

**Outland v Crayton**

2010 NY Slip Op 32245(U)

August 12, 2010

Supreme Court, Queens County

Docket Number: 7552/09

Judge: James J. Golia

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Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable JAMES J. GOLIA  
Justice

IAS TERM, PART 33

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RUTH B. OUTLAND,

Index No: 7552/09

Plaintiff(s),

Motion Date: 05/13/10

-- against --

Cal. No: 22

CYDRICK CRAYTON AND MALIKA HUNTE,

Sequence No. 3

Defendant(s).

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The following papers numbered 1 to 13 read on this motion by defendants Cydrick Crayton and Malika Hunte pursuant to CPLR 317, and 5015(a)(1) and (3) to vacate the default judgment obtained against them, and to dismiss the complaint pursuant to CPLR 3211(a)(1) based upon a defense founded upon documentary evidence, and pursuant to CPLR 3211 (a)(5) based upon the statute of frauds and expiration of the statute of limitations, and to vacate the notice of pendency, or in the alternative, for leave to file a late answer.

PAPERS  
NUMBERED

Notice of Motion, Affidavits, Exhibits....	1 - 5
Answering Affidavits, Exhibits.....	6 - 9
Reply Affidavits, Exhibits.....	10 - 13

Upon the foregoing papers it is ordered that this motion is determined as follows:

Plaintiff commenced this action by filing a copy of the summons and complaint on March 25, 2009, asserting a cause of action against defendants to quiet title, causes of action against defendant Crayton for breaches of constructive trust and fiduciary duty, and a cause of action against defendant Hunte for unjust enrichment. Plaintiff alleges that she acquired title to, and resided at, the real property known as 93-50 Vanderveer Street, Queens Village, New York, which was encumbered by a mortgage.

Plaintiff also alleges that she later relocated to Georgia, where she owns real property, which also was encumbered by a mortgage. Plaintiff allegedly sought to refinance the mortgage on the Georgia property, and in order for her to qualify financially to do so, she entered into an oral agreement with defendant Crayton, her nephew, whereby he agreed to hold the Queens property in his name in trust for plaintiff, pending improvement of her financial position, and she agreed to pay all carrying charges of the premises, including the mortgage payments, and expenses related to the property, including utilities. Plaintiff further alleges that defendant Crayton also agreed that he would reconvey the Queens property back to her at a later date. It is alleged that defendant Crayton, however, without plaintiff's knowledge, consent or authority, encumbered the Queens property with two mortgages, in original principal amounts totaling approximately \$300,000.00, and conveyed title to the property to himself and defendant Malika Hunte, as grantees. Plaintiff seeks a judgment declaring that she is the owner of the Queens property in fee simple absolute, and awarding monetary damages.

Plaintiff moved for leave to enter a judgment against defendants upon their default in appearing or answering and to direct an inquest. By order dated February 25, 2010, plaintiff's motion was granted to the extent of setting the matter down for an inquest on the issue of damages.

The affidavit of service dated April 1, 2009, submitted by plaintiff, indicates service was made upon defendant Crayton by in-hand delivery of a copy of the summons and complaint on April 1, 2009 "in front of" 151-20 Jamaica Avenue, New York at approximately 11:06 A.M. The other affidavit of service, also dated April 1, 2009, submitted by plaintiff, indicates service was made upon defendant Hunte by in-hand delivery of a copy of the summons and complaint on April 1, 2009 at 151-20 Jamaica Avenue, New York at 11:06 A.M. These affidavits constitute *prima facie* proof of proper service upon defendants Crayton and Hunte, respectively, pursuant to CPLR 308(1) (see *Prospect Park Management, LLC v Beatty*, 73 AD3d 885 [2010]; *Parker v Top Homes, Inc.*, 58 AD3d 817, 818 [2009]). Defendants Crayton and Hunte have failed to submit a sworn denial of service or specific facts to rebut the statements in the affidavits of service. Because service was made under CPLR 308(1), defendants Crayton and Hunte may not avail themselves of the provisions of CPLR 317 (see *Fleetwood Park Corp. v Jerrick Waterproofing Co., Inc.*, 203 AD2d 238 [1994]; *National Bank of Northern N.Y. v Grasso*, 79 AD2d 871 [1980]). The branch of the motion by defendants Crayton and Hunte to vacate their default in the action pursuant to CPLR 317 is denied.

With respect to that branch of the motion to vacate pursuant

to CPLR 5015(a)(3), defendants Crayton and Hunte have failed to establish that the judgment was procured by intrinsic or extrinsic fraud (see generally *Shaw v Shaw*, 97 AD2d 403 [1983]), misrepresentation, or other misconduct (CPLR 5015[a][3]).

To the extent defendants Crayton and Hunte move to vacate their default in appearing or answering the complaint pursuant to CPLR 5015(a)(1), it is well settled that the proponent of a motion to vacate a default judgment under the provision must demonstrate a reasonable excuse for his or her failure to appear or answer the complaint, and a meritorious defense.

Defendants Crayton and Hunte, who are now husband and wife, resided together prior to their marriage, along with Jane Hardy, Crayton's grandmother in the Queens property. Defendant Crayton states that immediately after their receipt of the summons and complaint, he and Hunte were displaced from the property by virtue of Hardy's obtaining of an order of protection against Crayton. Defendants Crayton and Hunte maintained certain papers relevant to their defense to this action at the premises, and claim that due to the issuance of the order of protection, they were unable to retrieve them at that time. Defendant Crayton states he subsequently was given access to the premise to retrieve, among other things, a few documents, which he did, and then on or about April 29, 2009, he and defendant Hunte retained their present attorney to represent them in this action, and made arrangements to obtain bank records. Although defendants' counsel did not file a notice of appearance, he made a written request for an extension of time in which to serve an answer on behalf of defendants Crayton and Hunte to May 29, 2009, which went unanswered. Plaintiff's attorney also did not respond to defense counsel's telephone calls to request an adjournment of the return date of the motion for leave to enter a default judgment. Under these circumstances, defendants Crayton and Hunte have established a reasonable excuse for their default in appearing or answering, and that they did not ignore the claims of plaintiff, but took prompt steps to defend themselves, and relied upon their attorney to represent them.

In addition, defendants Crayton and Hunte have presented an arguable meritorious defense to the action based upon their claim that defendant Crayton was a bona fide purchaser for value, who never agreed to hold title in constructive trust for the benefit of plaintiff or to reconvey title to the Queens property back to plaintiff, and thus, are protected in their title by virtue of the recording statutes. Under such circumstances, that branch of the motion to vacate the judgment is granted in an exercise of discretion (CPLR 5015[a][1]).

With respect to that branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(5) based upon the expiration of the applicable statutes of limitation, where the relief sought is equitable in nature, the six-year statute of limitations period of CPLR 213(1) applies. The quiet title claim, which sounds in equity and arises under article 15 of the Real Property Actions and Proceedings Law, is not barred by 174 AD2d 191, 195-196 [1992]). To the degree the first cause of action also may be read as an equitable claim for the imposition of a constructive trust, such claim has a six-year statute of limitations measured from the time of the wrongful conduct or event giving rise to a duty or restitution (see *Maric Piping, Inc. v Maric*, 271 AD2d 507 [2000]; *Dybowski v Dybowska*, 146 AD2d 604 [1989]). Likewise, a cause of action for unjust enrichment has to be asserted within six years after its accrual (see CPLR 213; *L&L Plumbing & Heating v DePalo*, 253 AD2d 517 [1998]; *Lawyer's Fund for Client Protection of State of N.Y. v Gateway State Bank*, 239 AD2d 826 [1997]). The alleged wrongful conduct by defendant Crayton occurred within 6 years of the commencement of this action, and defendant Hunte allegedly acquired her ownership interest in the property within such period. The claims for imposition of a constructive trust and based upon unjust enrichment, hence, are not barred by the applicable statutes of limitations. Furthermore, to the extent plaintiff asserts a claim based upon breach of fiduciary duty against defendant Crayton based on allegations of actual fraud, it is subject to a six-year limitations period (see *Klein v Gutman*, 12 AD3d 417 [2004]; *Kaufman v Cohen*, 307 AD2d 113, 118 [2003]). That branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(5) based upon the expiration of the applicable statutes of limitation is denied.

With respect to that branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(5) based upon the statute of frauds, it is true that General Obligations Law §5-703 requires that a conveyance, or a contract for the conveyance, of an interest in real property be in writing. However, the statute of frauds is not a defense to an action seeking the imposition of a constructive trust (see *Delango v Delango*, 203 AD2d 319 [1994]; *Gottlieb v Gottlieb*, 166 AD2d 413 [1990]). That branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(5) based upon the statute of frauds is denied.

With respect to that branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(1), a motion to dismiss a complaint based upon documentary evidence may be granted where the documentary evidence submitted resolves all factual issues as a matter of law and definitively

disposes of the plaintiff's claim (*Fortis Fin. Servs. V Fimat Futures USA*, 290 AD2d 383, 383 [2002]; see *Leon v Martinez*, 84 NY2d 83-88 [1994]; *Martin v New York Hosp. Med. Ctr. of Queens*, 34 AD3d 650 [2006]; *Berger v Temple Beth-El of Great Neck*, 303 AD2d 346, 347 [2003]). The documentary evidence submitted by defendants Crayton and Hunte does not utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law pursuant to CPLR 3211(a)(1) (see *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; see *Leon v Martinez*, 84 NY2d 83, 88 [1994], *supra*). That branch of the motion by defendants Crayton and Hunte to dismiss the complaint pursuant to CPLR 3211(a)(1) based upon a defense founded on documentary evidence is denied.

That branch of the motion to vacate the notice of pendency is denied.

That branch of the motion by defendants Crayton and Hunte for leave to serve and file an answer is granted to the extent of directing them to serve and file an answer within 10 days of service of a copy of this order with notice of entry.

Dated: August 12, 2010

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JAMES J. GOLIA, J.S.C.