

Wilmington Sav. Fund Socy., FSB v VanderCruze

2022 NY Slip Op 33527(U)

August 26, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 64241/19

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART Q

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WILMINGTON SAVINGS FUND SOCIETY, FSB
AS TRUSTEE FOR STANWICH MORTGAGE
LOAN TRUST A,

Index No. L&T 64241/19

Petitioner,

-against-

EUNICE CLAUDIA VANDERCRUZE, JUSTINE
DAVY, HAGAR HOMES INCORPORATED,
"JOHN DOE 1" Through "JOHN DOE #3"*, "JANE
DOE #1"* Through "JANE DOE"*,

DECISION/ORDER

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Greene Court Corp.'s motion to substitute as petitioner, and pursuant to CPLR §§ 409(b) and 3215, for a default judgment and warrant of eviction, and for a status conference and other relief, and respondent Eunice VanderCruze's (cross) motion to dismiss pursuant to CPLR §§ 3211 and 3215(f) and for declaratory relief pursuant to CPLR § 3001:

Papers	Numbered
Notice of Motion & Affirmation/Affidavit/Exhibits Annexed.....	<u>1</u>
Notice of (Cross) Motion & Affidavit Annexed.....	<u>2</u>
Affirmation (in Opposition to Cross Motion) & Exhibit Annexed.....	<u>3</u>

Upon the foregoing cited papers, the decision and order on Greene Court Corp.'s motion to substitute and respondent's (cross) motion to dismiss and for declaratory relief (consolidated for determination) is as follows.

PROCEDURAL HISTORY

This post-foreclosure holdover proceeding was commenced in July 2019. Respondent Eunice VanderCruze appeared and filed a pro se answer on December 6, 2019. Subsequently,

the proceeding was transferred to this trial part for traverse and trial. Judge Malaika Scott-McLaughlin conducted a traverse hearing, which was concluded on January 14, 2020. By Decision/Order dated February 20, 2020, Judge Scott-McLaughlin overruled traverse and restored the proceeding for trial. Before the trial date, all eviction proceedings were suspended as a result of the COVID-19 public health emergency. *See* Administrative Order 68/20.

After the resumption of eviction proceedings, this proceeding was restored to the trial part’s calendar on March 29, 2022. After an adjournment to May 24, 2022, counsel for Greene Court Corp. (hereinafter “Greene Court”), the purported new owner of the subject premises, appeared, as well as respondent VanderCruze. Over respondent’s objection, the proceeding was adjourned to July 12, 2022 for Greene Court to make a motion to substitute as petitioner. Subsequently a motion to substitute and cross motion to dismiss and for declaratory relief were filed by the parties, respectively. On July 14, 2022, again over respondent’s objection, the proceeding was adjourned for opposition and reply to the respective motions to be submitted. On August 25, 2022, Greene Court’s attorney appeared and submitted opposition papers to respondent’s cross motion. Respondent did not appear. The court reserved decision on both motions upon respondent’s default.

MOTION FOR SUBSTITUTION

Greene Court moves to be substituted as petitioner in this proceeding. The motion is unopposed. In support of the motion, Greene Court annexes an attorney-certified deed recorded on May 4, 2022, which conveys the subject property (130-66 228th Street, Queens, New York) from Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (current petitioner) to Greene Court Corp. The motion is also supported by an affidavit of Hans Charles Zizi, president of Greene Court Corp., who attests to the transfer of ownership and an

assignment of rights and interests in this proceeding to Greene Court (a copy of the assignment is also annexed).

Pursuant to CPLR § 1018, “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.” Here, Greene Court’s motion demonstrates a transfer of title of the subject property and the necessity for it to substitute as petitioner. Accordingly, the motion to substitute is granted, Greene Court Corp. is substituted as petitioner, and the caption and all pleadings are amended to reflect the substitution, nunc pro tunc.

CROSS MOTION TO DISMISS AND FOR DECLARATORY RELIEF

Before reaching the prong of Greene Court’s motion for a default judgment of possession and warrant of eviction, the court will consider respondent’s cross motion, as dismissal would render moot the request for a default judgment. *See e.g. Datta v. Terrapin Indus., LLC*, 2011 NY Slip Op 33562[U] [Sup Ct, Queens County 2011]. The court first denies the cross motion’s request for declaratory relief pursuant to CPLR § 3001. Housing court is a court of limited jurisdiction and does not have the power to grant declaratory relief. *See e.g. Winthrop Realty, LLC v. Menal*, 21 Misc 3d 141[A], 2008 NY Slip Op 52383[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2008] [citing *Jones v. Gianferante*, 305 NY 135, 139 [1953]];

The court finds no merit to the cross motion’s argument that the court lacks personal jurisdiction over respondent. Judge Scott-McLaughlin’s traverse decision overruled traverse and thus constituted a determination as to respondent’s personal jurisdiction defense on the merits. Accordingly, the court considers the decision and order after the traverse hearing law of the case. *See Fishon v. Richmond Univ. Med. Ctr.*, 171 AD3d 873, 874 [2d Dept 2019]; *In re Estate of Billings*, 122 AD2d 941, 943 [2d Dept 1986].

The cross motion also attacks petitioner's standing because of the "illegal foreclosure action." However, as the Appellate Term, Second Department recently held, determinations in a foreclosure action, including the validity of the foreclosure sale, may not be collaterally attacked in Civil Court. *See NBD 1818 2019, LLC v. Johnson*, 75 Misc 3d 127[A], 2022 NY Slip Op 50367[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022]; *see also Banker's Trust v. Corbin*, 14 Misc 3d 136[A], 2007 NY Slip Op 50239[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2007].

Finally, to the extent that the cross motion seeks dismissal on the basis that the predicate notice to quit is defective, the court finds that the notice satisfies the requirements of RPAPL § 713(5). The court is satisfied that the documentation included with the notice here, namely the attorney-certified deed and the power of attorney, were sufficient to apprise respondents of the signatory's authority to act on behalf of petitioner as transferee of a property sold in foreclosure. *See Plotch v. Dellis*, 60 Misc 3d 1, 4-5 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018].

The court also holds that there is no merit to respondent's request for sanctions to be issued against petitioner, as no basis for doing so under 22 NYCRR § 130-1.1 is presented in the cross motion or upon the record.

For each of these reasons, respondent's cross motion is denied in its entirety.

MOTION FOR DEFAULT JUDGMENT

Petitioner's motion also seeks a default judgment pursuant to CPLR §§ 409(b) and 3215 and DRP-222 (now superseded by DRP-223). The court notes that only respondent VanderCruze has appeared or answered. Therefore, upon the court's review of the pleadings, predicate notice, affidavits of service, and Mr. Zizi's affidavit, petitioner is presumptively entitled to a default judgment of possession against all respondents except for Eunice Claudia

VanderCruze, as the cause of action pursuant to RPAPL § 713(5) is established. *See* CPLR § 409(b); *Plotch*, 60 Misc 3d at 4-5. The judgment shall issue against those respondents upon the filing of valid non-military affidavits with the clerk. *See Avgush v. De La Cruz*, 30 Misc 3d 133[A], 2011 NY Slip Op 50076[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2011]; *see also Unitrin Advantage Ins. Co. v. 21st Century Pharmacy*, 158 AD3d 450, 451 [1st Dept 2018].

Although a default judgment is not warranted as against respondent VanderCruze since she has filed an answer, the court finds that petitioner is entitled to a judgment of possession against her upon the “pleadings, papers and admissions” before the court. *See* CPLR § 409(b); *Bahar v. Schwartzreich*, 204 AD2d 441, 443 [2d Dept 1994] [“In a special proceeding, where no triable issues of fact are raised, the court must make a summary determination on the pleadings and papers as if a motion for summary judgment were before it”]; *Fisher Ave. Realty Partners, L.P. v. Hausch*, 186 Misc 2d 609, 610 [App Term, 2d Dept, 9th & 10th Jud Dists 2000] [Awarding landlord judgment pursuant to CPLR § 409(b) in a holdover proceeding]. The motion establishes petitioner’s cause of action under RPAPL § 713(5) and the answer does not raise any triable issue or defense. The court dismisses respondent’s counterclaim for \$250,000.00 in sanctions for frivolous filings and legal fees as it is without merit on its face. Accordingly, a judgment of possession is granted to Greene Court Corp. as against Eunice Claudia VanderCruze. The court finds that the appearances on the motions prior to Ms. VanderCruze’s non-appearance on August 25, 2022 constitute a conference pursuant to Administrative Order 245/21.

A warrant of eviction shall issue as against all respondents; issuance of the warrant shall be stayed 10 days from the date of the judgment against the defaulting respondents. The earliest execution date (EED) shall be the date immediately following the last date of the stay. A


marshal's notice of eviction shall be served prior to execution. *See* RPAPL § 749(2). Greene Court's attorney shall promptly notify the court if any respondent has filed an ERAP (Emergency Rental Assistance Program) application or if any respondent requires an Adult Protective Services referral.

CONCLUSION

In accordance with the foregoing determinations, Greene Court Corp.'s motion is granted to the extent stated herein. Respondent VanderCruze's cross motion is denied in its entirety. This Decision/Order will be emailed to Greene Court Corp.'s attorney and mailed to Eunice VanderCruze. Petitioner's attorney shall serve copies on each defaulting respondent by first class mail on or before September 1, 2022. Proof of service shall be filed with the court.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
August 26, 2022



HON. CLINTON J. GUTHRIE, J.H.C.

SO ORDERED - HON. CLINTON J. GUTHRIE