

McWhite v I & I Realty Group LLC

2020 NY Slip Op 32709(U)

August 13, 2020

Supreme Court, Kings County

Docket Number: 511363/2017

Judge: Peter P. Sweeney

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
COUNTY OF KINGS: PART 73

Index No.: 511363/2017
Motion Date: 8-3-20
Mot. Seq. No.: 2-3

-----X

CYRILEN MCWHITE,
Plaintiff,

-against-

Action No. 1

I & I REALTY GROUP LLC,
Defendant.

-----X

DECISION/ORDER

-----X

I & I REALTY GROUP LLC,
Plaintiff,

Index No.: 524104/2017

-against-

Action No. 2

CYRILEN MCWHITE and
STAR ACADEMY DAY CARE,
Defendants.

-----X

The following papers numbered 1 to 5 were read on these motions:

<u>Papers:</u>	<u>Numbered:</u>
Notice of Motion/Notice of Cross Motion	
Affirmations/Affidavits/Exhibits/Memo of Law.....	1-2
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	3-5
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	

Upon the foregoing papers, the motion is decided as follows:

I & I Realty Group LLC ("I & I Realty"), the defendant in Action No. 1 and the plaintiff in Action No. 2, moves for an Order: (i) granting it summary judgment against CYRILEN MCWHITE ("McWhite") for the relief demanded in the Complaint in the action entitled *I & I Realty Group LLC v. Cyrillen McWhite and Star Academy Day Care* (Index No. 524104/2017) (the "Reforeclosure Action") and striking the Answer filed by McWhite therein; (ii) entering Judgment foreclosing McWhite's right of redemption pursuant to RPAPL § 1503 in the form annexed as Exhibit W to its motion; (iii) granting I & I Realty summary judgment dismissing McWhite's Complaint in the action entitled *Cyrilen McWhite v. I & I Realty Group LLC* (Index

MS #02-GEXT

MS #03-XMD

No. 511363/2017) (the "Quiet Title Action") pursuant to CPLR 3212; (iv) amending the caption in the Reforeclosure Action to correct the spelling of McWhite's name from Cyrillen McWhite to Cyrilen McWhite; and (v) granting I & I Realty such other and further relief as the Court deems just and proper.

McWhite, the plaintiff in Action No. 1 and a defendant in Action No. 2, cross-moves for an order a) granting summary judgment in favor of McWhite on the Reforeclosure cause of action; and/or b) for such other and further relief which to this Court deems just and proper.

The two motions are consolidated for disposition.

The motion of I & I Realty insofar as it seeks an order amending the caption in the Reforeclosure Action to correct the spelling of McWhite's name from Cyrillen McWhite to Cyrilen McWhite is **GRANTED**. The motion and cross-motion are in all other respects **DENIED**.

The remainder of I & I Realty's motion, as well as McWhite's cross-motion, are properly viewed as either motions to renew or successive motions for summary judgment. Both I & I Realty and McWhite made prior motions for summary judgment seeking the identical relief they now seek. Both motions were denied pursuant to this Court's decision and order dated May 28, 2019 filed under Index No.: 511363/2017.

In general, a motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination, and must set forth a reasonable justification for the failure to present such facts on the prior motion (*see Worrell v. Parkway Estates, LLC*, 43 A.D.3d 436, 437, 840 N.Y.S.2d 817; *Heaven v. McGowan*, 40 A.D.3d 583, 586, 835 N.Y.S.2d 641). A motion to renew "shall be identified specifically as such" (CPLR 2221(e)(1)). A motion for leave to renew is not a second chance freely given to parties who have

not exercised due diligence in making their first factual presentation (*see Worrell v. Parkway Estates, LLC*, 43 A.D.3d at 437, 840 N.Y.S.2d 817; *Renna v. Gullo*, 19 A.D.3d 472, 797 N.Y.S.2d 115). Indeed, the Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion (*see Worrell v. Parkway Estates, LLC*, 43 A.D.3d at 437, 840 N.Y.S.2d 817; *Greene v. New York City Hous. Auth.*, 283 A.D.2d 458, 459, 724 N.Y.S.2d 631).

Here, neither I & I Realty nor McWhite labeled their motion as one to renew. I & I Realty did not set forth a reasonable justification for its failure to present the new facts presented in its motion on its original motion. McWhite's motion is not even based on new facts.

Successive motions for summary judgment should not be entertained in the absence of good cause, such as a showing of newly discovered evidence. However, evidence is not newly discovered simply because it was not submitted on the prior motion; rather, the evidence must not have been available to the party at the time it made its initial motion and could not have been established through alternate evidentiary means (*see Hillrich Holding Corp. v. BMSL Mgt., LLC*, 175 A.D.3d 474, 103 N.Y.S.3d 846; *Vinar v. Litman*, 110 A.D.3d 867, 868, 972 N.Y.S.2d 704; *Sutter v. Wakefern Food Corp.*, 69 A.D.3d 844, 845, 892 N.Y.S.2d 764). I & I Realty did not demonstrate that the new evidence in its motion was not available to it at the time it made its initial motion. McWhite did not establish any basis for allowing a successive motion for summary judgment.

Accordingly, it is hereby

ORDRED the motion of I & I Realty Group LLC insofar as it seeks an order amending the caption in the Reforeclosure Action to correct the spelling of McWhite's name from Cyrillen McWhite to Cyrilen McWhite is **GRANTED**; and it is further

ORDERED that the motion and cross-motion are in all other respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: August 13, 2020

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
FILED
2020 AUG 19 PM 1:59