

<b>Myrtle 684 LLC v Tauber</b>
2018 NY Slip Op 30579(U)
April 2, 2018
Supreme Court, Kings County
Docket Number: 519534/16
Judge: Lawrence S. Knipel
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2<sup>nd</sup> day of April, 2018.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

-----X

MYRTLE 684 LLC,

Plaintiff,

- against -

Index No. 519534/16

SAMUEL TAUBER, THE SHERIFF'S OFFICE OF THE CITY OF NEW YORK, INVESTORS BANK, 684 MYRTLE LLC AND CENTRAL YETEV LEV D'SATMAR MEAT INC. D/B/A CENTRAL YETEZ LEV SATMAR MEAT AND POULTRY,

Defendants.

-----X

The following papers numbered 1 to 10 read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1-2, 3-4, 5-6, 7
Opposing Affidavits (Affirmations)_____	9, 9, 8
Reply Affidavits (Affirmations)_____	8, 9
_____Affidavit (Affirmation) in support_____	10

Upon the foregoing papers, plaintiff Myrtle 684 LLC moves for an order: 1) pursuant to CPLR 3001 and 3212, granting summary judgment on its complaint as against defendant Samuel Tauber; 2) striking the affirmative defenses of Tauber; and 3) pursuant to CPLR 3215, granting plaintiff a default judgment against defendants Sheriff's Office of the City of New York (Sheriff), 684 Myrtle LLC and Central Yetev Lev D'Satmar Meat Inc. d/b/a

Central Yetez Lev Satmar Meat and Poultry (Central). Defendant Investors Bank (Investors) moves for an order, pursuant to CPLR 3001 and 3212, granting summary judgment on its first cross claim against Tauber for declaratory and injunctive relief. Tauber cross-moves for an order granting summary judgment dismissing the claims of plaintiff and Investors as against him and granting him a judgment declaring that all parties which recorded interests in the subject property after Tauber's judgment was docketed on May 21, 2009 took their interests subject to a judgment lien for \$217,245.00 plus interest.

Plaintiff commenced this action pursuant to Article 15 of the Real Property Actions and Proceedings Law (RPAPL) seeking a judgment declaring that a judgment lien held by Tauber against the subject property be deemed for the amount of \$16,050.00, the sum stated in the judgment docket, rather than for the principal amount of \$200,000.00 as awarded. Plaintiff also seeks a judgment granting it equitable subrogation and/or indemnification against 684 Myrtle LLC and Central and for injunctive relief against Tauber and the Sheriff enjoining any sale of the property following satisfaction of the alleged \$16,050.00 lien. In a prior negligence action commenced by Tauber to recover damages for personal injuries sustained at the subject property at 684/684B Myrtle Avenue in Brooklyn (*Tauber v Central Yetez Lev Satmar Meat and Poultry and 684 Myrtle LLC*, [Kings County index No, 3217/08]), Tauber obtained a judgment in the amount of \$200,000.00 following an inquest. In the judgment entered on May 21, 2009, Tauber was awarded interest on the judgment from June 30, 2008 in the amount of \$16,050.00 plus costs and disbursements in the sum of

\$1,195.00. The judgment was thereafter docketed with the Kings County Clerk. However, the judgment was mistakenly entered into the docket for the amount of \$16,050.00 – the amount of interest awarded – rather than the principal amount of \$200,000.00. On March 17, 2011, following the docketing of the judgment, 684 Myrtle LLC conveyed the subject property to Myrtle FT Realty LLC. The property was subsequently conveyed to 196 4<sup>th</sup> Avenue LLC, which thereafter conveyed the property to 684 Myrtle Avenue Realty, LLC. Plaintiff took title to the property from 684 Myrtle Avenue Realty, LLC, by deed dated January 21, 2016. On September 9, 2016, Investors executed an amended, restated and consolidated mortgage and security agreement with plaintiff, which consolidated a prior mortgage executed in favor of Investors by 196 4<sup>th</sup> Avenue LLC on December 14, 2012 with a gap mortgage, creating a single mortgage lien in the amount of \$2,925,000.00.

Subsequent to the conveyance of the property to plaintiff, Tauber issued a creditor's letter, dated March 24, 2016, notifying plaintiff that the approximate amount outstanding on the judgment was \$351,043.87. According to plaintiff, this letter was the first notice it received that the judgment was in considerable excess of the \$16,050.00 amount entered in the docket index. Tauber thereafter proceeded to execution of the judgment and a sheriff's sale of the subject property was scheduled. The instant action was commenced on November 3, 2016 and the Sheriff's sale was stayed by preliminary injunction dated November 17, 2016. In its answer, filed on February 1, 2017, Investors sets forth a cross claim against Tauber for a judgment declaring that Tauber's lien is limited to \$16,050.00 as per the docket

entry, identical to the claim interposed by plaintiff. Both plaintiff and Investors now move for summary judgment on these claims.

“CPLR 5203 (a) gives priority to a judgment creditor over subsequent transferees with regard to the debtor’s real property in a county where the judgment has been docketed with the clerk of that county” (*Matter of Accounts Retrievable Sys., LLC v Conway*, 83 AD3d 1052, 1053 [2011]; *see* CPLR 5203 [a]; *Matter of Soressi v SWF, L.P.*, 81 AD3d 1143, 1144 [2011]). Pursuant to CPLR 5018 (c) (1), a judgment is docketed by making an entry in the proper docket book as follows:

1. under the surname of the judgment debtor first named in the judgment, the entry shall consist of:

(i) the name and last known address of each judgment debtor and his trade or profession if stated in the judgment;

(ii) the name and last known address of the judgment creditor;

(iii) the sum recovered or directed to be paid in figures;

(iv) the date and time the judgment-roll was filed;

(v) the date and time of docketing;

(vi) the court and county in which judgment was entered; and

(vii) the name and office address of the attorney for the judgment creditor;

“Once docketed, a judgment becomes a lien on the real property of the debtor in that county” (*Matter of Accounts Retrievable Sys., LLC v Conway*, 83 AD3d at 1053, quoting *Matter of Soressi v SWF, L.P.*, 81 AD3d at 1144).

“The recording of judgment liens is of particular benefit to prospective purchasers of real property belonging to judgment debtors. ‘The docketing of the judgment is especially for the purpose of giving notice of the lien to third parties dealing with the land of the judgment debtor’” (*Flagstar Bank, FSB v State of New York*, 114 AD3d 138, 145 [2d Dept 2013], quoting *Bernstein v Schoenfeld*, 37 Misc 610, 612 [Sup Ct, NY County 1902], *affd* 81 App Div 171 [1<sup>st</sup> Dept 1903]). “‘A judgment is not docketed against any particular property, but solely against a name, and if that name is incorrectly set forth, a purchaser in good faith should not be the one to suffer; but rather the creditor, who should see to it that the docketing is in the correct name of the debtor, if it is to be notice to subsequent purchasers’” (*We Buy Now, LLC v Cadlerock Joint Venture, LP*, 46 AD3d 549, 549 [2d Dept 2007], quoting *Grygorewicz v Domestic & Foreign Discount Corp.*, 179 Misc 1017, 1018-1019 [Sup Ct, Kings County 1943]).

Plaintiff and Investors make two essential arguments. Plaintiff and Investors claim that only part of Tauber’s judgment (to the extent of \$16,050.00) was properly docketed. That part of the judgment which exceeded \$16,050.00, plaintiff and Investors maintain, was never actually docketed and thus cannot constitute a lien for the excess amount. Plaintiff and Investors also contend that they took their interests as a good faith purchaser and good faith encumbrancer without notice that Tauber’s lien was in excess of \$16,050.00.

A circumspect purchaser of real property will ascertain whether there are any clouds on the property’s title before committing to the transaction. Because the purchaser must rely on the docket index to ascertain the existence of any judgment liens, it is imperative that the correct name of the judgment debtor is entered. If the judgment debtor’s name is not entered

correctly in the docket index, the purchaser would be without notice of any judgment liens against the property as judgment liens are not reflected in the block and lot index where deeds and mortgage liens are recorded. So long as the judgment debtor's name is entered correctly in the docket index, the potential purchaser may ascertain if a judgment was entered against the judgment debtor and whether there is a timely lien on the property.

A good faith purchaser is protected from an *unrecorded interest* in a property, provided such a purchaser's interest is first to be duly recorded (*see e.g.*, Real Property Law §§ 291, 294). The status of good faith purchaser for value cannot be maintained by a purchaser with either notice or knowledge of a prior interest or equity in the property, or one with knowledge of facts that would lead a reasonably prudent purchaser to make inquiries concerning such (*see Barrett v Littles*, 201 AD2d 444 [2d Dept 1994]; *United Matura Realty v Reade Indus.*, 155 AD2d 660 [2d Dept 1989]; *Morrocoy Marina v Altengarten*, 120 AD2d 500 [2d Dept 1986]). If the case at bar involved a mistake in the entry of the name of the judgment debtor, plaintiff and Investors could rightfully claim that they are a good faith purchaser and encumbrancer and take their interests free and clear of the judgment lien. Here, however, there is no dispute that the judgment was entered in the docket book under the correct name of the judgment debtor, 684 Myrtle LLC. It is likewise acknowledged by plaintiff and Investors in their pleadings that Tauber has a superior judgment lien on the subject property, albeit for a disputed amount.

Thus, unlike the cases dealing with the entry of an incorrect or fictitious name of a judgment debtor in the docket index, which would not provide notice of a judgment lien on the judgment debtor's property, the parties here were able to find 684 Myrtle LLC in the

docket index and discover a cloud on title on the subject property by reason of a judgment lien held in favor Tauber.<sup>1</sup> Once a potential purchaser is given notice that a cloud on title exists on the property by reason of a judgment lien, the purchaser would not then have to rely *solely* on the information contained in the docket index as to the amount of the judgment, as this information would be readily available from other sources such as the clerk's records or from the attorney of the judgment creditor whose name and address appears in the docket entry. While CPLR 5018 requires that certain information be entered in the docket index in addition to the name of the judgment debtor, such as the amount of the judgment, significantly absent from the statute is any language providing that a judgment lien is ineffective where an incorrect judgment amount is entered or that the lien is otherwise limited to the amount mistakenly entered. Further, the parties do not cite, and this court has not uncovered, any relevant and prevailing case law holding that a purchaser need only rely on the docket entry as to the judgment amount or that the amount entered in the docket controls over the sum stated in the actual judgment.<sup>2</sup>

---

<sup>1</sup>The case of *Mansfield State Bank v Cohn* (58 NY2d 179 [1983]), cited by plaintiff and Investors in support of their motions, is inapposite to the facts of this case. In *Mansfield State Bank*, the Court of Appeals determined that a judgment lien which was nullified but then reinstated could not be given seniority over another lien filed in the interim. Here, notwithstanding the issue as to the judgment amount, there is no dispute that Tauber held a docketed judgment lien prior to the conveyances to plaintiff and Investors and that these parties had notice that a cloud on title existed on the property at the time of the conveyances.

<sup>2</sup>This court is not persuaded by the antebellum lower court case cited by plaintiff and Investors involving the amendment of an incorrect judgment amount docket entry (*Hunt v Grant & Towbridge*, 19 Wend 90 [1838]). In said case, the court suggested that bona fide purchasers and encumbrancers, if any, who dealt with the defendant on the assumption that the plaintiff's debt did not exceed the sum specified in the docket, should be protected against the consequences of an unrestricted amendment of the docket. However, the court does not find said case or the cited 1820 Court for the Correction of Errors case involving an error in the mortgage registry (*Frost v Beekman*, 18 Johns 544 [1820]) to be applicable to modern day practice, which



A purchaser who searches the docket index and uncovers the existence of a judgment lien likely would seek to satisfy the lien and any other encumbrances in order to take title free and clear. In such a case, the actual amounts required to clear the liens inevitably would be revealed, and the purchaser could not then claim to have lacked notice of the correct amount. Granted, plaintiff in this case may have decided to purchase and take the property subject to Tauber's lien, rather than seek clear title, based on the figure which appeared in the docket. However, given the absence of controlling and applicable case law and the silence of the relevant statutes as to the consequences of a mistake in the docket entry concerning the amount of the judgment, where all other entries, particularly the name of the judgment debtor is accurate, this court declines to hold that a validly issued and entered judgment is trumped by a mere erroneous data entry, particularly in this case where the docket was otherwise accurate and gave proper notice that a judgment lien existed on the subject property, where the true judgment amount was readily and easily verifiable and where holding otherwise would inequitably vitiate Tauber's ability to collect on his duly awarded judgment.

As a result, those branches of the motions of plaintiff and Investors for summary judgment, for injunctive relief as against Tauber is denied and that branch of Tauber's cross motion seeking summary judgment dismissing such claim as against him is granted. However, a claim for declaratory relief is not subject to dismissal merely because plaintiff and Investors are not entitled to the declaration they seek (*Lanza v Wagner*, 11 NY2d 317 [1962], *appeal dismissed* 371 US 74 [1962], *cert denied* 371 US 901 [1962]). Rather than

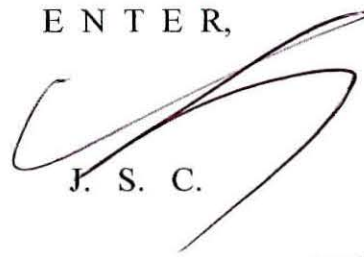
---

allows records of the clerk to be electronically retrieved and cross referenced with ease.

dismiss the complaint, the court should make an appropriate declaration of the rights and obligations of the parties with respect to the subject matter of the litigation (*Sweeney v Cannon*, 30 NY2d 633 [1972]). Accordingly, those branches of the motions and cross motion seeking declaratory relief is granted to the extent that the court declares that those parties which recorded interests in the subject property after Tauber's judgment was docketed took such interests subject to a judgment lien for the sum of \$217,245.00 together with accumulating interest. Plaintiff's claim against the Sheriff for injunctive relief, insofar as it is predicated on a finding that the judgment lien is limited to \$16,050.00, is rendered moot. Consequently, plaintiff's motion for a default judgment against the Sheriff is denied. Plaintiff's motion for a default judgment is otherwise granted as against 684 Myrtle LLC. Because it appears that Central filed an answer on July 25, 2017 and there does not appear to be any timely objection by plaintiff to the late filing, that part of plaintiff's motion for a default judgment is denied with respect to Central (*see Glass v Captain Hulbert House, LLC*, 103 AD3d 607, 608-609 [2d Dept 2013]; *Oparaji v Duran*, 18 AD3d 725, 725- 726 [2d Dept 2005]; *Ligotti v Wilson*, 287 AD2d 550, 551 [2d Dept 2001]). The action is severed accordingly.

The foregoing constitutes the decision, order and judgment of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL