

Third District Court of Appeal

State of Florida

Opinion filed September 2, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1091
Lower Tribunal No. 16-29192

Nidia N. Magarino,
Petitioner,

vs.

The Bank of New York Mellon, etc.,
Respondent.

A Case of Original Jurisdiction – Prohibition.

Pomeranz & Associates, P.A., and Mark L. Pomeranz (Hallandale), for petitioner.

DeLuca Law Group, PLLC, and Brandi Wilson, (Fort Lauderdale), for respondent.

Before EMAS, C.J., and MILLER, and LOBREE JJ.

MILLER, J.

By petition for writ of prohibition, petitioner seeks review of an order denying disqualification of the judge assigned to preside over the foreclosure action she is defending in the proceedings below. Petitioner asserts that by ordering the sequestration of rents, despite her affidavit she lacked a tenant, the trial court necessarily discounted her credibility.

The record before us demonstrates that the challenged actions of the lower tribunal did “not stem, as the petitioner contends, from any disqualifying personal bias or prejudice towards her.” Camacho v. Kendall Healthcare Grp., Ltd., 872 So. 2d 922, 923 (Fla. 3d DCA 2003) (citation omitted). Rather, the court efficiently resolved a pending motion so as to avoid permitting the case “to ‘drift aimlessly through the system.’” Fleischer v. Fleischer, 217 A.3d 1028, 1034 (Conn. App. Ct. 2019) (citation omitted). Accordingly, as disqualification “was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his [or her] future action in the pending cause,” we deny prohibition. Suarez v. State, 95 Fla. 42, 58, 115 So. 519, 525 (1928) (quoting Ex parte Am. Steel Barrel Co., 230 U.S. 35, 44, 33 S. Ct. 1007, 1010, 57 L. Ed. 1379 (1913)).

Denied.