, PART 41
NASSAU COUNTY
INDEX NO.: 10-021170

MOTION SUBMISSION
DATE: 10-10-13

MOTION SEQUENCE
NO. 8

The following papers read on this motion:

Order to Show Cause, Affidavit, and Exhibits	X
Affidavit in Opposition	X
Affirmation in Opposition	X
Affidavit in Reply	X

Defendant GAETANO DELISA (hereinafter THOMAS) moved by Order to Show Cause to reargue and/or renew this Court's order dated August 20, 2013 insofar as (1) a hearing was ordered to determine if THOMAS willfully disobeyed the Court's Interlocutory Judgment dated December 13, 2012; (2) THOMAS and his wife were ordered to vacate the premises at 279 Hillcrest Lane, Upper Brookville; and (3) the stay of the Referee's sale of said premises was vacated. The Court stayed the direction requiring THOMAS to vacate said premises and stayed the sale of both the premises at 279 Hillcrest Lane, Upper Brookville, and the premises at 1849 Bellmore Avenue, Bellmore, pending further Order of the Court.

Further, on the same date the instant motion was submitted, the Court conducted the hearing to determine if THOMAS was in contempt for willfully disobeying the Interlocutory Judgment dated December 13, 2012. Decision was reserved subject to the Court's ruling on the instant motion.

This is an action for partition involving three (3) siblings and 2 pieces of real property as set forth above. By order dated January 27, 2012, this Court granted summary judgment to plaintiff for partition of the properties and subsequently appointed a Referee to hear and report and to sell the properties. THOMAS opposed said relief and Defendant JOHN DELISA had not answered at that time.

Subsequent to receipt of the Referee's Report, the Court issued its Interlocutory Judgment herein on December 13, 2012. The Court confirmed the Report and found as follows:

1. 1849 Bellmore Avenue—each of the three parties owned a 1/3 undivided interest.
2. 249 Hillcrest Lane—plaintiff and THOMAS each owned a ½ undivided interest.
3. The Referee was directed to sell the properties by auction or brokered sale.
4. THOMAS shall permit access to 279 Hillcrest Lane by the Referee or broker for the purpose of inspection or exhibiting the property.

By order dated January 2, 2013, defendant JOHN DELISA moved to vacate the default judgment against him. While defendant JOHN DELISA had not answered, he had appeared at the hearing held by the Referee and no default judgment was entered

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against him. Further, the Referee found he had an interest in the Bellmore property. The Court has permitted him to appear pro se and he filed an Answer on January 9, 2013.

Both in his Affidavit and at the hearing, THOMAS's position is that he allowed a broker to view the premises at 279 Hillcrest Lane, but did not permit the broker to photograph the interior. He wanted to speak to his attorney, which he did due to his confusion as to whether there was to be a brokered sale, an auction, or a private sale between plaintiff and THOMAS.

After THOMAS spoke to his counsel, said counsel contacted the Referee and broker. THOMAS had no further dealings with the broker. While the broker testified that THOMAS was supposed to contact him and not the opposite, the broker also acknowledged that as the auction date approached he stopped pursuing the matter. He also stated he did have contact with THOMAS's counsel after viewing the premises. He said the only refusal to cooperate by THOMAS concerned the photographs.

Plaintiff opposes the motion in its entirety.

The motion to reargue is denied and the motion to renew is granted. The moving papers do not establish that the Court overlooked or misapprehended the facts or the law. However, additional facts in the nature of exhibits have been provided, which the Court in its discretion, will accept and consider.

Upon renewal, the Court finds that there has been no willful disobedience of the Court's Interlocutory Judgment and plaintiff's motion for an order of contempt is denied, the order setting the matter down for a hearing is vacated, and the warrant dated

September 9, 2013 is hereby vacated. Plaintiff and/or the Referee may seek appropriate relief in the event defendant THOMAS and his wife remain in the Upper Brookville at the time the auction is scheduled and advertised.

The Court vacates the stay of sale at auction by the Referee of the premises known as 279 Hillcrest Lane, Upper Brookville, and 1849 Bellmore Avenue, Bellmore. Unless all parties agree otherwise, there shall be no brokered or private sale permitted without further order of the Court.

The parties are directed to communicate with the Referee within fifteen (15) days of the date of this order to provide for advance payment of the advertising expenses of said sales. In the event this order is not complied with, the Referee shall advise the Court and request an emergency conference be held.

The Referee shall determine all credits and adjustments between or among all parties in his final Report after the sales.

All other requests for relief are denied.

The foregoing constitutes the decision and order of the Court.

Dated: October 23, 2013


STEVEN M. JAEGER, A.J.S.C.

ENTERED
OCT 29 2013
NASSAU COUNTY
COUNTY CLERK'S OFFICE