

**Renke v Kwiecinski**

2010 NY Slip Op 30497(U)

March 4, 2010

Supreme Court, Nassau County

Docket Number: 19550/09

Judge: Denise L. Sher

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**SHORT FORM ORDER**

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

**PRESENT: HON. DENISE L. SHER**  
**Acting Supreme Court Justice**

\_\_\_\_\_  
JOHN K. RENKE II,

Petitioner,

- against -

JOYCE A. KWIECINSKI a/k/a JOYCE KWIECINSKI,  
ANCHOR SAVINGS BANK, FSB, BOARD OF  
MANAGERS OF SEA BREEZE II CONDOMINIUM, and  
WORKERS' COMPENSATION BOARD OF THE STATE  
OF NEW YORK,

Respondents.

TRIAL/IAS PART 32  
NASSAU COUNTY

Index No.: 19550/09  
Motion Seq. No: 01  
Motion Dates: 10/15/09  
**XXX**

**The following papers have been read on this motion:**

	<u>Papers Numbered</u>
<u>Order to Show Cause, Emergency Affidavit, Verified Petition and Exhibits</u>	<u>1</u>
<u>Affidavit of Respondent/Mortgagee and Exhibits</u>	<u>2</u>
<u>Affirmation of Respondent Workers' Compensation Board</u>	<u>3</u>
<u>Affirmation in Support by Respondent Board of Managers of Sea Breeze II Condominium and Exhibits</u>	<u>4</u>
<u>Pro Se Answer to Petition</u>	<u>5</u>
<u>Pro Se Answer Affidavit</u>	<u>6</u>
<u>Pro Se Answer Affidavit to Petition</u>	<u>7</u>
<u>Petitioner's Affidavit in Reply and Further Support and Exhibit</u>	<u>8</u>
<u>Petitioner's Affidavit in Reply and Further Support and Exhibits</u>	<u>9</u>

Upon the foregoing papers, it is ordered that the application is decided as follows:

Petitioner brings the present application for a judgment, pursuant to CPLR § 5206(e), directing that: (1) the interest of respondent Joyce A. Kwiecinski ("Kwiecinski") in and to that certain condominium property, together with improvements, commonly known as 75 East

Broadway, Unit 10, a/k/a Unit 5B, Section 59, Block 101, Lot 227, Village of Long Beach, Town of Hempstead, County of Nassau, State of New York, ("Premises") together with Kwiecinski's undivided 7.5833% interest in the common elements of the Sea Breeze II Condominium which were included in the conveyance of the Premises to Kwiecinski, and more fully described in the Petition, said Premises being a residential condominium unit being part of the Sea Breeze II Condominium, be sold by a Sheriff or a Receiver to be appointed by the Court; (2) the proceeds of said sale, in an amount not exceeding fifty thousand dollars (\$50,000.00), as and for Kwiecinski's homestead exemption, be paid to Kwiecinski; (3) the State of Florida judgments recovered by petitioner, plus interest, and the costs, disbursements of this proceeding, be adjudged to be a lien upon the surplus of the said sale, and that lien be enforced; (4) the surplus of the said sale to be applied to the State of Florida judgments obtained by petitioner, as judgment creditor against Kwiecinski as judgment debtor; and (5) Kwiecinski be directed and compelled to execute and deliver any and all documents and papers and take any action that may be reasonably requested by the Sheriff or Receiver to effectuate the transfer and sale of the interest of Kwiecinski in the Premises upon public auction sale, and matters related thereto, including, but not limited to, taking any action and/or executing and delivering of any or all documents as may be required by the Sea Breeze II Condominium, and in the event that Kwiecinski fails, refuses or neglects to take such action(s) or to execute and deliver such documents or papers, authorizing the Sheriff or Receiver to execute such documents or papers or to perform such action(s) on behalf of Kwiecinski, as her attorney in fact.

Petitioner submits to the Court that he is the beneficiary of three money judgments entered in the Nassau County Clerk's Office against Kwiecinski. Said judgments include a judgment entered on September 21, 2004, in the sum of \$32,219.80 with interest, under Index No. 12997/04, a judgment entered on August 3, 2007, in the sum of \$56,794.25 with interest, under Index No. 13464/07 and a judgment entered on September 23, 2008, in the sum of \$12,225.00 with interest, under Index No. 17506/08. All three judgments remain wholly unpaid and unsatisfied as of the date of the present petition.

Petitioner states that he named Anchor Savings Bank ("ASB") as a respondent as ASB is in possession of an approximately \$98,000.00 mortgage lien against Kwiecinski's Premises. The

Board of Managers of Sea Breeze II Condominium ("Sea Breeze") were named as a respondent based upon the fact that they have filed a Notice of Lien against the Premises in the Nassau County Clerk's Office on May 2, 2001, in the sum of \$10,511.31 and recovered a money judgment against Kwiecinski in the sum of \$10,000.00 recorded in the Nassau County Clerk's Office on October 28, 2003 under Index No. 1504/04. The Workers' Compensation Board of the State of New York ("WCB") was named as a respondent by reason of it having recovered a money judgment against Kwiecinski in the sum of \$23,500.00 entered in the Nassau County Clerk's Office on October 30, 2000, a money judgment against Kwiecinski in the sum of \$132,000.00 entered in the Nassau County Clerk's Office on June 4, 2009 and a money judgment against Kwiecinski in the sum of \$134,000.00 entered in the Nassau County Clerk's Office on June 15, 2009. All of the aforementioned respondents were named by petitioner based upon a search for Judgments against Joyce Kwiecinski made by Stewart Title Insurance Company. The results of said search were presented to petitioner from Stewart Title Insurance Company on September 21, 2009.

Kwiecinski acquired title to the Premises by a deed dated June 20, 1991, made by Sea Breeze Equities Ltd., as Grantor, to Kwiecinski, as Grantee, recorded in the Nassau County Clerk's Office on September 24, 1991. Upon the filing of Petitioner's three judgments against Kwiecinski with the Nassau County Clerk's Office, each judgment became a lien upon the Premises as of the date of the docketing. On September 22, 2009, an Execution, upon each and every money judgment owned and held by petitioner against Kwiecinski was issued to and filed with the Nassau County Sheriff for the satisfaction of the three judgments out of the real and personal property of Kwiecinski, as judgment debtor, including, but not limited to, the Premises.

Respondent WCB submitted an affirmation which stated that "[a] search of all the records of the Workers' Compensation Board of the State of New York revealed that all of the three money judgments that it obtained against Joyce Kwiecinski have been either vacated or satisfied. First, the money judgment filed with the Nassau County Clerk's Office on October 30, 2000 in the amount of \$23,500.00 was vacated in 2000. Secondly, in regard to the two money judgments filed with the Nassau County Clerk's Office in June of 2009, one for \$132,000.00 and the other for \$134,000.00, each has been satisfied without payment, with a 'Satisfaction of

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Judgment' issued in October 2009 for both. Based upon the above, the Workers' Compensation Board of the State of New York has no interest in this matter. Since the Workers' Compensation Board of the State of New York has no continuing interest in this matter, the Workers' Compensation Board of the State of New York requests this Court to issue an order amending the caption of this action to delete it as a respondent in this matter."

Respondent ASB submitted an affidavit in conditional and limited opposition to the petition. ASB did not oppose or support petitioner's application to the extent relief is sought against Kwiecinski. ASB states that its "interest in the litigation is that of mortgagee with a perfected security interest in the subject premises in the form of a senior mortgage lien interest." ASB's mortgage liens are not satisfied and remain open with an unpaid balance in the approximate amount of \$60,972.11. ASB asserts that "Petitioner, by his motion and Petition, does not contest the validity of Respondent's Mortgage Liens, and references and acknowledges Respondent's Mortgage Liens in paragraphs '5,' '22a' and '22b' of the Petition. Accordingly, no issue exists that the relief requested by Plaintiff is subject and subordinate to the perfected Mortgage Liens of Respondent." ASB adds that "if the property is sold or auctioned, the Respondent's senior Mortgage Liens must first be satisfied in full from the proceeds before any distribution can be made to Petitioner, Kwiecinski or any other creditor." It should also be noted that the correct caption for ASB is in fact "JPMorgan Chase Bank, N.A., as the acquirer of certain assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, F.A., from, the FDIC acting as receiver, as authorized servicing agent of Anchor Savings Bank, FSB."

Respondent Sea Breeze submitted an affirmation in support of petitioner's request for a judgment pursuant to CPLR § 5206(e). Sea Breeze indicated that Kwiecinski has owned the Premises for over fifteen years, but for the past twelve years has been in litigation with Sea Breeze over non-payment of her common charges, assessments and other occurred fees. Sea Breeze alleges that when Kwiecinski makes her monthly maintenance payments she does so via money orders to prevent Sea Breeze from ascertaining the source of her income. Sea Breeze states that they join in petitioner's application as the Premises appears to be the sole asset available to Kwiecinski that is available to satisfy her debts and if the Court should deny petitioner's application then Sea Breeze will move, under the Condominium Law, to foreclose on Kwiecinski's Premises in order to satisfy Sea Breeze's liens against her.

Kwiecinski, acting *pro se*, submitted three separate sets of papers purportedly in

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opposition to the petition - a *Pro Se* Answer to Petition, a *Pro Se* Answer Affidavit and a *Pro Se* Answer Affidavit to Petition. In her *Pro Se* Answer Affidavit to Petition, Kwiecinski submits that she believes that the petition should be dismissed. Her first argument in support of dismissal is that she allegedly was not personally served, yet she does acknowledge that she "received part of the document taped to my door." The Court finds that proper service was made upon Kwiecinski. Kwiecinski also argues that since Acting Nassau County Supreme Court Justice Daniel Martin was the judge who signed petitioner's Order to Show Cause and now that he is no longer a sitting judge in Nassau County the petition should be dismissed. This argument has no merit. Kwiecinski also states that she requests a hearing in this matter and that the papers not be submitted without said hearing. The Court will note that Kwiecinski was indeed provided the opportunity to be heard on the record in open court on January 12, 2010, despite the fact that no other parties were present at that time as it was a submission date for the present application. Kwiecinski then attempts to re-litigate the underlying matters in which the three judgments were issued as well as various actions that she had previously brought in Nassau County to vacate said judgments. As the action before this Court deals with petitioner's request for the Court to order the sale of Kwiecinski's Premises with the sale proceeds to be applied towards the satisfaction of petitioner's three money judgment liens against the premises and any other liens or encumbrances against the premises in the order of priority, the arguments by Kwiecinski with respect to the underlying Florida actions and the prior actions she had brought in Nassau County to vacate said judgments are inapplicable and irrelevant. Kwiecinski also disputes any alleged liens on the Premises held by respondent Sea Breeze and details her ongoing issues with Sea Breeze. However, these are also not matters before this Court and, once again, any arguments made about same are inapplicable and irrelevant to these proceedings.

In her *Pro Se* Answer Affidavit, Kwiecinski argues that she objects to petitioner consenting to "the voluntary discontinuance of the special proceeding against NYS Workers' Compensation Board as Respondent" and further states "[a]s a Respondent against whom Petitioner brought this case to foreclose on my home, I have a very strong objection to so casually removing New York State as Respondent." Kwiecinski believes that "Petitioner and his attorney brought in New York State to try to defame my character and turn the Court against me. I feel Petitioner and his Attorney Haupel should pay punitive damages or receive some type of punishment or fines for the extra emotional torment they caused me." The Court finds no merit

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in said arguments by Kwiecinski as there is no legal basis for same. Kwiecinski also disputes the "Broker's Opinion of fair market value prepared on my property" which petitioner submitted to the Court. Once again, the determination of the actual sale value is not a matter presently before the Court. Petitioner presented said appraisal of the Premises as evidence that, as a result of the sale of said Premises, there would be funds available for Kwiecinski's homestead exemption, ASB's senior Mortgage Lien, the three money judgments held by Petitioner against Kwiecinski and any other liens or encumbrances against the Premises. Furthermore, Kwiecinski's request for punitive damages is without merit.

In her *Pro Se Answer to Petition*, Kwiecinski sets forth eight affirmative defenses (in actuality nine as she lists "A Seventh Affirmative Defense" twice). Kwiecinski's first affirmative defense is that "[t]he Verified Petition fails to state a cause of action against Respondent." Kwiecinski is in error by raising this as an affirmative defense as the proper way to raise this defense is by way of motion. See *Konow v. Sugarman*, 71 A.D.2d 1016, 420 N.Y.S.2d 411 (2d Dept. 1979); *Bank of New York v. Lockwood Venture Housing, Inc.*, 222 A.D.2d 633, 635 N.Y.S.2d 692 (2d Dept. 1995). Kwiecinski's first affirmative defense is thereby stricken.

Kwiecinski's second affirmative defense is that "[t]he Verified Petition should be dismissed since the Petitioner is estopped from recovering from Respondent." There is no legal basis in said defense as petitioner has already recovered against Kwiecinski in the form of the three money judgments. Petitioner has established the three money judgments and that the fair market value of the Premises, over liens and encumbrances, is sufficient to pay Kwiecinski her homestead exemption of \$50,000.00. Kwiecinski's second affirmative defense is thereby stricken.

Kwiecinski's third affirmative defense is that "[t]he Verified Petition should be dismissed since the Petitioner's claims are barred by the applicable sections of the Statute of Limitations." Pursuant to CPLR § 5203, the liens for petitioner's three money judgments against Kwiecinski's Premises are good for ten years. Each of petitioner's three money judgments are well within the ten year period and are fully enforceable against the Premises, once again making Kwiecinski's argument without merit. Kwiecinski's third affirmative defense is thereby stricken.

Kwiecinski's fourth affirmative defense is that "[t]he Petitioner's claims should be

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dismissed on the grounds of Laches.” The doctrine of laches applies in equity actions where relief lies in the discretion of the court, such as an action for the specific performance of a contract or for an injunction. As the matter before this Court is one in which enforcement of a final judgment is at issue, the doctrine of laches does not apply. Kwiecinski’s fourth affirmative defense is thereby stricken.

Kwiecinski’s fifth affirmative defense is that “Respondent pleads accord and satisfaction and/or express or implied agreement.” In this defense, it appears as if Kwiecinski’s is attempting to re-litigate matters that have already been fully decided in the Florida Courts. Kwiecinski’s fifth affirmative defense is thereby stricken.

Kwiecinski’s sixth affirmative defense is that “[t]he Verified Petition should be dismissed since Petitioner has waived his right to recover from Respondent.” Once again, as in her fifth affirmative defense, Kwiecinski is attempting to re-litigate matters that have already been fully decided in the Florida Courts. Kwiecinski’s sixth affirmative defense is thereby stricken.

Kwiecinski’s seventh affirmative defense is that “[t]he Verified Petition should be dismissed as the legal fees demanded by Petitioner were not authorized and in any even is substantially excessive.” As with the fifth and sixth affirmative defenses, Kwiecinski is attempting to re-litigate matters that have already been fully decided in the Florida Courts. Kwiecinski’s seventh affirmative defense is thereby stricken.

Kwiecinski’s eighth affirmative defense (erroneously listed as the second seventh affirmative defense) is that “Petitioner’s Verified Petition should be dismissed as Respondent paid all legal fees and costs in full in a timely manner.” As with the fifth, sixth and seventh affirmative defenses, Kwiecinski is attempting to re-litigate matters that have already been fully decided in the Florida Courts. Kwiecinski’s eighth affirmative defense is thereby stricken.

Kwiecinski’s ninth affirmative defense (erroneously listed as an eighth affirmative defense) is that “Petitioner’s Verified Petition should be dismissed due to fraud, deceit and misrepresentation.” These claims are completely unsubstantiated allegations and once again Kwiecinski is attempting to re-litigate matters that have already been fully decided in the Florida Courts. Kwiecinski’s ninth affirmative defense is thereby stricken.

Taking into consideration all of the arguments raised by Kwiecinski and the determinations concerning her alleged affirmative defenses, the Court finds that Kwiecinski has

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failed to raise any issue sufficient to warrant the Court's denial of petitioner's requested relief.

The Court hereby grants petitioner's application for a judgment, pursuant to CPLR § 5206(e), directing that the interest of respondent Joyce A. Kwiecinski ("Kwiecinski") in and to that certain condominium property, together with improvements, commonly known as 75 East Broadway, Unit 10, a/k/a Unit 5B, Section 59, Block 101, Lot 227, Village of Long Beach, Town of Hempstead, County of Nassau, State of New York, ("Premises") together with Kwiecinski's undivided 7.5833% interest in the common elements of the Sea Breeze II Condominium which were included in the conveyance of the Premises to Kwiecinski, and more fully described in the Petition, said Premises being a residential condominium unit being part of the Sea Breeze II Condominium, be sold by the Sheriff of Nassau County and that the Sheriff shall disburse the proceeds as provided by law.

It is hereby ordered that the proceeds of said sale, in an amount not exceeding fifty thousand dollars (\$50,000.00), as and for Kwiecinski's homestead exemption, be paid to Kwiecinski.

It is hereby ordered the State of Florida judgments recovered by petitioner, plus interest, and the costs, disbursements of this proceeding, be adjudged to be a lien upon the surplus of the said sale, and that lien be enforced.

It is hereby ordered that the surplus of the said sale to be applied to the State of Florida judgments obtained by petitioner, as judgment creditor against Kwiecinski as judgment debtor.

It is hereby ordered that Kwiecinski execute and deliver any and all documents and papers and take any action that may be reasonably requested by the Sheriff of Nassau County to effectuate the transfer and sale of the interest of Kwiecinski in the Premises upon public auction sale, and matters related thereto, including, but not limited to, taking any action and/or executing and delivering of any or all documents as may be required by the Sea Breeze II Condominium, and in the event that Kwiecinski fails, refuses or neglects to take such action(s) or to execute and deliver such documents or papers, the Sheriff is hereby authorized to execute such documents or papers or to perform such action(s) on behalf of Kwiecinski, as her attorney in fact.

It is further ordered that the caption of this action should be amended by removing Workers' Compensation Board of the State of New York as a respondent in this matter.

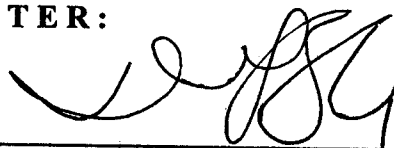
It is also ordered that, pursuant to CPLR § 3025(e), the caption of the present action be

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amended in order to conform to the evidence so that "JPMorgan Chase Bank, N.A., as the acquirer of certain assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, F.A., from, the FDIC acting as receiver, as authorized servicing agent of Anchor Savings Bank, FSB" be substituted as respondent herein in the place and stead of "Anchor Savings Bank, FSB."

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.  
XXX

Dated: Mineola, New York  
March 4, 2010

**ENTERED**

MAR 08 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE