

**67-69 St. Nicholas Ave. Hous. Dev. Fund Corp. v
Green**

2022 NY Slip Op 31597(U)

May 16, 2022

Supreme Court, New York County

Docket Number: Index No. 155502/2019

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DAVID B. COHEN **PART** **58**

Justice

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67-69 ST. NICHOLAS AVENUE HOUSING
 DEVELOPMENT FUND CORPORATION,

Plaintiff,

INDEX NO. 155502/2019

MOTION SEQ. NO. 004

- v -

SIWANA GREEN, THOMAS GREEN, A CUP OF HARLEM,
 ANTONIO CONTRERAS,

Defendants.

**DECISION + ORDER ON
 MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for SUMMARY JUDGMENT.

In this action seeking, inter alia, declaratory relief, defendants Siwana Green (“Ms. Green”), Thomas Green (“Mr. Green”), and A Cup of Harlem (collectively “movants”) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff 67-69 Saint Nicholas Avenue Housing Development Fund Corporation opposes the motion. After a review of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

A comprehensive recitation of the facts of this action is set forth in the decision and order of this Court entered June 30, 2021. Docs. 63-64. Any additional facts relevant to the instant application are set forth below.

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." (*Winegrad v New York Univ. Med. Ctr.*, 64

NY2d 851, 853 [1985]). Such a motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as by pleadings and other proof such as affidavits, depositions and written admissions (*See CPLR 3212*). The "facts must be viewed in the light most favorable to the non-moving party." (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). If the moving party meets its burden, it becomes incumbent upon the non-moving party to establish the existence of material issues of fact (*Id.*, citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, *regardless of the sufficiency of the opposing papers.*" (*Vega*, 18 NY3d at 503 [internal quotation marks and citation omitted, emphasis in original]).

In support of their motion for summary judgment, the movants submit affidavits signed by Ms. Green and Mr. Green. Doc. 74. However the affidavits, which are identical except for the signatures, merely recite which documents the movants submit in support of their application, which are the affidavits themselves, a "[b]rief of motion for summary judgement", a mailing list of service, and two "verification letters". Doc. 74. Thus, the affidavits, the only sworn documents submitted in support of the motion, do not contain any evidence entitling defendants to summary judgment (*See Winegrad v New York Univ. Med. Ctr.*, *supra*; *Zuckerman v City of New York*, *supra*).

The only arguments made by the movants in support of the motion are set forth in their "[b]rief of motion for summary judgement [sic]". Doc. 74. However, since the said document is unsigned, it is in violation of 22 NYCRR § 130-1.1-a, which requires that "[e]very pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney, or by a party if the party is not represented by an attorney, with the name of

the attorney or party clearly printed or typed directly below the signature.” Although Ms. and Mr. Green submit what they refer to as “verification letters”, in which they purport to swear to the truth of the contents of the “[s]ummary [j]udgment [d]ocuments” submitted in support of the motion, they do not specify that their verifications pertain to the “[b]rief of motion for summary judgement [sic]”.

Even assuming, arguendo, that the movants’ verifications clearly related to the “[b]rief of motion for summary judgement [sic]”, they were deficient insofar as their signatures on the same were not notarized (*cf.*, *Pelaez v Turner Constr. Co.*, 2014 NY Slip Op 31974[U], *8 [Sup Ct, NY County 2014] [affidavit considered by the court where affiant’s signature was notarized, and, although it was not sworn under the penalty of perjury, he certified that the information therein was “true to the best of [his] knowledge”).

The motion is procedurally improper as well. First, since both Ms. Green and Mr. Green each submitted a notice of motion seeking dismissal as against all three movants, service of a second notice of motion was superfluous. Additionally, in the affidavit of service of the motion, the individual who mailed the motion avers that the movants did not serve defendant Antonio Contreras “because plaintiffs dismissed him from the case”. However, in opposition to the motion, plaintiff’s counsel maintains that Contreras has not been dismissed from this action (Doc. 75 at par. 10), and this Court’s review of the documents filed on NYSCEF in this matter confirms this fact. Thus, Contreras must be served with the motion.

Finally, the motion fails to comply with Rule 2 (H) of the Part 58 Rules, which provides that:

H. All notices of motion/cross motion, orders to show cause, affirmations, affidavits, memoranda of law, and exhibits to motions must be labeled and tabbed individually and must contain the motion sequence number on the upper right corner of the first page, whether e-filed or not. All motion papers and exhibits

thereto must be e-filed separately and must contain a concise and accurate description of the document filed on NYSCEF. The failure to comply with the foregoing may result in the denial of the motion. Any correspondence to the court regarding a motion must contain the motion sequence number to which it pertains or it will be disregarded.

Here, the movants have filed all of the papers in support of their motion as a single NYSCEF document. This makes consideration of the motion far more difficult for this Court, and, thus, the moving papers will not be accepted in the form in which they were submitted.

Given the foregoing, the motion is denied with leave to renew upon proper papers (*See Giffords v Cablevision, Inc.*, 69 AD2d 851 [2d Dept 1979]; *Derek Wells v - Luis Guzman*, 2020 N.Y. Misc. LEXIS 11647, at *4-5 [Sup Ct, NY County Apr. 21, 2020, No. 154962/2019] [Love, J.]). Since discovery remains outstanding, the movants shall have such leave upon the filing of the note of issue.

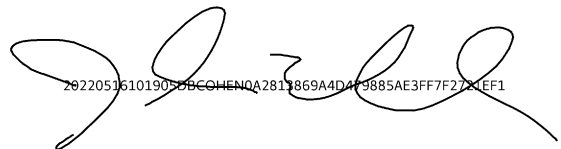
Accordingly, it is hereby:

ORDERED that the motion by defendants Siwana Green, Thomas Green, and A Cup of Harlem seeking dismissal of the complaint pursuant to CPLR 3212 is denied with leave to renew upon proper papers at the conclusion of discovery; and it is further

ORDERED that the parties shall appear for a compliance conference via Microsoft Teams on June 21, 2022 at 11:30 a.m.

5/16/2022

DATE



HON. DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE