

**Rainford Mgt. Corp. v 207 Van Buren LLC**

2020 NY Slip Op 31129(U)

April 27, 2020

Supreme Court, Kings County

Docket Number: 508065/2019

Judge: Dawn M. Jimenez-Salta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 88 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 27<sup>th</sup> day of April, 2020.

P R E S E N T:

HON. DAWN JIMENEZ-SALTA,  
Justice.

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RAINFORD MANAGEMENT CORPORATION and  
LCD HOLDING CORP.,

Plaintiffs,

Index No. 508065/2019  
Motion Seq. 1

- against -

207 VAN BUREN LLC,

Defendant.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of:

- 1) Defendant 207 Van Buren LLC’s (Defendant) motion, pursuant to CPLR 3212, for an order dismissing the complaint in its entirety, cancelling and vacating the notice of pendency, and awarding Defendant costs and attorneys’ fees pursuant to 22 NYCRR 130-1.1(a), with accompanying memorandum of law, dated September 25, 2019;
- 2) Plaintiffs Rainford Management Corporation and LCD Holding Corp.’s (Plaintiffs) affirmation in opposition, dated January 7, 2020;
- 3) Defendant’s affirmation in reply, dated January 30, 2020, all of which submitted February 5, 2020.

Papers Considered:

Papers Numbered:

Notice of Motion, Affirmation, Affidavits and Exhibits Annexed .....	Defendant 1; 2 [Exh. A-S];
Answering Affirmation, and Exhibits Annexed .....	Plaintiffs 4 [Exh. A-G];
Reply Affirmation, and Exhibits Annexed .....	Defendant 5 [Exh. A-C];
Other [Memorandum of Law] .....	Defendant 3.

Upon the foregoing cited papers, the Decision/Order is as follows: Defendant’s motion for an order, pursuant to CPLR 3212, is granted to the extent that the complaint is dismissed and the notice of pendency is vacated. The motion is otherwise denied.

### ***Background***

Plaintiffs, Rainford Management Corporation and LCD Holding Corp., (Plaintiffs) seek a judgment declaring that they are title owners of an undivided share or interest in fee simple absolute of the real property known as 207 Van Buren Street, Brooklyn, New York (the Property) and, pursuant to article 15 of the Real Property Actions and Proceedings Law, to compel the determination of claims to the Property. Plaintiffs also seek to set aside the deed purporting to transfer the Property to the defendant, 207 Van Buren LLC, (Defendant) as null and void (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

The Property was originally purchased in 1981 by Estelle Gray and her daughter, Clifford Mae Gray, with each owning an undivided 50% interest. Estelle Gray died intestate on May 13, 1998, survived by Clifford Mae Gray and seven other children, Anita Gray, Barbara Gray, Cheryl Gray, Colleen Gray, Sevonne Gray, Terry Gray, and Rosalind Rice. A small estate affidavit in relation to the settlement of her estate was filed in Surrogate's Court, Kings County in May 1998 (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Anita Gray died intestate on December 26, 1999, survived by her daughter, Kimberly Gray. Rosalind Rice died intestate on September 9, 2013, survived by her husband, Bobby Rice, and three children: Stacy Alston, Eric Gray, and David Rice. A small estate affidavit for her estate was filed by Stacy Alston in October 2013 (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

By deed dated August 1, 2017 and recorded on August 11, 2017, Clifford Mae Gray, individually, and Clifford Mae Gray and Barbara Gray “as the sole heirs and distributees of Estelle Gray, deceased” executed a deed purportedly transferring the Property to Defendant for \$1,275,000.00 (August 2017 Deed) (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Upon learning of the sale, on November 2, 2017, Sevonne Gray, Cheryl Gray, Rosalind Rice, and Anita Gray “and/or their lawful heirs, successors, beneficiaries” commenced an action against Clifford Mae Gray, Barbara Gray, and Defendant seeking, *inter alia*, monetary damages and a quiet title declaration that they were also heirs of Estelle Gray with an interest in the Property (the “*Gray v. Gray* action”)<sup>1</sup> (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

During the pendency of the *Gray v. Gray* action, in August 2018, Kimberly Gray sought and obtained letters of administration for the estate of Anita Gray. Stacy Alston also obtained amended letters of administration for the estate of Rosalind Rice in September 2018. In connection with the administration proceeding, Bobby Rice executed a waiver of citation and consent to the amendment of the letters of administration. The parties thereafter agreed by stipulation to amend the caption to

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<sup>1</sup> The full caption of the *Gray v. Gray* action is *Sevonne Gray, Colleen Gray, Terry Gray, Cheryl Gray, Rosalind Lee Gray, Anita Gray, and/or their lawful heirs, successors, beneficiaries v. Clifford Mae Gray, a/k/a Clifford Mae McGee, a/k/a Clifford Birt Mae, a/k/a Clifford Birt, a/k/a Jackie Gray, Barbara Gray and 207 Van Buren LLC* (Sup Ct, Kings County, index No. 2970/2017).

substitute Kimberly Gray, as administrator of the estate of Anita Gray, in place of Anita Gray and Stacy Alston, as administrator of the estate of Rosalind Rice, in place of Rosalind Rice (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

On January 25, 2019, the parties in the *Gray v. Gray* action executed a settlement agreement pursuant to which, in consideration for \$426,000.00 paid to the plaintiffs in the *Gray v. Gray* action by Clifford Mae Gray and Barbara Gray, the plaintiffs executed quitclaim deeds and general releases relinquishing their claimed interests in the Property to Defendant. The quitclaim deed, dated January 23 2019, was executed by Clifford Mae Gray, Kimberly Gray as administrator of the estate of Anita Gray, Barbara Gray, Cheryl Gray, Colleen Gray, Stacy Alston as administrator of the estate of Rosalind Rice, Sevonne Gray and Terry Gray, and purported to convey their interests deriving from Estelle Gray to Defendant. The deed was not recorded until September 4, 2019. In the general release, the same plaintiffs and their “agents, heirs, executors, affiliates, successors [and] beneficiaries” released Defendant from all claims that they “ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever” (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

In a separate proceeding in Surrogate’s Court, Kings County, full and unrestricted letters of administration for the estate of Estelle Gray were issued to Sevonne Gray on March 1, 2019. Each of the estate beneficiaries, including Bobby Rice, executed a waiver of citation and consent to her appointment as administrator. Sevonne Gray as administrator thereafter executed an additional quitclaim deed on March 8, 2019 purporting to convey the entirety of Estelle Gray’s original 50% interest in the Property to Defendant. The deed was not recorded (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

On March 22, 2019, Sevonne made an application pursuant to Surrogate’s Court Procedure Act (SCPA) article 19 for an order approving the prior disposition of the Property to Defendant. The Surrogate’s Court then issued an order, entitled “Order Approving the Prior Disposition of Real Property,” granting Sevonne Gray’s SCPA article 19 application (Article 19 Order). The Article 19 Order stated “that the prior disposition and transfer of the real property located at 207 Van Buren Street, Brooklyn, NY, Block: 1609; Lot 63 to 207 Van Buren LLC for the consideration amount of \$1,275,000.00 is hereby approved” and also authorized Sevonne Gray as administrator to confirm and consent to “said prior transfer/disposition by executing a quit-claim deed and general release to 207 Van Buren LLC” (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

While the petition was pending, on April 10, 2019, Bobby Rice executed a bargain and sale deed purportedly conveying “any and all of his interest” in the Property to Plaintiffs for \$20,000.00. The deed was recorded on April 11, 2019 (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Plaintiffs commenced this action against Defendant by filing of the summons and complaint on April 10, 2019, seeking a declaration that they are title owners to the extent of Bobby Rice’s share in the Property and to compel a determination of their claim to ownership of the Property. They also seek to set aside the August 2017 Deed on the ground that said deed is void because Clifford Mae Gray and Barbara Gray were not the “sole heirs and distributees” of Estelle Gray and therefore were unable to

convey full title to the Property (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Defendant now moves pursuant to CPLR 3212 to dismiss the complaint in its entirety and seeks costs and attorneys' fees pursuant to 22 NYCRR 130-1.1. Citing Real Property Law § 245, which states that "[a] greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed," Defendant argues that the Rainford Deed is invalid or void because Bobby Rice held no interest in the Property at the time he executed the Rainford Deed. Defendant notes that the beneficiaries of the estate of Estelle Gray, including Stacy Alston as administrator, executed quitclaim deeds prior to the Rainford Deed transferring all of their respective interests in the Property to Defendant. Defendant notes that Bobby Rice executed a waiver of citation and consent to the amendment of the letters of administration issued to Stacy Alston and a waiver and consent to the appointment of Sevonne Gray as administrator of the estate of Estelle Gray (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Defendant further contends that the original August 2017 Deed remains a valid encumbrance upon the Property on the ground that validity of the deed was established in context of the SCPA article 19 application filed in Surrogate's Court, which sought judicial approval of the sale. Defendant asserts that the Article 19 Order effectively authorized the *Gray v. Gray* action settlement pursuant to which each of the beneficiaries received a proportionate share of the proceeds from the initial sale<sup>2</sup> (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Defendant also argues that it is entitled to summary judgment on the ground that Plaintiffs' claims are precluded by the doctrine of res judicata and barred by the release executed in the *Gray v. Gray* action (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Plaintiffs argue that Defendant's summary judgment motion must be denied because the August 2017 Deed was void and the later quitclaim deed executed by Sevonne Gray was not recorded until September 4, 2019, almost five months after the Rainford Deed recorded on April 11, 2019 (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

In addition, Plaintiffs claim that neither the original August 2017 Deed nor the later quitclaim deeds conveyed the interest now owned by Plaintiffs since said interest in the Property vested immediately in the Plaintiffs' grantor, Bobby Rice, at the time of Rosalind Rice's death.<sup>3</sup> As such, they

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<sup>2</sup> The stipulation of settlement executed by the parties in the *Gray v. Gray* action provided that all settlement funds remain in escrow until, *inter alia*, an order approving the disposition of the Property pursuant to SCPA article 19 was obtained by the administrator for the estate of Estelle Gray (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

<sup>3</sup> According to Plaintiffs, at the time of Estelle Gray's death, each of her eight distributees became immediately vested in fee simple of an undivided one-sixteenth interest in the Property. Since Clifford Mae Gray already owned a one-half share, the result was that she now owned a nine-sixteenth interest as tenant in common with the seven remaining distributees who each owned a one-sixteenth interest. When Rosalind Rice died intestate on September 9, 2013, her one-sixteenth interest in the Property vested immediately in her distributees: Bobby Rice and three children. Accordingly, pursuant to EPTL § 4-1.1, at least one-half of Rosalind Rice's share in the Property vested immediately upon her death in Bobby Rice, making him the owner of between a one-sixteenth and one-thirty-second interest, depending on the value of Rosalind Gray's assets (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

argue that the interest now possessed by Plaintiffs never passed to the estate of Rosalind Rice and was not subject to disposition by Stacy Alston as administrator or the Surrogate's Court (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

### *Discussion*

Real Property Law § 245 provides, in pertinent part, that “[a] greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed.” Accordingly, “when a cotenant who has a partial interest in real property executes a deed that purports to convey full title to the property, the deed is not entirely void; rather, the deed is effective, but only to the extent of conveying the grantor’s interest in the property” (*Matter of Blango*, 166 AD3d 767, 768-769 [2d Dept 2018], quoting *Bayview Loan Servicing, LLC v White*, 134 AD3d 755, 756 [2d Dept 2015]).

Pursuant to SCPA § 1902, the Surrogate’s Court, upon application of “[a]ny person entitled either absolutely or contingently to share as beneficiary in the estate” (SCPA § 103 [39]), may dispose of an intestate decedent’s real property for any of the reasons enumerated in SCPA § 1902, including in order to pay estate expenses, to effect distribution of the respective shares of the estate, or “[f]or any other purpose the court deems necessary” (SCPA 1902 [7]; *see also In re Estate of Marino*, 2012 NY Slip Op 51327[U], \*4-5 [Sur Ct, Bronx County 2012]). A transfer that occurs pursuant to SCPA article 19 constitutes a judicially ordered sale by the Surrogate’s Court (*Matter of Freund*, 162 Misc2d 965, 972 [Sur Ct, Schoharie County 1994]).

In ordering the sale, the Surrogate’s Court “directs that the *decedent’s interest in the real property* be sold and conveyed unencumbered by the interests of the estate beneficiaries and/or their judgment creditors” (*Matter of Freund*, 162 Misc2d at 973 [emphasis in original]).

In this case, following the initial transfer in 2017, the beneficiaries of the estate of Estelle Gray, including Stacy Alston, as administrator of the estate of Rosalind Rice, executed a quitclaim deed in January 2019 conveying their interests in the Property to Defendant. Stacy Alston was authorized to act as administrator of the estate of Rosalind Rice following the issuance of letters of administration pursuant to waivers of citation and consent executed by all beneficiaries, including Bobby Rice (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Shortly thereafter, Sevonne Gray, following the issuance of letters of administration authorizing her to act as administrator of the estate of Estelle Gray, executed an additional quitclaim deed conveying the entirety of Estelle Gray’s original 50% interest in the Property to Defendant. Said transfer and disposition of the Property was then judicially approved in the Article 19 Order in the estate proceeding on the ground that it was in the best interest of the estate and beneficiaries (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Although Plaintiffs correctly state that title to real property automatically vests in the heirs of a decedent who dies intestate (*see, e.g., Matter of Blango*, 166 AD3d at 768; *Kraker v Roll*, 100 AD2d 424, 429 [2d Dept 1984]), such vesting of title is subject to the rights granted to the administrator to manage and dispose of it for purposes of distribution to beneficiaries of the estate (*see, e.g., Estate of Berson*, 2017 NYLJ LEXIS 2587, \*9 [Sur Ct, Kings County 2017]; *Matter of Lewis*, 2008 NY Slip Op

52528[U], \*2 [Sur Ct, Bronx County 2008] [“Notwithstanding that title to realty technically vests in a decedent’s distributees or the devisees under a will, SCPA article 19 does confer jurisdiction upon the surrogate’s court to sell a decedent’s interest in realty.”]; *Estate of Taylor*, 2005 NYLJ LEXIS 289, \*7 [Sur Ct, Kings County 2005] [“Realty descends at death to the distributees, subject to the right of the administrator to manage it, and to sell it for the purposes of distribution”] (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Plaintiffs’ arguments, premised upon the claim that their interest is superior to Defendant’s interest on the ground that it derives from Rosalind Rice and vested immediately in Bobby Rice, and was therefore not subject to disposition by the administrator of her estate or the Surrogate’s Court, are unavailing. The quitclaim deeds and the Article 19 Order from the Surrogate’s Court, which approved the prior disposition of the Property and quitclaim deed executed by Sevonne Gray, encompassed any interest that Bobby Rice had in the Property that the Rainford Deed purported to convey (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

The fact that the Rainford Deed was recorded prior to the recording of the quitclaim deeds relied upon by Defendant does not change the court’s analysis as Bobby Rice had no interest to convey at the time he executed the Rainford Deed. Alternatively stated, Plaintiffs are not bona fide purchasers entitled to the protections of Real Property Law § 291, the recording statute, because the Rainford Deed is not a valid deed under Real Property Law § 245 as it purports to convey an interest that Bobby Rice did not possess at the time of the conveyance (*see Bayview Loan Servicing LLC v White*, 134 AD3d at 756; *Solar Line, Universal Great Broth., Inc. v Prado*, 100 AD3d 862, 863 [2d Dept 2012]) (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

In opposition to Defendant’s summary judgment motion, Plaintiffs fail to articulate any grounds by which they can avoid the effect of the quitclaim deeds and judicially ordered sale encompassing their interest derived from Bobby Rice. They failed to submit any evidence indicating that the Surrogate’s Court did not have jurisdiction over the dispute between beneficiaries and the SCPA article 19 petition, or that Bobby Rice did not receive notice of the proceedings or consent to the appointment of Sevonne Gray and Stacy Alston as administrators of the estates of Estelle Gray and Rosalind Rice, respectively (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

In light of the foregoing, regardless of the validity of the initial August 2017 Deed, Bobby Rice had no interest to convey at the time he executed the Rainford Deed purportedly conveying his interest in the Property to Plaintiffs (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

The court does not reach Defendant’s remaining arguments, including those relating to the affirmative defense that Clifford Mae Gray obtained title to the Property by adverse possession (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Though it is not the basis for the court’s decision, the court notes that the settlement agreement in the *Gray v. Gray* action provided that the plaintiffs in that action, including the estate of Rosalind Rice, were to be paid the sum of \$426,000.00 “representing six (6) shares of \$71,000.00 for each of the within settling Plaintiffs,” which purported to settle and resolve the beneficiaries’ dispute in a manner which

disbursed the proceeds of the initial sale of the Property and provided each of the beneficiaries, including the estate of Rosalind Rice, with their respective distributive shares (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

Defendant's other requested relief of costs and fees pursuant to 22 NYCRR § 130-1.1 for the alleged frivolous conduct is denied as Plaintiffs' position and arguments were not without reasonable basis in fact or law, or "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR § 130-1.1 [c]). In addition, costs and sanctions pursuant to 22 NYCRR § 130-1.1 pertain to conduct occurring in civil litigation, not for conduct that engenders litigation, such as the recording of a deed or the claiming of an interest in real property (Defendant 1; Defendant 2 [Exh. A-S]; Defendant 3; Plaintiffs 4 [Exh. A-G]; Defendant 5 [Exh. A-C]).

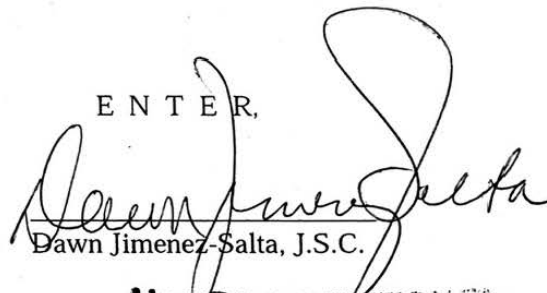
Accordingly, Defendant's summary judgment motion is granted to the extent that Plaintiffs' complaint is dismissed and the notice of pendency is vacated. The motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: April 27, 2020  
Brooklyn, New York

*Rainford Management Corporation and LCD Holding Corp. v 207 Van Buren LLC*  
Index No. 508065/2019

E N T E R,



Dawn Jimenez-Salta, J.S.C.

Hon. Dawn Jimenez-Salta  
Justice of the Supreme Court