

Rossi v New York City Hous. Auth.
2022 NY Slip Op 33193(U)
September 22, 2022
Supreme Court, New York County
Docket Number: Index No. 157341/2019
Judge: J. Machelé Sweeting
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. J. MACHELLE SWEETING PART 62

Justice

-----X

DANIELLE ROSSI,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, CITY OF NEW
YORK,

Defendants.

-----X

INDEX NO. 157341/2019

MOTION DATE 07/20/2022,
07/20/2022

MOTION SEQ. NO. 002 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

In a Decision and Order dated May 31, 2022, this court denied defendant City's motion to dismiss the complaint, with leave to refile upon proof of vacatur of the October 1, 1985 deed. Pursuant to the same, the City now seeks an order, pursuant to CPLR 2221(d), granting reargument; and upon granting reargument, an order, pursuant to CPLR § 3211 (a)(1), dismissing the complaint based on documentary evidence and dismissing the complaint, pursuant to CPLR § 3211 (a)(7), for failure to state a cause of action.

In the instant motion, the City argues that the order (the "Vacate Order") recorded on December 11, 1985, which vacated the October 1, 1985 deed was in fact annexed to the City's reply papers in the earlier motion. The City also explained the contradictions between Mr. Schloss's affidavits by stating that the first affidavit (dated January 21, 2022) "inadvertently

indicates that the property was located at Lot 71, *due to a typographical error*" [emphasis added], but that the second affidavit (dated March 28, 2022) correctly noted the subject property as being located at Lot 80.

In support of its arguments, the City attached a copy of the Vacate Order (NYSCEF Document #75). The City also attached a third affidavit from Mr. Schloss, dated June 30, 2022 (NYSCEF Document #71). This affidavit states, in part:

1. I am a Senior Title Examiner with the New York City Law Department.
2. My duties as a Senior Title Examiner include the examination and certification of real estate titles in New York County.
3. At the request of the Tort Division of the New York Law Department ("Tort Division"), on or about January 21, 2022, I conducted a title search for the premises known as 154 Broome Street, in the County, City and State of New York, which is designated on the tax map as New York Block 347, Lot 80. My search revealed that record title on September 11, 2018 for New York Block 347, Lot 80 was in the New York City Housing Authority. *Although I conducted a search for New York Block 347, Lot 80, a clerical error on my affidavit dated January 21, 2022, indicated that my search was for New York Block 347, Lot 71.* A copy of my affidavit is annexed hereto as Exhibit "A". [emphasis added]
4. At the request of the Tort Division, on or about March 25, 2022, I conducted a second title search for the premises located at 154 Broome Street, located at New York Block Lot 347, Lot 80. My search again confirmed that record title for New York Block 347, Lot 80, on September 11, 2018, was in the New York City Housing Authority ("NYCHA"). My search revealed that record title was in NYCHA pursuant to a deed recorded October 6, 1972, in Reel 254, Page 1351, and pursuant to a deed recorded September 8, 1971, in Reel 216, Page 717. My search also revealed that the deed that was recorded October 1, 1985, that conveyed New York Block 347, Lot 80 to the City of New York was subsequently vacated by a Court Order recorded December 11, 1985. Annexed hereto as Exhibit "B" is a copy of my affidavit dated March 25, 2022 indicating same. Annexed hereto as Exhibit "C" is a copy of the aforementioned deeds. Annexed hereto as Exhibit "D" is a copy of the subject Court Order recorded December 11, 1985.
- [5.] At the request of the Tort Division. I have conducted a third title search for the subject premises located at 154 Broome Street, New York Block Lot 347, Lot 80, which confirmed the prior results. My search again confirms the record title on September 11, 2018, was in NYCHA pursuant to a deed recorded October 6, 1972, in Reel 254, Page 1351, and pursuant to a deed recorded September 8, 1971, in Reel 216, Page 717. My search confirmed that the deed that was recorded October 1, 1985, that conveyed New York Block 347, Lot 80 to the City of New York was subsequently vacated by a Court Order recorded December 11, 1985. See deeds, annexed hereto as Exhibit "C" and Order, annexed hereto as Exhibit "D".

In opposition, plaintiff makes several arguments.

First, plaintiff contests the City's argument that the Vacate Order was properly attached to the City's first motion.

Second, plaintiff argues that Mr. Schloss conducted a search for the wrong lot, insofar as Mr. Schloss had conducted a search for Lot 71, when the correct Lot was Lot 80.

Third, plaintiff argues that the City's own records show that Lot 80 is owned by the City. In support of this argument, plaintiff references a printout from the NYC Department of Buildings ("DOB") website regarding "Tax Block 347" and "Tax Lot 80" (NYSCEF Document #50). The printout states on its face, "City Owned: YES."

Fourth, plaintiff argues that the City's own records show that the 1985 deed is in fact the operative document in effect with respect to Lot 80. In support of this argument, plaintiff references a printout of the Automated City Register Information System ("ACRIS") database from the Office of the City Registrar regarding "Block 0347" and "Lot 80" (NYSCEF Document #51). On its face, the printout lists one document only, and such document is identified as a "DEED" with "Doc Date 9/30/1985" and "Recorded /Filed 10/1/1985." Plaintiff argues:

24. As we previously noted and the City conceded by silence, ACRIS goes as far back in time as 1966. Thus, the absence of the 1971 Deed relied on by CITY in the ACRIS search we performed search is telling. [...]

Fifth, plaintiff argues that even *assuming arguendo* that the 1971 deed was still in operation, an examination of the metes and bounds description of the land that is included in this deed shows that the relevant piece of land where plaintiff fell was not actually included in this deed. Plaintiff argues:

10. First, the 1971 Deed CITY relies on is for the wrong parcel. [...] Nowhere does the 1971 Deed relied on by CITY give a street address or a block and lot identifier. And the metes-and-bounds descriptions in the Deed for the Parcels conveyed in the Deed - identified as Parcels 1A, 1B and 4A - plainly do not cover the location of 154 Broome Street. [...]

[...]

13. The parcels addressed in the 1971 Deed are identified therein as Parcels "1A", "1 B" and "4A" as depicted on certain maps that the CITY has failed to attach [...] the metes-and-bounds descriptions for these parcels plainly do not include the 154 Broome Street Building. Parcel 1A and 1B are bound by Grand Street at the bottom and the south side of Broome Street at the top, whereas 154 Broome Street is north of that area [...] Parcel 4A covers the area between Broome Street on the south and what is now Delancey Street on the north, but it begins at the corner of Ridge Street and proceeds west along Broome for just 163 feet, which plainly does not reach the Building.

[...]

32. [...] the 1971 Deed contains metes-and-bounds descriptions that simply do not match up to the 154 Broome Street Building.

In Reply, the City argues that the DOB website states that the property is “owned” by the City, because the property is owned by NYCHA, which is operated by New York City. The City argues that the DOB website provides general reference only, and does not distinguish ownership classification between distinct governmental institutions.

With respect to the printout from the ACRIS database that lists the 1985 deed as the only document with respect to Lot 80, the City argues that this document, as well as the document printout from the DOB website, are “hearsay print outs from websites, none of which are evidence in admissible form.” Further, with respect to this issue and with respect to plaintiff’s argument that the 1971 deed does not actually include the relevant property, the City also submitted a fourth affidavit (NYSCEF Document #82, dated August 17, 2022) from Mr. Schloss. This states, in relevant part:

7. Paragraph ten [of plaintiff’s opposition papers] claims that the 1971 deed does not “cover” 154 Broome Street. However, the deed dated October 4, 1972, contains metes and bounds descriptions congruent with Block 347, Lot 80 as it appears on the tax map. Parcel number 4-b describes the easterly portion of Lot 80. Parcel number 4-a describes the westerly portion of Lot 80. Block 347 is mentioned in the paragraph that follows the metes and bound description of parcel 4-a.

9. The claims contained in paragraph thirteen [of plaintiff’s opposition papers] are a result of an incorrect reading of the metes and bounds description; particularly, the plaintiffs counsel failed to include the description under parcel 4-a in his assessment.

10. As to paragraph twenty-four [of plaintiff's opposition papers], ACRIS does indeed maintain records back to 1966. The relevant deeds are recorded on ACRIS against Block 347, Lot 71. This is owing to changes in the tax map. My affidavit dated January 21, 2022, which states that I conducted a search for Block 347, Lot 71, did not specify that the deeds relevant to Lot 80 are record against Lot 71. Again, the metes and bounds descriptions are determinate of the subject property, located at 154 Broome Street. The searches I initially conducted are indeed for the subject property located at 154 Broome Street, which is now designated as Block 347, Lot 80. See current tax map annexed hereto as Exhibit "A". In order to resolve the block and lot issue, I conducted another search for the property which currently occupies Block 347, Lot 71, which reveals that this block and lot corresponds to numerical address of 175 Delancey Street, not 154 Broome Street, the subject location.

In counsel's Affirmation in Reply, counsel further argues:

12. While plaintiff notes in her opposition papers, that metes and bounds should prevail, here plaintiff has misread the description of the property location in the relevant documents. To the extent that plaintiff argues that Mr. Schloss searched for an unrelated block and lot, Mr. Schloss responds that "[t]he claims contained in paragraph thirteen are a result of an incorrect reading of the metes and bounds description; particularly, the plaintiff's counsel failed to include the description under parcel 4-a in his assessment."

14. Here, Mr. Schloss has clarified that the deeds relevant to 154 Broome Street, were recorded against Lot 71, as it was previously known on the prior tax map. Notably, as per the metes and bounds, which is determinative of ownership, rather than the block and lot, which are subject to changes in the tax map, the subject deeds encompass the subject location.

16. Rather than merely looking up the Block and Lot, Mr. Schloss has thoroughly researched the subject location. The property is currently listed as a part of Block 80, but the two relevant deeds for the subject location were filed against Lot 71, as it was previously known, which is now identified as encompassing 175 Delancey Street, per the current tax map, a completely different address and parcel of land.

Conclusions of Law

This court first notes that there is no dispute that the subject location, 154 Broome Street, is currently located on the tax map as Block 347, Lot 80.

Second, the court notes that regardless of whether a copy of the Vacate Order was properly submitted in the earlier motion, there is no dispute that a copy of the same was submitted in this instant motion sequence (NYSCEF Document #75).

Third, the court notes that the Vacate Order references the 1985 deed, and also clearly references “Block 347, Lot 80” as one of the applicable parcels. Hence, with respect to the subject properly, it is clear on this record that the 1985 deed is a nullity. With respect to plaintiff’s concerns that the ACRIS database states otherwise, the court credits the City’s argument that the ACRIS database printout is hearsay and is not properly in evidence.

Fourth, plaintiff argues that an analysis of the metes and bounds description of the land that is included in this 1971 deed shows that 154 Broome Street was not actually included in this deed. The court finds this argument to be unavailing, as Mr. Schloss’s affidavit states that he is a Senior Title Examiner with the New York City Law Department; that his duties include the examination and certification of real estate titles in New York County; and that the operative deed “contains metes and bounds descriptions congruent with Block 347, Lot 80 as it appears on the tax map.” In contrast, plaintiff’s analysis of the metes and bounds appears to have been carried out solely by plaintiff’s counsel, and there is no indication on this record that plaintiff’s counsel has any experience or expertise in examination or certification of real estate titles.

Finally, and critically, the court notes that co-defendant NYCHA not only does not object to the City's motions, but NYCHA has already submitted an "Affirmation of No Opposition" to the City's original motion, in which NYCHA's counsel confirmed that NYCHA had already admitted ownership, operation, and maintenance of the premises.

Conclusion

Given the above, it is hereby:

ORDERED that the City's motion is GRANTED; and it is further

ORDERED that this complaint is dismissed, with prejudice, as against the City; and it is further

ORDERED that the caption is amended to remove the City of New York as a named defendant; and it is further

ORDERED that this action is randomly reassigned to a General IAS part; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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).

<u>9/22/2022</u>							
DATE				J. MACHELLE SWEETING, 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		