

Goldstein v Zeigler
2017 NY Slip Op 32613(U)
December 15, 2017
Supreme Court, Kings County
Docket Number: 500527/17
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

-----X
**CHARLES R. GOLDSTEIN, not individually but
solely in his capacity as the Chapter 7 Trustee
for the Estate of Willie Anthony Zeigler,**

Plaintiff,

-against-

**DECISION / ORDER
FOR SERVICE BY
PUBLICATION
Index No.: 500527/17
Mot. Seq. #2
Sub: December 14, 2017**

**PEARLINE ZEIGLER and JOHN DOES NO. 1 through
20 inclusive, the last 20 names being fictitious
names, the true names unknown to plaintiff, the
defendants intended being all persons or entities
having or claiming an interest in or upon the
premises described in the complaint, NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY DEPARTMENT OF FINANCE,
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, THE NEW YORK CITY DEPARTMENT
OF HOUSING PRESERVATION AND DEVELOPMENT,
AND THE BANK OF NEW YORK MELLON,**

Defendants.
-----X

HON. DEBRA SILBER, J.S.C.:

**Recitation, as required by CPLR §2219(a), of the papers considered in the review of
plaintiff's motion for an order permitting service of process by publication.**

Papers	Numbered
Notice of Motion, Order to Show Cause and Affidavits (Affirmations) Annexed.....	<u>1-4</u>
Answering Affidavits	<u> </u>
Reply Affidavits	<u> </u>
Other: _____	<u> </u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff's motion seeking an order for service by publication pursuant to CPLR 316 is granted without opposition.

UPON the supplemental summons and amended complaint heretofore filed herein in the Office of the Clerk of the County of Kings, and from which it appears that the complaint herein demands judgment declaring, *inter alia*, that the Bankruptcy Estate of Willie Anthony Zeigler is the sole fee owner of the Property at issue, specific real property within this County and the State of New York, known as 48 St. Felix Street, Block 2096, Lot 53, and that any claim to an estate or interest in the Property by Pearline Zeigler, or by any person claiming under Pearline Zeigler, is invalid and directing that the Registrar at the Office of the City Register cancel of record the deed from Jack Howard to Pearline Zeigler, dated April 28, 1971 and recorded May 14, 1971 at Reel 482, Page 497;

and it appearing that there is a sufficient cause of action stated therein against the defendant PEARLINE ZEIGLER, who is a necessary party defendant herein;

and upon reading and filing the annexed affidavit of diligent search, sworn to by Stacey Rubino on October 23, 2017, and the exhibits annexed thereto;

and upon the annexed affirmation of David J. Eiseman, Esq., dated October 24, 2017, from all of which it appears that the said defendant cannot be served personally within the State of New York, and plaintiff thereby made proof to the court's satisfaction that the location of said defendant or her personal representatives cannot with due diligence be ascertained and that the plaintiff has been and will be unable in the exercise of such due diligence to make personal service of the summons herein by any other prescribed method on the said defendant within the State;

NOW, on motion of Golenbock Eiseman Assor Bell & Peskoe, attorneys for the plaintiff, it is hereby

ORDERED that the plaintiff be and hereby is granted leave to issue and file a supplemental summons and second amended complaint in this action (E-file Document Nos. 3 and 4, amended as described herein), and that the title of this action is hereby amended to conform with the provisions herein, without prejudice to any of the proceedings heretofore had herein, and it is further

ORDERED, that the caption of this action be amended to read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

-----X
CHARLES R. GOLDSTEIN, not individually but solely in his capacity as the Chapter 7 Trustee for the Estate of Willie Anthony Zeigler,

Plaintiff,

Index No.: 500527/17

-against-

PEARLINE ZEIGLER, and if she be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom

and whose names, except as stated, are unknown to plaintiff; and JOHN DOES NO. 1 through 20 inclusive, the last 20 names being fictitious names, the true names unknown to plaintiff, the defendants intended TO be the tenants, occupants, persons or corporations, if any, and all persons or entities having or claiming an interest in or upon the premises described in the complaint, THE NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, AND THE BANK OF NEW YORK MELLON,

Defendants.

-----X

AND IT IS FURTHER ORDERED that service of the summons in this action upon the defendant PEARLINE ZEIGLER, if living, and if she is dead, her respective heirs-at-law, next of kin, distributees, executors, administrators, trustees, devisees, legatees, assignees, lienors, creditors, and successors in interest, and generally all persons having or claiming under, by or through this defendant who may be deceased, by purchase, inheritance, lien or otherwise, any right, title or interest in or to the real property described in the verified complaint in this action, be made by publication, and it is further

ORDERED that the publication of the summons in this complaint be made in accord with the provisions of CPLR 316 in two (2) newspapers, at least one of which is printed in the English language, to wit: in the BROOKLYN DAILY EAGLE, published in the County of Kings, State of New York, and THE NEW YORK LAW JOURNAL, published in the County of New York, State of New York, together with a brief notice and statement to the

defendant containing a brief statement of the nature of this action and the relief sought, and the relief which may be granted in the event of a default, and a brief description of the real property which is the subject of this action, once a week for four (4) consecutive weeks, and it is further

ORDERED that the supplemental summons and second amended complaint in this action and the supporting papers in support of this order be filed on or before the first day of publication, and that the first publication of the summons be made within thirty (30) days after the date of this order, and it is further

ORDERED that the date of entry of this order with the county clerk shall be and hereby is deemed to be the date of granting this order for the purpose of compliance with CPLR §316.

The foregoing shall constitute the decision and order of the court.

Dated: Brooklyn, New York
December 15, 2017



Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court