LoanDepot v Estate of Pickett
2022 NY Slip Op 33491(U)
August 19, 2022
Supreme Court, Kings County
Docket Number: Index No. 503731/16
Judge: Larry D. Martin
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At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of August 2022.

P R E S E N T:

HON. LARRY D MARTIN,
J.S.C.

Index No.: 503731/16

x

LOANDEPOT,

Plaintiff,

ORDER

-against-

THE ESTATE OF HATTIE PICKETT et al,

Defendant,

x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	**Numbered**
Motion (MS 4)	1
Opposition	2
Reply	3
Cross-Motion (MS 5)	4
Oppositions	5,6
Reply	7

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

This action was commenced against Hattie Pickett on March 14, 2016. Seven months later, the defendant died and Plaintiff moved for the appointment of a temporary administrator for her estate and to substitute "the Estate of Hattie Pickett" in her place in this action. By order dated May 16, 2018, the motion was granted "only to the extent that the Court appoints a Public Administrator on behalf of the Estate of Hattie Picket [stet] … [and] that the Estate of HATTIE PICKETT be substituted as a party defendant in the place and stead of the Defendant HATTIE

PICKETT." It does not appear that the Office of the Public Administrator was notified of the appointment and it did not appear in the action.

On March 12, 2020, Plaintiff moved for summary judgment and an order of reference. Thereafter, Cross-Movant Glenroy Walcott was appointed administrator of Hattie Pickett's estate by the Kings County Surrogate's Court. Walcott now seeks to be substituted as a Defendant in place of the estate and leave to file a late answer on behalf of the estate. Plaintiff's counsel and co-counsel each filed opposition to portions of Walcott's motion.

Plaintiff is correct that the Public Administrator is not a party to this action, that it was "the Estate of Hattie Pickett" that was substituted in her place. An "estate" cannot itself an entity that can be a party – it is the administrator or executor who must be named in a representative capacity (*Grosso v Estate of Gershenson*, 33 AD3d 587, 587 [2d Dept 2006]). It is undisputed that did not happen here.

To further complicate matters, Walcott has also proffered a medical evaluation of Hattie Pickett dated shortly before the commencement of this action which appears to have been intended to have been submitted as part of a guardianship proceeding. Therein, the examining physician found that she was medically incapable of being present for a hearing as she was bedbound and at high risk for falls. The doctor also concluded that she was incapable of managing her own affairs. As such, it appears likely that the original defendant in this action was incapacitated at the time of commencement.

To recap: It appears that Hattie Pickett was likely incapacitated when she was sued. It is thus unsurprising that she did not answer the summons and complaint. The Public Administrator was appointed to administer her estate but was not named a party to this action. It could not have been expected to appear. The "estate" as substituted into the caption (at the request of Plaintiff) is not a legal entity and was not properly sued. All-in-all, it does not appear that Hattie Pickett, the Public Administrator, or Walcott as administrator could reasonably be held in default.

Walcott, having presented evidence that he has been duly appointed as administrator of the estate of the original defendant Hattie Pickett, is hereby substituted in this action in place of "Hattie Pickett" and "the Estate of Hattie Pickett" and acceptance of the proposed answer

attached to his moving papers is compelled. Walcott is directed to serve and file his answer within 30 days of entry of the instant order. The caption is amended to read:

LoanDepot.com, LLC,

Plaintiff,

-against-

Glenroy Walcott as Administrator of the Estate of Hattie Pickett, City of New York Environmental Control Board, City of New York Department of Transportation Parking Violations Bureau, "JOHN DOE #1" through and including "JOHN DOE#25", the defendants last named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff,

Defendants,

MS 5 granted. MS 4 denied as moot.

ENTER:

Hon. Larry D Martin JSC

KINGS COUNTY CLERK
FILED
2022 SEP 19 AM 10:30

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT