

Reich v 559 St. Johns PL LLC
2020 NY Slip Op 34089(U)
December 9, 2020
Supreme Court, Kings County
Docket Number: 506861/19
Judge: Lawrence S. Knipel
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At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 9th day of December, 2020.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

ALEXANDER REICH,

Plaintiff,

- against -

Index No. 506861/19

559 ST. JOHNS PL LLC; LATANYA PIERCE; LENOX PACIFIC LLC; THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF TAXATION AND FINANCE; NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; "JOHN DOE #1" through "JOHN DOE #12" the last twelve names being fictitious and unknown to plaintiff, the persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

88-93

Opposing Affidavits (Affirmations) _____

94-98

Reply Affidavits (Affirmations) _____

99-103

Upon the foregoing papers in this action to foreclose a mortgage encumbering the real property at 1308 Caton Avenue in Brooklyn (Property), plaintiff Alexander Reich (Reich) moves (in motion sequence [mot. seq.] three) for an order, pursuant to CPLR

6405, appointing a substitute receiver.

By a September 11, 2019 order (Receiver Order), the court (Vaughan, J.) appointed Bruno Codispoti, Esq. as the receiver over the Property. Thereafter, defendant 559 St. Johns Pl LLC (St. Johns) moved for an order vacating the Receiver Order on the ground that there was no need for a receiver since the Property is owner occupied and not in danger of being “removed from the state, or lost, materially injured or destroyed.” By an August 3, 2020 order (Denial Order), the court (Partnow, J.) denied the motion by St. Johns to vacate the Receiver Order holding that:

“Under [RPL § 254 and RPAPL § 1325 (1)], as well as the applicable mortgage paragraphs, Reich is entitled to have a receiver appointed without notice to St. Johns or the other defendants. Therefore, this motion is denied in its entirety.”

On October 1, 2020, plaintiff’s counsel received an email from the receiver, Bruno Codispoti, in which the receiver renounced his appointment and directed that a motion be made to appoint a substitute receiver. Reich promptly filed the instant motion seeking such relief.

St. Johns, in opposition, argues that Reich’s motion to appoint a substitute receiver should be denied because: (1) Reich has not proved his standing to foreclose; (2) the Property is owner occupied, and thus, there are no rents and profits for a receiver to collect; and (3) the law does not provide for the substitution of a receiver. St. Johns further argues that, in light of the COVID-19 pandemic, “[n]o homeowner should be subjected to the additional burden of paying any additional money to a Receiver,

especially when the home is well maintained and up to date with its running costs.” St. Johns also asserts that a court of equity may exercise its discretion to deny an application for the appointment of a receiver, despite the fact that the mortgage allows the appointment of a receiver.

Reich, in reply, argues that St. Johns opposes the instant motion with the same arguments that the court previously rejected in its motion to vacate the Receiver Order. Reich asserts that “[t]he propriety of the appointment of a receiver is now the law of the case subject only to the Notice of Appeal which was filed by Defendants on August 19, 2020 . . .”

The doctrine of law of the case “is a judicially crafted policy that ‘expresses the practice of courts generally to refuse to reopen what has been decided . . .’” (*People v Evans*, 94 NY2d 499, 503 [2000] [quoting *Messenger v Anderson*, 225 US 436, 444 (1912)]). St Johns asserts grounds to oppose the instant motion for a substitute receiver that were previously considered and rejected when its motion to vacate the Receiver Order was denied. The court has previously determined that a receiver is warranted by statute and under the terms of the mortgage, which is law of the case. Accordingly, it is

ORDERED that Reich’s motion (in mot. seq. three) for the appointment of a substitute receiver is granted, and Michael Resnick is hereby appointed as the

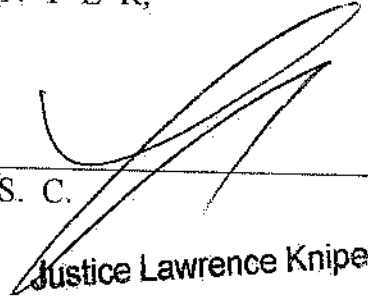
270 No. Ave Suite 811
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646 599 1359

substitute receiver over the Property in this foreclosure action.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

A handwritten signature in black ink, appearing to read "Justice Lawrence Knipel", is written over a horizontal line. The signature is stylized and slanted.

Justice Lawrence Knipel