

Janet Tr., Inc. v Mott Haven Improvement Group LP
2024 NY Slip Op 35488(U)
April 1, 2024
Supreme Court, Bronx County
Docket Number: Index No. 804743/2023E
Judge: Paul L. Alpert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

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Janet Transit, Inc., Victor Weingarten,
individually, and Victor Weingarten, as Trustee of
the Trust created under Sub-Article (B) of Article Fourth
of the Last Will and Testament of Irene Weingarten dated
August 21, 1988, Vosvetzein Transit Inc.,
Edgar Weingarten and Piper Cab Corp.,

Index: No.: 804743/2023E

Plaintiffs,

-against-

Mott Haven Improvement Group LP
and Ischia Bravo, The Bronx County Clerk,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of the order to
show cause as indicated below:

Papers	Numbered
Notice of Motion to Dismiss	1
Memorandum of Law in Support of Motion to Dismiss.....	2
Affirmation in Opposition & Exhibits.....	3
Memorandum of Law in Opposition.....	4
Memorandum of Law in Reply.....	5

Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:

The plaintiff commenced this action seeking a judgment declaring that the affidavits for a
Judgment by Confession filed under index Numbers 816231/2022E are expired as a matter of
law; the Article 78 money judgments are legally void on the grounds that the affidavits for a
Judgment by Confession are expired and are unenforceable; the Article 78 money judgments are
legally void; and the Article 78 money judgments were obtained by fraud. The defendant, Mott
Haven Improvement Group, LP ("Mott Haven") moves to dismiss the complaint pursuant to

CPLR § 3211 (a) (7) and seek an order setting forth declarations regarding the validity and enforceability of the joint affidavits and resulting judgments. The motion is opposed by the plaintiff.

On April 19, 2023, Mott Haven filed this motion to dismiss pursuant to CPLR § 3211 (a) (7). On May 22, 2023, while the motion was pending, the plaintiffs filed an amended complaint. The first, second, and fourth through tenth causes of action in the amended complaint are duplicative of the causes of action asserted in the original complaint. Mott Haven has chosen to proceed with the motion as to those causes of action in the amended complaint and has filed an Answer as to the remaining causes of action in the amended complaint.

Pursuant to CPLR § 3001 “the supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed” (CPLR § 3001). “The demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested” (CPLR § 3017 [b]). “On a motion to dismiss a declaratory judgment action for failure to state a cause of action, the only question is whether a proper case is presented for invoking the jurisdiction of the court to make a declaratory judgment, and not whether the plaintiff is entitled to a declaration favorable to him” (*General Insurance v. Piquion*, 211 AD3d 634 [1st Dept. 2022]). The only issue is whether a cause of action for declaratory relief is set forth, not the question of whether the plaintiff is entitled to a favorable declaration (see *North Shore Towers Apts. Inc., v Three Towers Assoc.*, 104 AD3d 825 [2nd Dept. 2013]; see also *DiGiorgio v. 1109-1113 Manhattan Ave. Partners, LLC.*, 102 AD3d 725 [2nd Dept. 2013] quoting *Staver Co. v. Skrobisch*, 144 AD2d 449 [1988]). However, “where the court, deeming

the material allegations of the complaint as true, is nonetheless able to determine, as a matter of law, that the defendant is entitled to a declaration in his or her favor, the court may enter a judgment making the appropriate declaration” (*DiGiorgio* at 728). In contrast, “if the material allegations of the complaint, taken as true, implicate ‘factual issues such that the rights of the parties cannot be determined as a matter of law, a declaration upon a motion to dismiss is not permissible’” (*DiGiorgio* quoting *Matter of Tilcon N.Y., Inc., v. Town of Poughkeepsie*, 87 AD3d [2nd Dept. 2011]).

The plaintiff’s first cause of action in the amended complaint is for a declaratory judgment that the New York State Attorney General was not duly served with notice of the Article 78 proceeding seeking the entry of money judgments against the plaintiffs pursuant to CPLR § 7804 (c). They claim the order dated November 29, 2022 and the resulting money judgments are unenforceable because the Article 78 Proceeding was jurisdictionally defective. Mott Haven moves to dismiss this cause of action based on the plaintiff’s lack of standing to contest the order entered in the Article 78 proceeding.

The plaintiffs argued as non-parties in the Article 78 proceeding, as well as in an order to show cause for a preliminary injunction, that the Attorney General was not served the Article 78 petition. The Article 78 petition sought an order directing the respondent, Kevin Rothermel, Acting Clerk of Bronx County, to accept the filing of Affidavits of Confession of Judgment and issue judgments upon such confessions in Mott Haven’s name. This court already determined in its April 27, 2023 decision and in its decision in the Article 78 petition that the plaintiffs lack standing to challenge any lack of service of the Article 78 petition upon the NYS Attorney General. The defendant’s motion to dismiss the first cause of action is granted. The plaintiffs

failed to state a cause of action for which the court can grant declaratory relief. The court takes the allegations as alleged in the first cause of action as true and as a matter of law declare that the judgment of confessions and the resulting judgments are enforceable.

The plaintiffs' second cause of action seeks a declaratory judgment that the plaintiffs are interested persons pursuant to CPLR § 7802(d) and that they should have been served with notice of the Article 78 proceeding. The plaintiffs made the same argument in their attempt to vacate the money judgments in the Article 78 proceeding. The court opined that the plaintiffs were not interested persons requiring notice of the Article 78 proceeding. The defendant's motion to dismiss the second cause of action for failure to state a cause of action for declaratory relief is granted.

The plaintiffs' fourth cause of action seeks a declaratory judgment that the plaintiffs are interested persons pursuant to CPLR § 5015(a). They argue that they are interested persons with standing under CPLR § 5015 to challenge the court's order granting money judgments and were entitled to notice of Mott Haven's Article 78 proceeding. The defendant argues that the plaintiffs lack standing to seek vacatur of the order dated November 29, 2022 and to vacate the money judgments. They rely on *Lehman Bros. Bank v. Hickson*, 186 AD3d 1350 [2nd Dept. 2020; see also *Mazurek v. Rogers*, Index No. 35108/2019, 2020 NY Misc. Lexis 6930, *8 [Sup Ct, Bronx County May 6, 2020]) for the proposition that "the defense of lack of jurisdiction based on improper service is personal in nature and may only be raised by the party improperly served". They also argue that the plaintiffs are not interested parties. Interested parties must show a legitimate interest in the litigation and the need for judicial assistance to ensure that justice is served.

CPLR § 5015(a) provides that the court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, ...” The procedure to vacate such a judgment is through a motion. The court already opined in its order dated March 7, 2024, in the Article 78 proceeding, that CPLR § 5015 was not available to the plaintiffs. The words ‘render’ and ‘judgment’ refer generally to the pronouncement of the court’s judgment on a given state of facts and are not used with reference to judgments by confession”. The defendant’s motion to dismiss the fourth cause of action for failure to state a claim for which the court can grant declaratory relief that the plaintiffs are interested persons pursuant to CPLR § 5015(a) is granted.

The defendants fifth cause of action asserts a claim for a declaratory judgment that the money judgments are legally void pursuant to CPLR § 5015(a) for lack of jurisdiction. Again, this court already determined that CPLR § 5015 is inapplicable to vacate money judgments resulting from judgments by confession. A court may vacate a judgment which was rendered by the court. However, where the judgment is not one rendered by the court but by confession, the application of CPLR § 5015 is not available “(*Scheckter et al v. Ryan*, 161 AD2d 344 [1st Dept. 1990]). The defendant’s motion to dismiss the fifth cause of action for the failure to state a cause of action for declaratory relief is granted.

The plaintiff’s sixth cause of action seeks a declaratory judgment that the money judgments in the Article 78 proceeding are declared void on the grounds of fraud pursuant to CPLR § 5015. This cause of action claims that the money judgments should be void because Mott Haven did not serve the plaintiff’s with notice of the proceeding and did not make the court aware that the judgment of confession expired on October 28, 2022. This court already held that

CPLR § 5015 is inapplicable. The defendant's motion to dismiss the sixth cause of action for the failure to state a cause of action is granted.

The plaintiff alleges in the seventh cause of action that it seeks a declaratory judgment that the affidavits for judgment by confession expired as a matter of law and are unenforceable. This court already decided this issue in its decision and order dated April 17, 2023. Justice Capella opined that the judgment of confessions were executed on December 19, 2019 and Mott Haven filed the confessions on November 30, 2022, which is within the required three (3) year period. The defendant's motion to dismiss the seventh cause of action for failure to state a cause of action upon which declaratory relief can be issued is granted.

The eighth cause of action seeks a declaratory judgment declaring that the money judgments are void based on the affidavits for judgment of confession being expired. The court already determined in its order dated April 17, 2023 that the affidavits of confessions were not expired. The defendant's motion to dismiss the eighth cause of action for the failure to state a cause of action upon which declaratory relief can be issued is granted.

The ninth cause of action seeks a declaratory judgment declaring that the money judgments are void based on Mott Haven's failure to serve them and the NYS Attorney General with notice of the Article 78 proceeding. This cause of action is duplicative of the fifth cause of action. The defendant's motion dismissing the ninth cause of action is granted for the failure to state a cause of action for which declaratory relief may be issued is granted. The tenth cause of action seeks a declaratory judgment and determination that the money judgments were obtained by fraud. This cause of action is duplicative of the sixth cause of action. The defendant's motion to dismiss the tenth cause of action for failure to state a cause of action for which declaratory

relief may be issued is granted.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the defendant's motion to dismiss the first, second, and fourth through the tenth causes of action pursuant to CPLR § 3211 (a) (7) is granted, and it is further,

ORDERED AND ADJUDGED, that the defendant shall serve a copy of this decision and order upon the plaintiff and co-defendant Ischia Bravo, within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: April 1, 2024



Hon. Paul L. Alpert, J.S.C.