

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GREEN TREE SERVICING, LLC)
(F/K/A CONSECO FINANCE)
SERVICING CORP.),)
)
) Plaintiff,
)
) v. C.A. No. 09C-03-013 AMF
)
ANITA GIBBS,)
)
) Defendant.)

Submitted: December 28, 2010
Decided: March 28, 2011

Dean A. Campbell, Esq., Law Offices of Dean A. Campbell, LLC, Georgetown,
Delaware for Green Tree Servicing, LLC (f/k/a Conseco Finance Servicing Corp.).

Anita Gibbs, *Pro se.*

Upon Consideration of Plaintiff's
Appeal of Grant of Writ of Replevin
AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of defendant Anita Gibbs' Appeal from a Commissioner's Final Judgment, the plaintiff's opposition, and the record of the case, it appears that:

1. On September 20, 2010, a Commissioner issued a final order granting a writ of replevin to the plaintiff, Green Tree Servicing, LLC, for a mobile home. The defendant failed to appear at the hearing. Testimony was taken from a representative of the plaintiff.

2. Superior Court Civil Rule 132(a) provides that Commissioners shall have all powers and duties conferred or imposed upon them by law, by the Rules of Civil Procedure for the Superior Court, and by Administrative Directive of the President Judge. Administrative Directive 2007-5, paragraph one, gives Commissioners the power to enter final judgments in nonjury replevin proceedings.

3. By letter dated September 23, 2010 defendant Anita Gibbs asked the Commissioner to reconsider the order on the grounds that she had not received notice of the September 20 hearing date. In a two-page letter dated October 5, 2010, the Commissioner considered and rejected the defendant's request. The defendant then appealed to a Judge of the Court. The appeal is subject to *de novo* review.

4. The plaintiff holds a secured interest in the mobile home in question under a Security Agreement. A copy of the agreement is attached to the complaint. The agreement gives the holder the right to replevy the mobile home upon default.

5. The Commissioner stated in her October 5, 2010 letter that "[t]he case is straight forward and clear evidence demonstrates your lack of payments gave

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adequate reasons for the issuance of the writ.”¹ Furthermore, the Commissioner held that the defense given by the plaintiff, that the mobile home was damaged in a manner that would justify nonpayment, was outside the scope of the replevin case and would be better addressed in a separate lawsuit.

6. On this appeal it appears that the defendant contends that: (1) the writ of replevin should not have been granted as a result of her failure to appear at the hearings because she was not afforded notice of the hearing date; and (2) the writ of replevin is not justified because her nonpayment is excused due to the plaintiff’s failure to fix damage to her home.

7. After the appeal was filed, the defendant filed a motion with me asking for a stay of the Commissioner’s order pending her appeal. On January 14, 2011, the Court heard the defendant’s motion to stay execution of the writ of replevin. At the hearing the defendant detailed her reasons for not making the monthly payments. She indicated that her roof sustained physical damage that led to a mildew problem throughout her home. That mildew problem, in turn, she explained, led to significant health issues. During this time period, the defendant filed an insurance claim to have her roof fixed. The defendant contends that the plaintiff has failed to uphold an obligation which she contends it has to fix her roof, and that this is the reason she stopped making mortgage payments.

¹ *Green Tree Servicing, LLC v. Anita Gibbs, et al.*, C.A. No. 09C-03-013 AMF, Freud, Comm’r. (Oct. 5, 2010)(ORDER).

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8. In her letter of October 5, 2010, the Commissioner sets forth in detail the sequence of events leading to the September 20, 2010 hearing. I agree with the Commissioner that the defendant was given due and proper notice of the hearing.

9. In addition, the defendant has failed to present a valid defense to the issuance of the writ.

10. Having conducted a *de novo* review, I conclude that the order for replevin issued by the Commissioner is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

PJVJr/dsc
oc: Prothonotary
cc: Order Distribution