

Cedeno v Quinones

2024 NY Slip Op 31606(U)

May 7, 2024

Supreme Court, New York Conty

Docket Number: Index No. 150966/2021

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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LYNETTE CEDENO AS EXECUTOR UNDER THE LAST
WILL AND TESTAMENT OF MARCOS M. QUINONES,
and LYNETTE CEDENO

Plaintiffs,

INDEX NO. 150966/2021

MOTION DATE 05/06/2024

MOTION SEQ. NO. 002

- v -

ADA QUINONES a/k/a ADA BRASWELL, and
SEWARD PARK HOUSING CORPORATION
Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47, 48

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiffs' motion for summary judgment is granted.

Background

Plaintiff Lynette Cedeno brings this case for an order requiring defendant Seward Park Housing Corporation ("Seward Park") to issue a stock certificate and proprietary lease in her name in connection with an apartment in which she has lived for decades. She alleges that her recently deceased husband (Mr. Quinones passed away in 2021) purchased these shares with his ex-wife, defendant Ada Braswell, in 1992. Ms. Cedeno contends that as part of the divorce proceeding between Mr. Quinones and Ms. Braswell, he would have exclusive ownership of the apartment. She insists that since Ms. Braswell moved out of the apartment in 1995, Ms. Braswell has not contributed anything towards the apartment (such as the mortgage or the maintenance). Ms. Cedeno claims she has lived in the apartment for nearly three decades and has acquired ownership rights in the property under a theory of adverse possession.

Plaintiffs also include affidavits from the now-deceased Mr. Quinones dated June 26, 2020 and January 26, 2021 in which he claims that Ms. Braswell relinquished her interest in the apartment as part of the divorce and that Ms. Braswell made no attempt to assert any claims concerning her interest in the apartment since she moved out (NYSCEF Doc. No. 26, 27).

Plaintiffs allege that they have satisfied the elements for adverse possession as they have asserted sole ownership rights over the subject premises for more than ten years. They argue that their residence in the apartment has been continuous, exclusive, open, and obvious. Plaintiffs emphasize that Ms. Braswell has never sought to return to the apartment or ever asserted any rights with respect to the apartment during this time period.

In opposition, defendant Braswell only submits an affirmation from her attorney. This affirmation contends that she “has come forward with documentary evidence in the form of the various exhibits which the Plaintiff has attached” (NYSCEF Doc. No. 47, ¶ 10) and that this Court cannot resolve issues of credibility on a motion for summary judgment. Defendant Braswell’s attorney claims that the instant case requires a trial. The attorney adds that “Since the Defendant is not conceding the points raised in the attached motion’s Affidavit, it is inferred that the Defendant has established the presence of various issues of fact with respect to the underlying allegations which were pled in the underlying complaint in regard to the issue of adverse possession” (*id.* ¶ 17).

In reply, plaintiffs observe that the affirmation in opposition was not timely uploaded.

Discussion

As a preliminary matter, the Court observes that it struck defendant Braswell’s answer for failure to appear for a conference (NYSCEF Doc. No. 38). However, this Court will consider this motion on the merits as the defendant Braswell filed opposition and plaintiffs filed their

reply *after* the Court struck Braswell's pleading. Put another way, plaintiffs did not withdraw this motion and so the Court will ignore the prior order striking Ms. Braswell's answer for purposes of this motion only.

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

On the merits, the Court grants plaintiffs' motion. They met their burden through the affidavits of Ms. Cedeno and Mr. Quinones for an adverse possession claim. And, critically, defendant Braswell did not raise an issue of fact in opposition because she did not submit

anything in connection with this motion from someone with personal knowledge. While Ms. Braswell is correct that a Court cannot make credibility determinations on a motion for summary judgment, it was her burden to raise issues of fact admissible form to create credibility issues. Simply having her attorney assert, in conclusory fashion, that there are issues of fact does not suffice.

And submitting only an affirmation from an attorney who lacks personal knowledge does not create an issue of fact (*Schwartz v 170 W. End Owners Corp.*, 161 AD3d 693, 693, 79 NYS3d 13 [1st Dept 2018]). Ms. Braswell needed to submit an affidavit to offer her account of the alleged facts in this dispute in order to adequately contest plaintiffs' moving papers.

The Court recognizes that counsel for Ms. Braswell asserts that he has personal knowledge of the facts (NYSCEF Doc. No. 47, ¶ 6). But there is no explanation for how Ms. Braswell's attorney acquired such knowledge or the foundation for this allegation. This vague argument is not a basis to find that Ms. Braswell's attorney can raise an issue of fact solely through his affirmation.

Summary

The instant motion turns of the question of burdens. Plaintiffs met their burden by including affidavits from individuals with personal knowledge. And defendant Braswell did not submit anything to contest these accounts from someone with personal knowledge and so she did not raise a material issue of fact. Therefore, the Court grants the motion to the extent that the stock certificate and proprietary lease be transferred to plaintiff Lynette Cedeno.

However, the Court denies the request contained solely in the affidavit of Lynette Cedeno (and not in the notice of motion) for legal fees she has paid for Seward Park's attorneys. She did not cite a basis for Ms. Braswell to pay these fees. Moreover, these fees were included on her

maintenance bill, bills which she claims she has exclusively paid over the years and is part of her prima facie showing that she has an exclusive right to ownership of the subject unit. It makes little sense to find that Ms. Cedeno acquired adverse possession of the apartment, in part, due to her payment of the maintenance and then make Ms. Braswell pay a portion of the maintenance.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for summary judgment is granted to the extent that defendant Seward Park Housing Corporation is directed, after payment of all appropriate and routine fees, to issue a new stock certificate and proprietary lease in plaintiff Lynnette Cedeno's name on or before May 30, 2024; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of plaintiffs and against only defendant Ada Quinones a/k/a Ada Braswell along with costs and disbursements upon presentation of proper papers therefor.

The upcoming inquest is therefore canceled.

5/7/2024
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE