

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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195 HAWTHORNE PARTNERS, LLC.,

Plaintiffs, Decision and order

- against -

Index No. 506136/18  
ms #4

GEORGENE S. THOMPSON  
a/k/a GEORGENE S. THOMPSON (BROWN)  
AND HAWTHORNE PARTNERS, LLC.,

Defendants, December 10, 2018

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GEORGENE S. THOMPSON  
AND HAWTHORNE PARTNERS, LLC.,  
Third-Party Plaintiffs,

- against -

GEORGE RUSSO, ESQ., THE LAW FIRM OF  
GEORGE RUSSO & ASSOCIATES, P.C.,  
ATKINS & BRESKIN, LLC., JERRY ATKINS,  
FIRST AMERICAN TITLE, UNITED AMERICAN  
TITLE AGENCY, LLC., THOMAS V. CARABALLO,  
THE BANK OF ASIA, USA, INDUSTRIAL AND COMMERCIAL  
BANK OF CHINA, TITLEVEST AGENCY AND FIDELITY  
NATIONAL TITLE INSURANCE COMPANY,  
Third-Party Defendants.

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff 195 Hawthorne Partners LLC has moved pursuant to CPLR §3212 seeking summary judgement concerning the two causes of action of the complaint. The defendant Georgene Thompson has opposed the motion. Papers were submitted by both parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in an order dated October 30, 2018 the defendant Georgene Thompson acquired property located at 195 Hawthorne Street, Kings County in 1998. On March 28, 2007 Thompson

transferred the property to defendant Hawthorne Partners LLC. Although Thompson has consistently contended that she is a shareholder of that entity, the Complaint filed in this case asserts that Thompson was "never a member or manager of Hawthorne" (see, Complaint, ¶ 3) and indeed, the Operating Agreement lists only one member, namely George Russo. Thompson and Russo, a real estate attorney advising Thompson, entered into an agreement on January 10, 2006 wherein the parties agreed to form a limited liability corporation (Hawthorne Partners LLC) to develop the property and build a multi-unit building selling condominiums. Hawthorne Partners LLC thereafter gave two mortgages on the property to the Bank of East Asia, one for \$650,000 and one for \$3,130,000. Unhappy with the progression of the development of the property Thompson deeded the property back to herself and such deed was recorded on September 7, 2011. Thereafter, on May 24, 2012 Russo and Hawthorne Partners LLC commenced an action against Thompson seeking to set aside the transfer of the deed to herself. That complaint asserted four causes of action including fraud and forgery and claims to set aside the deed transfer and to quiet title. The complaint alleged Thompson knew that Hawthorne Partners LLC was the rightful owner of the property and the deed transfer clouded title. Thompson answered the complaint and asserted three affirmative defenses. First she asserted that any fraud or

forgery she committed was only in response to such actions first committed by Russo and consequently her actions were permitted under the doctrine of anticipatory repudiation. Second, she alleged Russo breached his fiduciary duty and violated the Code of Professional Responsibility. Third, she alleged Russo misrepresented material facts about the development of the property. She then asserted two counterclaims. The first one alleged that Russo "commenced negotiations with a third party buyer" without her consent, in violation of the agreement. Second, she asserted that Russo "convinced Defendant (Thompson) to transfer ownership of the subject premises into the Plaintiff Corporation (Hawthorne Partners LLC) which Defendant was a co-owner in" (see, Verified Answer with Counterclaim, ¶¶ 29, 30, dated July 10 2012) and further obtained a mortgage on the property through "fraud" (id).

Thereafter, Russo defaulted on the mortgages which had since been consolidated and a judgement was entered against him. The judgement and consolidated mortgages were then assigned to the plaintiff 195 Hawthorne Partners LLC on September 18, 2014. The plaintiff entered into an agreement with Hawthorne Partners LLC and Russo on November 3, 2014 essentially conveying title to the property to 195 Hawthorne partners LLC. 195 Hawthorne Partners LLC then sought to intervene in the quiet title action and after such intervention sought summary judgement. On July 1, 2015

Judge Bayne issued an order which stated that "195 Hawthorne Partners LLC's motion for summary judgement is granted to the extent that Defendant Georgene S. Thompson is directed to execute a deed for the Premises at issue 195 Hawthorne Street, Brooklyn, NY, within 30 days of the date of this order, to the prior owner Hawthorne Partners LLC..." (see, Order dated July 1, 2015). Thompson refused to comply with that order and on October 14, 2015 Judge Knipel ordered Russo to be appointed attorney in fact for Thompson to effectuate the earlier order directing Thompson to transfer the deed to Hawthorne Partners LLC. The deed was then transferred back to Hawthorne Partners LLC.

On December 9, 2015 195 Hawthorne Partners LLC instituted a foreclosure action against Hawthorne Partners LLC seeking to foreclose the mortgage and other liens on the property. On November 18, 2015 Judge Knipel issued an order granting 195 Hawthorne Partners LLC's motion seeking to compel the settlement agreement dated November 3, 2014 and ordered Hawthorne Partners LLC to record the deed. On October 1, 2015 the deed was recorded.

Thus, as of August 7, 2017 following a satisfaction of mortgage 195 Hawthorne Partners LLC was the owner of 195 Hawthorne Street in Kings County.

195 Hawthorne Partners LLC instituted the current action seeking to quiet title to the property upon discovering,



according to the complaint, that "Thompson or Hawthorne, or someone claiming to represent Hawthorne, have made at least two attempts to mortgage the Premises in exchange for loans in millions of dollars" (see, Verified Complaint, ¶ 38). Thus, the current complaint contains two causes of action, an action for a declaratory judgement to quiet title concluding that the plaintiff 195 Hawthorne Partners holds title to the premises and an injunction enjoining Thompson from further acting wherein she holds herself out as the owner of the property. Thompson filed a verified answer and asserted 195 Hawthorne Partners LLC's claims are barred by "waiver, laches, equitable estoppel, res judicata, collateral estoppel, and/or the entire controversy doctrine" (see, Verified Answer, ¶ 4) as well as other conclusory assertions. Moreover, Thompson instituted a third party action against various defendants. In addition, Thompson asserted four counterclaims against 195 Hawthorne Partners, consisting of the same causes of action filed in the third party complaint except two causes against Russo concerning his legal representation. 195 Hawthorne Partners LLC moved seeking to dismiss the counterclaims filed in the original complaint. On October 30, 2018 the court issued an order which granted 195 Hawthorne's motion. The court held that pursuant to the doctrine of res judicata Thompson's claims were barred since they such claims had essentially been rejected in prior proceedings in which she

participated.

This summary judgement motion has now been filed seeking a determination that as a matter of law the plaintiff is granted judgement upon those two causes of action.

#### Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1<sup>st</sup> Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]).

Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007]).

Based upon the earlier decision the plaintiff's entitlement to summary judgement seems naturally evident. The defendant argues the prior decision only concluded that Thompson was required to place title in the hands of Hawthorne Partners LLC and that the further issue whether Hawthorne Partners was required to deed the property to the plaintiff has not yet been decided. It is true the prior decision explained it had never ruled upon Thompson's claims of ownership of Hawthorne Partners LLC but further noted that such a determination was irrelevant since it had nothing to do with transferring the property to 195 Hawthorne Partners. Thus, the defendant asserts that discovery is required to explore "whether Hawthorne Partners LLC should be required to deed the property and who had actual authority to deed it to 195 Hawthorne Partners LLC" (Defendant's Memorandum in Opposition, page 4). However, the issue whether Hawthorne Partners should be required to deed the property is a matter that has already been determined and cannot be re-litigated at this stage. The second issue, namely who had the authority to deed the property to 195 Hawthorne Partners LLC is not a matter


germane to this lawsuit, but rather as noted is a matter between Thompson and Russo. There can be no question of fact that 195 Hawthorne Partners LLC is the owner of the property located at 195 Hawthorne Street in Kings County. Indeed, the defendant has not raised any question of fact concerning the two causes of action contained in the complaint.

Therefore, based on the foregoing the motion of 195 Hawthorne Partners LLC seeking summary judgement is granted. Consequently, the cause of action seeking to quiet title is granted. As noted, the property is owned by 195 Hawthorne Partners LLC and Hawthorne Partners LLC may exercise any rights and benefits of such ownership. Second, the cause of action seeking an injunction is granted. Consequently, Georgene Thompson is hereby enjoined from conducting any activity which creates any cloud of title concerning the property or from taking any action as the owner of the property including attempting to encumber the property in any manner.

So ordered.

ENTER:

DATED: December 10, 2018  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC

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FILED