

<b>Tooker v Quest Ventures Ltd.</b>
2015 NY Slip Op 30522(U)
March 26, 2015
Supreme Court, Suffolk County
Docket Number: 5488/14
Judge: Paul J. Baisley
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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART XXXVI SUFFOLK COUNTY

COPY

**PRESENT:**  
**HON. PAUL J. BAISLEY, JR., J.S.C.**  
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INDEX NO.: 5488/14  
MOTION DATE: 11/6/14  
MOTION NO.: 001 MOT D; 002 MOT D

MARIE GUERRERA TOOKER, ABBESS FARM LTD., ABBOTTS VILLAGE LTD., GUERRERA ESTATES LTD.,

Plaintiffs,

**PLAINTIFF PRO SE:**  
MARIE GUERRERA TOOKER  
1040 Flanders Road  
Flanders, New York 11901

-against-

QUEST VENTURES LTD., SALVATORE GUERRERA, DAVID A. SCHWARTZBERG, ADVANTAGE TITLE AGENCY, DAVID REILLY, DAVID DEROSA, ISLAND PROPERTIES, DIRECTIONAL LENDING, RICHARD HANDLER and JOHN AND JANE DOES 1-20,

Defendants.

**DEFENDANTS' ATTORNEYS:**  
GRASING & ASSOCIATES, P.C.  
99 Smithtown Blvd.  
Smithtown, New York 11757

DAVID A. SCHWARTZBERG, ESQ.  
201 Old Country Road, Suite 200  
Melville, New York 11747

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CAHN & CAHN, P.C.  
22 High Street, Suite 3  
Huntington, New York 11743

GARCIA & STALLONE, ESQS.  
2076 Deer Park Avenue  
Deer Park, New York 11729

Upon the following papers numbered 1 to 78 read on these motions to dismiss complaint: Notice of Motion/ Order to Show Cause and supporting papers 1-24; ~~Notice of Cross Motion and supporting papers~~       ; Answering Affidavits and supporting papers 25-49; 50-65; Replying Affidavits and supporting papers 66-78; ~~Other~~       ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

**ORDERED** that the following motions are consolidated for purposes of this determination; and it is further

**ORDERED** that the motion (motion sequence no. 001) of defendants David A. Schwartzberg and Advantage Title Agency for an order dismissing the complaint and causes of action pursuant to CPLR R. 3211(a)(1), (a)(4), (a)(5) and (a)(7), and CPLR §321(a) in its entirety or in the alternative against David A. Schwartzberg and Advantage Title Agency, is granted as set forth hereinafter; and it is further

**ORDERED** that the unopposed motion (motion sequence no. 002) of defendant Richard Handler for an order dismissing plaintiffs' complaint in its entirety and/or as against Richard Handler pursuant to CPLR §321(a) and R. 3211(a)(1), (a)(5) and (a)(7), is granted as set forth hereinafter; and it is further

**ORDERED** that the amended verified complaint is dismissed in its entirety, with leave to *pro se* plaintiff Marie Guerrero Tooker to serve a second amended complaint, within 20 days after service of notice of entry of the instant order, setting forth her individual claims only, which claims shall comport with the pleading requirements of CPLR §3013.

*Ng*

Plaintiffs Marie Guerrero Tooker, Abbess Farm Ltd., Abbotts Village Ltd., and Guerrero Estates Ltd., all purportedly represented by Marie Guerrero Tooker, *pro se*, commenced this action on March 13, 2014 by filing a summons and purported verified complaint, sworn to by Marie Guerrero Tooker before a notary public on March 13, 2014.<sup>1</sup> It appears that thereafter, on July 10, 2014, Ms. Tooker filed a copy of the summons together with an amended verified complaint, verified by Ms. Tooker on July 10, 2014. Although the summons bears the caption of the original verified complaint, the caption of the amended verified complaint names only Ms. Tooker as a plaintiff (though the body of the amended complaint variously refers to both “plaintiff” and “plaintiffs”). The Court notes that the County Clerk file contains no affidavits of service reflecting service of either the verified complaint or the amended verified complaint on any of the named defendants, although several of the named defendants have appeared herein.

The amended verified complaint purports to seek damages, including punitive damages, in excess of \$20 million for a variety of claims arising out of alleged improprieties and fraudulent actions allegedly perpetrated by defendants against plaintiff (sometimes, “plaintiffs”) in connection with a mortgage foreclosure action previously commenced against Abbess Farm Ltd., Abbotts Village Ltd., and Guerrero Estates Ltd. by Quest Ventures, Ltd. (hereinafter referred to as the “foreclosure action”).<sup>2</sup> The principal of Quest Ventures is Salvatore Guerrero, the father of plaintiff Marie Guerrero Tooker, and a defendant herein along with his corporation. Other defendants include the attorneys who represented the plaintiff in the foreclosure action, the Court-appointed receiver therein, and the title company that issued the title policy to the purchaser at the foreclosure sale, among others. Ms. Tooker, the sole owner of Abbess Farm Ltd., Abbotts Village Ltd., and Guerrero Estates Ltd., which variously owned all of the mortgaged property, was not named in the foreclosure action but was served therein as an occupant of the mortgaged premises, and the caption was subsequently amended to substitute her as a defendant in place of the “John Doe” defendant.

Defendant David A. Schwartzberg, Esq., appearing *pro se*, and also appearing on behalf of defendant Advantage Title Agency, interposed a pre-answer motion to dismiss plaintiff’s amended verified complaint (motion sequence no. 001). Plaintiff submitted an affidavit in opposition to such defendants’ motion, and although plaintiff failed to provide an affidavit of service of her opposition papers on the moving defendants and all other appearing parties (CPLR R. 2103), the movants submitted an affidavit in reply. Defendants’ motion is predicated on documentary evidence, *res judicata*/collateral estoppel, another action pending, and failure to state a cause of action. Defendants also argue that plaintiff is attempting to act as counsel for her three corporations and the complaint is subject to dismissal pursuant to CPLR §321(a).

Defendant Richard Handler, Esq., served a post-answer motion to dismiss the amended verified complaint, which is unopposed (motion sequence no. 002). Mr. Handler’s submissions reflect that a verified answer to the amended verified complaint, verified by Mr. Handler on July 30, 2014, was served on plaintiff Marie Guerrero Tooker on July 30, 2014. Also annexed to Mr. Handler’s motion papers is a copy of a verified amended answer to the amended verified

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<sup>1</sup> The “verification” does not comport with CPLR R. 3021.

<sup>2</sup> *Quest Ventures, Ltd. v. Abbess Farm, Ltd., et al.*, Sup Ct Suffolk Cty, Index No. 8935/2008.

complaint dated August 12, 2014, verified by Mr. Handler on August 14, 2014. The Court notes that there is no affidavit of service reflecting that the verified amended answer was served on plaintiff or any other party, and neither the verified answer nor the verified amended answer was filed with the County Clerk.<sup>3</sup>

Mr. Handler's motion is predicated on his arguments that the instant action constitutes an impermissible collateral attack on the judgment in the foreclosure action, Ms. Tooker does not have standing to maintain this action on behalf of her corporations, her claims are barred by res judicata and collateral estoppel, documentary evidence establishes the validity of the mortgage on Lot 029.000, and the complaint fails to state a cause of action as to Mr. Handler.

The amended verified complaint, a lengthy and prolix document at 36 pages and 138 numbered paragraphs, sets forth three causes of action, denominated as "theft of personal property" (first cause of action), "fraud" (second cause of action), and "malicious interference with prospective economic advantage to achieve unjust enrichment and tortious [sic] interference [sic] (third cause of action), against the various defendants. Plaintiff alleges, among other things, that in connection with the foreclosure action defendants misrepresented material facts, falsified legal documents, changed legal property descriptions, perpetrated a fraud, filed false police reports, violated the Hobbs Act, and misappropriated plaintiff's property. In addition to damages, plaintiff seeks to vacate all allegedly void judgments obtained by defendant Quest Ventures therein. Plaintiff Marie Tooker also alleges that in the course of the foreclosure action defendants committed crimes against her and her three children, including extortion, armed robbery and racketeering activity; committed crimes of cruelty to her animals; and unlawfully ejected her from the entire property.

The amended verified complaint is a rambling and frequently incomprehensible diatribe against the various defendants, the Court, various judges and the judicial system, as well as certain nonparties. It is replete with broad, conclusory statements and accusations, grandiose pronouncements, and kaleidoscopic misstatements of the law, but is virtually devoid of factual statements. Plaintiff alleges, for example, at paragraph 2, that "The defendants collaterally worked in concert to use many different legal property descriptions in one foreclosure action. They concealed that the property known as 3605 middle country rd. was excepted out of all mortgages and was free and clear of any debt. This action is based on fraudulent filed deeds recorded with the Suffolk County clerk. Plaintiff is seeking compensatory damages, restitution and punitive damages. Plaintiff is seeking to vacate void judgments from defendant Quest Ventures for Fraud upon the court, actual fraud and the loss of jurisdiction from the court who engaged in fraud upon the court and clear violations of the plaintiff's constitutional rights that have been trampled on."

At paragraph 18, plaintiff alleges that "Throughout the course of the foreclosure action defendants employed actual fraud to fabricate its [sic] pleadings and exhibits. These were propped up by egregious material misrepresentations of all the central issues in dispute and dispensed by the cunning [sic]. Subsequently, defendants duped the judges herein, by contrived artifices, used

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<sup>3</sup> The Court notes that the County Clerk file does contain a verified answer to amended verified complaint dated July 28, 2014 served on behalf of defendants Quest Ventures, Ltd. and Salvatore Guerrera on July 29, 2014 and filed on November 14, 2014. The County Clerk file also contains a notice of appearance on behalf of defendant David Reilly dated and served on October 13, 2014 and filed on October 28, 2014.

to circumvent my right to receive justice. Thereby, defendant's [sic] false claims are targeted on cheating me out of the property I own by hostile takeover and bogus court rulings." At paragraph 51, plaintiff alleges that "Material facts have arose [sic] to prove bribery with judge Spinner."

Among other pleading deficits, the amended verified complaint is ambiguous as to whether it is interposed on behalf of plaintiff Marie Guerrera Tooker alone or on behalf of all of the plaintiffs named in the summons. It is well established, however, and well known to Marie Guerrera Tooker by reason of numerous decisions of this Court rendered in the foreclosure action, that a corporation must appear by counsel (CPLR §321(a)). The submissions and the Court's records reflect that no attorney has appeared in this action on behalf of the corporate plaintiffs, Abbess Farm Ltd., Abbotts Village Ltd., and Guerrera Estates Ltd. Accordingly, to the extent that the verified amended complaint, or any of the claims or allegations set forth therein, purport to be asserted on behalf of any or all of the corporate plaintiffs, the complaint is dismissed in its entirety pursuant to CPLR §321(a).

In any event, all such claims arising out of the foreclosure action are barred by the principles of res judicata and/or collateral estoppel. Under the former doctrine, once a claim has been fully adjudicated, all other claims arising out of the same transaction or series of transactions are barred – whether they were actually raised or could have been raised, and even if they are based on different theories or seek a different remedy (*O'Brien v City of Syracuse*, 54 NY2d 353 (1981)]; *Matter of Singer v Windfield*, \_\_ AD3d \_\_, 2015 NY App Div LEXIS 899, 2015 NY Slip Op 00890 [2d Dept 2015]). Here, with the exception of the issue of the allocation and disposition of the rents collected by the receiver and the expenses incurred, which remains *sub judice* in the foreclosure action,<sup>4</sup> the foreclosure action has been fully concluded and plaintiff's claims are res judicata.

The identical issues posed by plaintiff's pleading with respect to the validity of the mortgages and of the judgment of foreclosure and sale have all been raised – and determined adversely to the corporate plaintiffs – in the foreclosure action. Accordingly, plaintiff is collaterally estopped from interposing the same or related claims in this action (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449 [1985]).

Moreover, to the extent that the causes of action relate to the foreclosed property that was the subject of the foreclosure action, any claims of the individual plaintiff arising out of or pertaining to the mortgaged premises are also dismissed. It is undisputed that Abbess Farm Ltd., Abbotts Village Ltd., and Guerrera Estates Ltd. were the sole owners of the foreclosed property. The documentary evidence also establishes that, contrary to the allegations of the amended verified complaint, the property located at 3605 Middle Country Road, Calverton, NY (Lot 029.000) was subject to the mortgage given by Abbotts Village, Ltd. to Quest Ventures, Ltd. Individual plaintiff Marie Guerrera Tooker has no individual ownership interest in the mortgaged property, or in the two additional lots that were allegedly wrongfully subjected to the receivership, and has neither capacity nor standing to assert any claims with respect thereto.

The Court notes that Ms. Tooker appears to believe that the involuntary dissolution of her corporations by proclamation/annulment of authority in 2009 (Abbess Farm, Ltd.) and in 2010 (Guerrera Estates, Ltd. and Abbott's Village, Ltd.) enables her to bring all of the previously

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<sup>4</sup> Pending submission of copies of the transcript of the hearing conducted before the undersigned.

dismissed or denied claims in her own right: “Wherefore, by operation of law establishes that I the plaintiff has [sic] the capacity to sue for the properties under the title of the corporations as an individual in the complaint under this caption. Since upon the corporations’ dissolution in 2010, the title to the estate in the proceeding were [sic] de facto owned by plaintiff as an individual. This affords plaintiff with standing to sue in the complaint as an individual for the estate contained in the proceeding as doing new business post dissolution” (Affidavit in Opposition of Plaintiff Marie Guerrera Tooker, ¶33). Plaintiff has asserted no legal or factual authority for that position, however, and the Court rejects it as unfounded.

To the extent that Ms. Tooker is attempting to assert any claims on her own behalf arising out of the foreclosure action, the Court notes in the first instance that, contrary to defendants’ assertion, she is not precluded from bringing them in this action. Indeed, defendants previously argued, and this Court previously determined, that in light of Ms. Tooker’s status as a defaulting nominal defendant in the foreclosure action, any such claims could not properly be interposed therein. Denying her the opportunity to bring her personal claims in this action would leave her without a forum or a remedy (*see, Grace v State*, 148 Misc 2d 153 [NY Ct Cl 1990]).

However, upon a careful review of the amended verified complaint, the Court is unable to discern a legally cognizable cause of action on behalf of the individual plaintiff. It is well established that “conclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358 [2009]). Plaintiff’s broad, conclusory allegations regarding the allegedly illegal eviction of her and her three children, the theft or destruction of unspecified personal property, and alleged criminal trespasses, etc. fail to set forth the elements of a valid cause of action as to any of these alleged wrongs by the collective defendants. Accordingly, all such claims are dismissed, with leave to plaintiff Marie Guerrera Tooker to file and serve a second amended complaint in accordance with the foregoing determination, setting forth her individual, personal claims only, properly pleaded in accordance with CPLR §3013.

Dated: March 26, 2015

**PAUL J. BAISLEY, JR.**

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J.S.C.