

Matter of St. Augustine N. Am. Old R.C Church

2020 NY Slip Op 30355(U)

February 7, 2020

Supreme Court, New York County

Docket Number: 158644/2019

Judge: W. Franc Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

INDEX NO. 158644/2019

In the Matter of the Application of

MOTION DATE 09/11/2019

ST. AUGUSTINE NORTH AMERICAN OLD ROMAN
CATHOLIC CHURCH
For Approval of the Sale of Certain Real Property
Pursuant to Sections 510 and 511-a of the No-For-
Profit Corporation Law and Section 12 of the Religious
Corporation Law

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion to/for MISC. SPECIAL PROCEEDINGS

Upon the foregoing documents, the petition is dismissed.

Petitioner, through Father Vincent Natoli, seeks this court's approval to sell real property, allegedly owned by petitioner. The property is identified and designated Block # 3723, Lots 15, 20, 22 and 26 located in the Borough of Brooklyn. The property is also designated as 462 Glenmore Avenue, and 232/236, 238, 240 and 250 Wyll Street, Brooklyn, New York.

The record indicates that pursuant to New York Not-For-Profit Corporation Law, petitioner sought the approval of the Attorney General to sell the property early in 2019. Attorney General did not approve the sale finding that issues of fact exist as to the composition of petitioner's Board of Trustees and its membership, which issues could only be resolved by a Court of law.

The Attorney General also noted that a prior petition had been submitted to its office in June 2018 to sell the same property. However, the Attorney General noted that none of the individuals identified as the Church trustees, in the 2018 petition were identified in the 2019 petition. In addition, the Attorney General found that the 2018 petition stated that the petitioner Church had members. However, the 2019 petition states that the Church has no members.

The Attorney General further noted that there is an issue as to who is authorized to act on behalf of another North American Old Roman Catholic Church, St. Lucy's Cathedral, which controversy led to an action being brought in Kings County Supreme Court, involving Father Natoli. That action was dismissed without resolving those issues. In addition, the Attorney General noted that there is an action currently pending in Kings County Supreme Court, brought by St. Lucy's Cathedral against Father Natoli.

Based upon the above, the Attorney General denied petitioner's application and concluded that petitioner should, on notice to her office, file for leave to sell the real property at issue directly with the Kings County Supreme Court. In that new proceeding, the Attorney General stated that it would bring its concerns regarding the proposed sale to that Court's attention.

CPLR § 507 directs that the place of trial of an action "in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated. In this matter the relief sought herein affects the future use, possession or enjoyment of the property at issue," *Moschera & Catalano, Inc. v. Advanced Structures Corp.*, 104 AD2d 306; *Spellman Food Services, Inc. v. Patrick*, 90 AD2d 791. While some cases have held that CPLR § 507 does not preclude trial of an action affecting real property from taking place in a county other than one in which the real

property is located, (*Forde v. Forde*, 53 AD2d 779), the general rule is to the contrary, *Grace v. Deepdale, Inc.* 3 AD2d 397.

It has been held that venue of an action seeking judgment declaring rights to and a legal relationship with real property is properly held in the county in which the property is located, rather than that in which the principal's office is located. *Moschera*, supra.

New York Not-for-Profit Corporation Law § 511 (a) states in pertinent part:

- (a) to obtain court approval to sell lease, exchange or otherwise dispose of all or substantially all its assets, a corporation shall present a verified petition to the Supreme Court of the judicial district, or the County Court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed.

In this matter the Petition and Amended Verified Petition declare that the headquarters of petitioner's corporation is 2116 Fulton Street, Brooklyn, New York. However, at oral argument on this motion, petitioner's counsel stated that his client's headquarters is in Manhattan. The Court will recognize the Brooklyn address listed in the Petition and Amended Petition as the valid address of petitioner.

In this case, the subject property and petitioner's principal place of business is in Kings County. The proper venue to bring this action is Kings County, where other actions regarding petitioner Church and its representative have been litigated.

The Court will not address any of the additional arguments raised, as this Court lacks the subject matter jurisdiction to hear such.

Therefore, the Order to Show Cause is denied and the petition is dismissed without prejudice to commence an action in Kings County.

2/7/2020
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: