

Hobbs Ciena Assoc., LP v Jimenez
2017 NY Slip Op 30209(U)
January 31, 2017
Civil Court of the City of New York, New York County
Docket Number: 74011/16
Judge: Michael Weisberg
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART

-----X
HOBBS CIENA ASSOCIATES, LP,

Petitioner,

-against-

ELIDA JIMENEZ,

Respondent.

-----X
STRATFORD LAND DEVELOPMENT CO.,

Petitioner,

-against-

MELISSA PUGLIESE,

Respondent.

-----X

Sontag & Hyman, P.C., Roslyn Heights, for Petitioner.

WEISBERG, J.:

These two nonpayment summary eviction proceedings were referred to the court on the application of the Petitioners for entry of a default judgment based on the Respondents' failure to answer the petitions. In both proceedings the affidavits of service of the predicate rent demand and petition indicate that the documents were served by licensed process server Wesley Moise and contain what is purported to be his notarized signature.¹ In both proceedings the signature on the affidavit of service for the rent demand differs distinctly from the signature on the affidavit of

¹ Copies of the affidavits are appended hereto.

service for the notice of petition and petition. In light of this apparent discrepancy between the two signatures the court found that there was “a question regarding the sufficiency of...service [of the petition]” (*Brusco v Braun*, 84 NY2d 674, 681 [1994]). The court therefore did not grant Petitioners a default judgment and scheduled a hearing, which took place on January 20, 2017. The two proceedings are consolidated herein solely for the purpose of disposition of the Petitioners’ applications for entry of a default judgment.

The only witness to testify was Moise. He testified that he signed all four affidavits and that there was no possibility that anyone else had signed them. In response to the question from Petitioners’ attorney regarding why the signatures look different, he testified that he is always in a rush to sign his affidavits of service because he does not get paid by the hour. As a result he signs the affidavits quickly. On average, he is given a batch of twenty to thirty affidavits to sign at one time. Moise testified that he does not have a desk. He is always standing when he signs the affidavits presented to him.

Moise confirmed that a signature in his name on a 2013 consent order resulting from a notice of hearing from the New York City Department of Consumer Affairs was signed by him.²

The trier of fact may make a comparison of a disputed writing with a satisfactory standard (*see People v Hunter*, 34 NY2d 432 [1974]; CPLR 4536). In the court’s opinion one of the signatures in each case resembles the signature on the consent order (although significant differences are still observable), but even a casual observer could not help but notice the difference between the second signature in each case and that on the consent order. First, the

² A copy of the signature page from the consent order is appended hereto. A complete copy of the consent order is available at https://www1.nyc.gov/assets/dca/downloads/pdf/about/sa_WesleyMoise_1341165.pdf

signature on the consent order and one of the signatures in each proceeding contains serifs. A serif is a small line attached to the end of a stroke in a letter. The “W” in “Wesley” and the “M” in “Moise” in the consent order have serifs. Likewise, the same letters in one of the signatures in each proceeding has serifs. But the other signature in each case does not have serifs.

Second, for the non-serif signature in each case the space between the lines in the “W” and “M” is wide and correlates roughly equally to the height of the letters. In the consent order signature and in the other signatures the space between the lines in each letter is narrow. Compared to the non-serif signature, the ratio of the height of the letters to the width of the spaces between the lines in the letters is much greater for the serif signatures. Overall, one of the signatures in each case does not appear to be made by the same hand as the signature on the consent order.

The court was struck by Moise’s glib response to the Petitioners’ attorney’s request for an explanation accounting for the dissimilarity between the signatures on the affidavits. Moise did not suggest that the difference might have to do with the pen he uses at any given time, the surface on which he is signing, his body position (e.g. standing or sitting) while signing (because he always stands), whether or not he sometimes has more or less time to devote to signing the documents, or anything else that might cause his signature to differ. And in a statement seemingly at odds with his claim that his signatures look different because he signs the affidavits in a rush, Moise testified that when he is rushing to sign affidavits his signature does not look different from the signatures on the affidavits at issue. In other words, Moise contradictory testimony seemed to be that 1) his signature looks different on the affidavits at issue because he

signs them very quickly; but 2) even though his signatures herein look different because he signs the affidavits quickly, his signing the affidavits quickly only results in signatures that look like the two types herein and nothing else.

Frankly, Moise's having to sign many documents, and doing so as quickly as possible, without more, does not adequately account for the difference in signatures. The court does not doubt that Moise is required to sign voluminous documents, as it has reviewed many, many affidavits of conspicuous place service purportedly made by Moise.³ Nor does the court doubt that having to sign so many documents might result in hand weakness or cramps such that over the course of signing the documents the signature might change. But in the court's opinion the difference between the signatures is so stark that the only reasonable conclusion is that at least one of the signatures in each proceeding does not belong to Moise.


"Judges assigned the task of entertaining applications for entry of default final judgments in nonpayment proceedings do not function as mere automat[ons]" (*Central Park Gardens, Inc. v Ramos*, NYLJ, April 9, 1984, at 12, col. 6 [App Term, 1st Dept 1984]). The stark disparities between the signatures on the affidavits of service in each of these cases raise serious questions as to the sufficiency of service of the rent demand and notice of petition and petition so as to preclude entry of a default judgment. Moise's testimony did nothing to answer those questions, but instead increased the court's concern. Petitioners' applications for a default judgment are denied.

A copy of this decision is being sent to the Department of Consumer Affairs and the New

³ Many affidavits of which contained signatures of various appearance comparable to those herein.

York Department of State (the agency charged with oversight of notary publics).

Dated: January 31, 2017



Hon. Michael L. Weisberg
HON. MICHAEL L. WEISBERG