

White v JPMorgan Chase Bank
2013 NY Slip Op 33311(U)
March 14, 2013
Sup Ct, New York County
Docket Number: 153285/2012
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
J.S.C. Justice

PART _____

Index Number : 153285/2012
WHITE, AYLA
vs.
JPMORGAN CHASE BANK, N.A.,
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/14/13

CYNTHIA S. KERN, J.S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----x
AYLA WHITE,

Plaintiff,

Index No. 153285/2012

-against-

DECISION/ORDER

JPMORGAN CHASE BANK, N.A., et al.

Defendants.

-----x
HON: CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Cross-Motion and Affidavits Annexed.....	<u>3</u>
Answering Affidavits to Cross-Motion.....	<u>4</u>
Replying Affidavits.....	<u>5</u>
Exhibits.....	<u>6</u>

Plaintiff commenced the instant action seeking, among other things, reimbursement of mortgage loan payments she made in connection with real property located in Armonk, New York, Westchester County. Defendant JPMorgan Chase Bank, N.A. s/h/a JPMorgan Chase Bank, N.A., a/k/a Chase, a/k/a Chase Home Finance LLP, a/k/a Chase Fulfillment Center, a/k/a Chase Fulfillment Services, a/k/a Washington Mutual Bank, a/k/a WaMu (collectively referred to herein as "Chase") now moves for an Order (a) pursuant to CPLR § 3211(a)(1) and (a)(7) dismissing plaintiff's complaint based on (1) documentary evidence; and (2) that the complaint fails to state a cause of action; or, in the alternative, (b) pursuant to CPLR § 507 transferring this

action to Westchester County. Plaintiff, in a separate motion, moves this court for an order pursuant to NYCRR § 202.1(b) allowing her to file additional papers in further opposition to Chase's motion to dismiss and granting her leave to file and serve a Second Amended Complaint. For the reasons set forth below, the portion of Chase's motion seeking to change venue is granted. Thus, the remainder of defendants' motion and plaintiff's motion are denied without prejudice to re-file upon transfer of this action to Westchester County.

The relevant facts are as follows. Plaintiff is the owner of real property located at 41 Windmill Road, Armonk, New York 10504-2248. On or about October 12, 2007, WaMu Mortgage Plus granted a home equity line of credit ("HELOC") to plaintiff with a maximum limit of \$870,000.00. In accordance with said HELOC, plaintiff executed a Home Equity Line of Credit Agreement and Disclosure Statement (the "Note") in favor of WaMu. Thereafter, a Credit Line Mortgage (the "Mortgage") was publicly recorded on the Note.

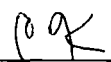
Plaintiff alleges that sometime prior to 2007, the Note and related Mortgage at issue herein were securitized "and interest therein sold to many thousands of investors in a package of real estate mortgages." Thereafter, starting sometime in 2007 and up to the last payment made in 2008, Chase allegedly collected payments on the Note from plaintiff. Plaintiff now alleges, among other things, that Chase is not in fact the rightful owner in possession of the Note and was not entitled to collect payments on the Note. Thus, plaintiff argues that she has been injured by making payments on the Note to an entity not entitled to collect payment and will continue to be injured in many ways by not knowing who is the rightful owner in possession of her Note. As part of her relief, plaintiff seeks a declaratory judgment that defendants do not own or possess the Note or Mortgage and have no enforceable interest therein.

As an initial matter, this court determines that Westchester County is the proper venue for this action. Pursuant to CPLR § 507, an action “in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property shall be in the county in which any part of the subject of the action is situated.” In the instant action, plaintiff seeks a declaratory judgment that defendants have no interest in the Note and Mortgage to the subject property, including the right to foreclose. It is undisputed that the subject property is located in Westchester County, not New York County. Thus, any order granting plaintiff’s requested relief would clearly affect her title to, or the possession, use or enjoyment of the real property located in Westchester County and proper venue lies therein. Plaintiff’s arguments in opposition to a change of venue are without merit as Chase is not seeking dismissal based upon the doctrine of *forum non conveniens*. On a motion to change venue pursuant to CPLR § 507, the court need not balance the interests of convenience and fairness to the parties.

Accordingly, as this court has determined that proper venue lies in Westchester County, all further relief sought by the parties on their respective motions should be determined by the court in Westchester County, not this court. It is hereby

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Westchester, and upon service by movant of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Westchester.

Dated: 3/14/13

Enter: _____ 

J.S.C.

CYNTHIA S. KERN
J.S.C.