

Bank of N.Y. Mellon Trust Co., N.A. v Estate of Silverman

2021 NY Slip Op 32957(U)

December 14, 2021

Supreme Court, New York County

Docket Number: Index No. 850133/2021

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At IAS 32 of the Supreme Court of the State of New York, held in and for the County of NEW YORK at the Courthouse thereof, ~~60~~ Centre Street, Motion Submission Part Courtroom 130, New York, NY 10007 on the 14 day of DEC, 2021.

PRESENT **HON. FRANCIS A. KAHN III**
Honorable _____ J.S.C. _____ J.S.C.

-----X
BANK OF NEW YORK MELLON TRUST COMPANY,
N.A. AS TRUSTEE FOR MORTGAGE ASSETS
MANAGEMENT SERIES I TRUST,

Plaintiff,

v.

HEIRS AND DISTRIBUTEES OF THE ESTATE OF ELEANOR T. SILVERMAN; BOARD OF MANAGERS OF THE COLONNADE CONDOMINIUM; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; UNITED STATES OF AMERICA,

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to Plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the Complaint,

Defendants.

-----X
UPON the Summons, Complaint and Notice of Pendency of action heretofore filed herein in the Office of the Clerk of the County of NEW YORK, from which it appears that the complaint herein demands judgment foreclosing a mortgage against specific real property within the County of NEW YORK and State of New York, and it appearing that there is a sufficient

INDEX NO. 850133/2021

ORDER DIRECTING SERVICE PURSUANT TO CPLR §316

Mortgaged Property:
347 WEST 57TH STREET, APT. 29-C
NEW YORK, NY 10019

cause of action stated therein against ELEANOR T. SILVERMAN, deceased, whose heirs and distributes are necessary party defendants herein;

UPON reading and filing the annexed Affidavit of Due Diligence and upon the annexed Attorney Affirmation of Ankit Mehta, Esq., an associate of Robertson, Anschutz, Schneid, Crane & Partners, PLLC, the exhibits annexed thereto, from which it appears that all the heirs and distributes of the Estate of ELEANOR T. SILVERMAN (hereinafter, the "Estate") cannot be served personally within the State of New York,

Plaintiff having made proof to the Court's satisfaction that the names and locations of all the heirs and distributes of the Estate cannot with due diligence be ascertained, and that Plaintiff has been and will be unable, in the exercise of such due diligence, to make personal service of the Summons herein or by any other prescribed method on the unknown heirs of the Estate within the State; and after due diligence, Plaintiff has been unable to ascertain where said Defendant(s) maintain an office to conduct business or to ascertain a place where said Defendants would probably receive mail; and it appearing that service upon all said heirs/Defendants pursuant to CPLR §308 (1), (2), and (4) is impracticable; from all of which it appears that the said Defendant cannot be served personally within the state of New York;

Plaintiff having made proof to the Court's satisfaction that the location of said Defendant DEBORAH DEZURE cannot with due diligence be ascertained, nor can it be ascertained whether said Defendant is living or dead and that Plaintiff has been and will be unable in the exercise of such due diligence to make personal service of the Summons herein or by any prescribed method on said Defendant within State; and after due diligence Plaintiff has been unable to ascertain where said Defendant would probably receive mail; and it appearing that service upon said Defendant pursuant to CPLR §308 (1), (2) AND (4) is impracticable;

NOW, upon motion by **ROBERTSON, ANSCHUTZ, SCHNEID, CRANE & PARTNERS, PLLC**, the attorneys for Plaintiff it is

ORDERED, that Plaintiff hereby is granted leave to file, and serve where necessary, the annexed Supplemental Summons and Amended Notice of Pendency of Action, and that the title of this action is hereby amended to conform with the caption on said Supplemental Summons and Amended Notice of Pendency of action, without prejudice to any of the proceedings theretofore had herein; and it is further

ORDERED, that the service of the Supplemental Summons in this action upon the unknown heirs at law of ELEANOR T. SILVERMAN, and Defendant DEBORAH DEZURE, if living, and if they be deceased, their 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 said defendant who may be deceased, by purchase, inheritance, lien or otherwise, any right title or interest in and to the premises described in the complaint herein, all of whom and whose names and places of residence are unknown to the plaintiff and cannot after diligent inquiry be ascertained, be made by mailing a copy of the Supplemental Summons and Complaint to ELEANOR T. SILVERMAN, and Defendant DEBORAH DEZURE's last known residence, and by publishing the Supplemental Summons with notice, annexed hereto *as "Exhibit C"*, in two (2) newspapers, at least one in the English language, hereby designated as most likely to give notice to the said defendant; together with a notice and brief statement of the object of the action and a brief description of the property, to wit:

IRISH VOICE

THE JEWISH WEEK

published and distributed in the County of NEW YORK, and State of New York, once a week for four (4) consecutive weeks, the first such publication to be made within sixty (60) days of the entry of this Order; and it is further;

ORDERED, that the Supplemental Summons and Complaint in this action be delivered on behalf of said Defendant, who may be served by publication in this action to

ROBERTA ASHKIN, ESQ of

300 EAST 42ND ST. - 14 FLOOR, NY, NY - 646-771-8520

whose telephone number is _____, who is hereby authorized, empowered and designated to appear in this action as Guardian Ad Litem and Military Attorney on behalf of any said defendants who may be infants, absentees or incompetents, or unknown successors in interest of the defendant who may no longer be in existence, and to protect and defend the interest of said defendant(s) in this action upon filing her/his acknowledged consent and qualifying affidavits; and it is further;

ORDERED, that the Guardian Ad Litem and Military Attorney (if applicable) shall also act for said Defendants should they be in default and be in the military service of the United States of America, the purpose of representing her and protecting her interests in this action pursuant to the provisions the Service Members Civil Relief Act of 2003; and it is further;

ORDERED, that the Plaintiff's motion for Order of Reference and Judgment of Foreclosure and Sale be made on notice to the Guardian Ad Litem; and it is further;

21-040955 - AnM

ORDERED, that the Guardian Ad Litem and Military Attorney (if applicable), is directed to execute his/her oath and that the same be filed with the Office of the County Clerk in the County of NEW YORK; and it is further

ORDERED, that the Guardian appointed herein be paid \$250.00 upon the filing of a notice of appearance on behalf of the ward(s) and provision shall be made in the Judgment of Foreclosure and Sale for an additional fee, payable upon transfer of title; and it is further

ORDERED, that the Plaintiff's annexed Supplemental Summons and Amended Notice of Pendency is hereby deemed issued and filed upon entry of the granted Order, without any prejudice to any proceedings heretofore had herein; and it is further

ORDERED, that HEIRS AND DISTRIBUTEES OF THE ESTATE OF ELEANOR T. SILVERMAN be amended to reflect UNKNOWN HEIRS AND DISTRIBUTEES OF THE ESTATE OF ELEANOR T. SILVERMAN as a party Defendant herein, without any prejudice to any proceedings heretofore had herein; and it is further

ORDERED, that BETH SILVERMAN YAM AS HEIR AND DISTRIBUTE TO THE ESTATE OF ELEANOR T. SILVERMAN and DEBORAH DEZURE AS HEIR AND DISTRIBUTE TO THE ESTATE OF ELEANOR T. SILVERMAN be added as party Defendants herein, without any prejudice to any proceedings heretofore had herein; and it is further

ORDERED, that the time to serve all Defendants is extended 120 days from the filing date of Supplemental Summons; and it is further

ORDERED, that the caption be amended as follows:

-----X
BANK OF NEW YORK MELLON TRUST COMPANY,
N.A. AS TRUSTEE FOR MORTGAGE ASSETS
MANAGEMENT SERIES I TRUST

INDEX NO. 850133/2021

Plaintiff,

v.

BETH SILVERMAN YAM AS HEIR AND DISTRIBUTE TO THE ESTATE OF ELEANOR T. SILVERMAN; DEBORAH DEZURE AS HEIR AND DISTRIBUTE TO THE ESTATE OF ELEANOR T. SILVERMAN, if living, and if she/he be dead and any and all persons unknown to Plaintiff, claiming, or who may claim to have an interest in, or general 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; UNKNOWN HEIRS AND DISTRIBUTEES OF THE ESTATE OF ELEANOR T. SILVERMAN, and any and all persons unknown to Plaintiff, claiming, or who may claim to have an interest in, or general 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

21-040955 - AnM

Plaintiff; BOARD OF MANAGERS OF THE COLONNADE CONDOMINIUM; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; UNITED STATES OF AMERICA;

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to Plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the Complaint,

Defendants.

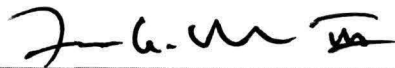
-----X

; and it is further

ORDERED, that the extension of time to serve, pursuant to CPRL §306-b, will be satisfied as long as publication is made and proof thereof is filed in the Office of County Clerk of the County of NEW YORK within 120 days of the filing of the Supplemental Summons; and it is further

ORDERED, that by acceptance of such guardianship, said Guardian Ad Litem certifies that he/she has complied with Rule 36 of the Chief Judge and Section 35-A of the Judiciary Law of the State of New York.

ENTER:



J.S.C.

HON. FRANCIS A. KAHN III

J.S.C.