

NYCTL 1998-2 Trust v Culpepper

2022 NY Slip Op 30220(U)

January 24, 2022

Supreme Court, New York County

Docket Number: Index No. 156872/2019

Judge: Francis A. Kahn III

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. FRANCIS A. KAHN, III PART IAS MOTION 32

Justice

-----X

INDEX NO. 156872/2019

NYCTL 1998-2 TRUST AND THE BANK OF NEW YORK
MELLON AS COLLATERAL AGENT AND CUSTODIAN
FOR THE NYCTL 1998-2 TRUST,

MOTION DATE

MOTION SEQ. NO. 001

Plaintiff,

- v -

SHERRI CULPEPPER, THE CITY OF NEW YORK -
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT, THE CITY OF NEW YORK - PARKING
VIOLATIONS BUREAU, THE CITY OF NEW YORK -
ENVIRONMENTAL CONTROL BOARD, GAYNIER
ASSOCIATES, PLLC, JOHN DOE NO. 1 THROUGH JOHN
DOE NO. 100

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - SUMMARY

In this action to foreclose on a tax lien, Plaintiff moves for summary judgment against Defendant
Sherri Culpepper, a default judgment against the non-appearing Defendants and appointment of a referee
to compute.

The evidence proffered by Plaintiff in support of its motion demonstrated prima facie entitlement
to the relief requested by submitting the subject tax lien certificate, which was presumptive evidence of
a valid and enforceable lien, proof that the outstanding balance due under the lien was not paid, as well
as evidence that constitutionally adequate notice of the sale of the tax lien was provided (see eg NYCTL
2009-A Trust v Morris, 164 AD3d 1249 [2nd Dept 2018]; NYCTL 1998-2 Trustee v 2388 Nostrand
Corp., 69 AD3d 594 [2nd Dept 2010]).

In opposition, Defendant Culpepper "failed to raise a triable issue of fact in opposition to the
plaintiffs' showing or as to the merit of their affirmative defenses alleging that the subject tax lien is
defective" (NYCTL 2011-A Trust v Evelyn, 175 AD3d 1418 [2nd Dept 2019]; see also NYCTL 2008-A
Trust v Livingston, 175 AD3d 1542 [2nd Dept 2019]; NYCTL 1998-2 Trust v 104-26 Jamaica Ave, LLC,
160 AD3d 974 [2nd Dept 2018]; NYCTL 1998-2 Trustee v. 2388 Nostrand Corp., 69 AD3d 594 [2nd Dept
2010]). "In any event, 'any dispute as to the amount of the lien may be resolved after a reference
pursuant to RPAPL 1321'" (NYCTL 2009-A Trust v Tsafatinos, 101 AD3d 1092 [2nd Dept 2012],
quoting NYCTL 1999-1 Trust v Stark, 21 AD3d 402, 403, 800 NYS2d 198 [2nd Dept 2005] see also
Heywood Condominium v Rozenkraft, 148 AD3d 38 [1st Dept 2017]). Defendant Culpepper's claim of

lack of personal jurisdiction, although raised in her answer, was waived when she failed to timely move to dismiss on that basis (*see* CPLR §3211[e]).

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment against defendant Sheri Culpepper is granted and her answer and affirmative defenses are severed and dismissed; and it is further

ORDERED that the motion for a default judgment against the non-appearing Defendants is granted; and it is

ORDERED that that **Georgia Papazis, Esq., 2478 Pine Place, Bellmore, New York 11710-(516) 603-9987** is hereby appointed Referee in accordance with RPAPL § 1321 to calculate the amount due Plaintiff and to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee, a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED, that the caption of this action be amended by striking the Defendants sued herein as "John Doe No. 1" through "John Doe No. 100," all without prejudice to the proceedings heretofore and had herein; and it is further

ORDERED that the caption shall read as follows:

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

-----X
NYCTL 1998-2 TRUST and THE BANK OF NEW
YORK MELLON as Collateral Agent and Custodian
for the NYCTL 1998-2 Trust,

Index No. 156872/2019

Plaintiff,

-against-

SHERRI CULPEPPER; THE CITY OF NEW YORK -
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT; THE CITY OF NEW YORK -
PARKING VIOLATIONS BUREAU; THE CITY OF
NEW YORK - ENVIRONMENTAL CONTROL
BOARD; and GAYNIER ASSOCIATES, PLLC,

Defendants

-----X

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

All parties are to appear for a virtual conference via Microsoft Teams on **May 18, 2022 at 10:40 am**. If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright (tswright@nycourt.gov) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

1/24/2022

DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE:

<input checked="" type="checkbox"/>	NO FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

FRANCIS A. KAHN, III, A.J.S.C.

HON. FRANCIS A. KAHN III
J.S.C.