

[*1]

Decided on May 2, 2008

Supreme Court, Queens County

Brighton Way, LLC, Plaintiff,

against

**Queen Esther's Temple, Inc., NEW YORK CITY
DEPARTMENT OF FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK STATE COMMISSIONER OF TAXATION
AND FINANCE and "JOHN DOE" and "JANE DOE",
said names being fictitious parties intended being
possible tenants or occupants of the subject premises,
and corporations, other entities or persons who claim or
may claim an interest or lien in or the subject premises,
Defendants.**

588/07

Jaime A. Rios, J.

In this foreclosure action, Neal Wright (Wright) on behalf of defendant Queen Esther's Temple Inc. (QET) by order to show cause seeks to vacate an order of reference (Rios, J.) dated October 23, 2007, and to have his answer to the complaint accepted. The answer was filed on March 26, 2007. Wright alleges that plaintiff failed to properly acquire personal jurisdiction over QET, as neither he, nor the attorney for QET were served with process, and that the mortgage is void as it lacked the required court approval.

By Summons and Complaint dated January 8, 2007, plaintiff commenced this action to foreclose a mortgage on real property located at 109-35 Farmers Boulevard, Saint Albans, New

York (Block 10925, Lot 11), executed by Neal Wright, Chairman of the Trustee Board, on behalf of defendant Queen Esther's Temple Inc. (QET) in the amount of \$140,000.00 on August 11, 2004 and recorded on October 12, 2004. According to plaintiff, QET defaulted by failing to make the monthly payments of principal and interest beginning on February 1, 2006. Under the terms of the note, plaintiff demanded payment in full. As a result plaintiff claims that the sum of \$139,048.88 plus interest is due as of February 1, 2006. No defendant has appeared or answered except for the City of New York Department of Finance who appeared and waived notice of this application.

By order dated January 16, 2008 this court (Rios, J.) granted the order to show cause to the [*2] extent of scheduling a traverse hearing on the issue of personal jurisdiction. Plaintiff was directed to produce a title search for the subject property and Wright was directed to appear and document his authority to execute the promissory note and mortgage. The hearing was held on March 10, 2008.

At the traverse hearing George Pressman (Pressman) a licensed process server was called as a witness for the Plaintiff. He testified that on January 18, 2007 he went to 115-46 Sutphin Blvd, Jamaica, New York and handed a copy of the foreclosure summons, complaint and notice of pendency to a black female identified by the name of Helen. Pressman averred that Helen indicated she was authorized to accept service for Wright and QET. He did not attempt or effect any other service.

William Greenspan (Greenspan) Plaintiff's managing agent testified that Wright in 2004 contacted him to negotiate a mortgage for a church that needed money to make repairs. Greenspan agreed to the loan, and following a title search which established QET's ownership of the property, a mortgage in the amount of \$140,000.00 was executed on October 1, 2004. The mortgage was for interest only at 10½ % with a balloon payment of the principal balance after five years (due September 1, 2009). Greenspan stated that prior to granting the mortgage he required authentication in writing from attorney Vernita Charles(Charles) that she was QET's attorney and that Wright had the authority to execute the mortgage.

The letter from Charles was introduced into evidence and it reads in part:

"As counsel for the church, Queen Esther's Temple Inc., it is my professional opinion, after reading the church bylaws and the minutes of the Board Meeting dated 12 March 2004, Mr. Neal Wright is authorize (sic) by the Board of Trustees, to duly execute a mortgage on behalf of the church, Queen Esther's Temple".

Greenspan further related that at the closing of the loan, attorney Charles agreed to serve as the escrow agent for QET, to retain certain funds to cover the first 12 months' mortgage payments, and for the removal of building violations. According to Greenspan, Charles made the first twelve mortgage payments.

Wright testified that he first became aware of QET when he read an announcement in the newspaper that there was a tax lien on the property. He indicated that based upon his expertise in the field of foreclosures he searched public records and located the address of QET:

"I looked on the deeds and I went through all the deeds and I traced the mail back to an address".

Wright indicated that he contacted Mae Williams (Williams) at the QET and left his card and some six months to a year later she contacted him, and asked his assistance in obtaining a loan to satisfy the outstanding liens against the property. Wright related that William's health failed and she asked that he execute the loan. His name was subsequently added to the QET Board of Trustees and he signed the mortgage documents. According to Wright at the mortgage closing he received \$70,000.00 which he used to open an account at Washington Mutual in the name of QET.

Although notified of the hearing, the law firm of Vernita Charles did not appear.

[*3]Issues

Whether service was properly effectuated on defendant QET, and whether the underlying mortgage violates Religious Corporation Law §12.

Decision

CPLR 311 (a) provides that:

"Personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows:

1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service."

In order to acquire jurisdiction over a domestic corporation by personal service, service is effectuated by delivering process to any one of the listed corporate representatives set forth in CPLR 311. The delivery requirement is not satisfied by leaving the summons, at a time when the proper person was absent with a receptionist who was not employed by the corporation regardless of whether the receptionist gave the summons to the proper person thereafter (*see McDonald v. Ames Supply Co., Inc.*, 22 NY2d 111 [1968]; *Lakeside Concrete Corp. v. Pine Hollow Building Corp.*, 104 AD2d 551 [1984]).

Here, it is undisputed that service upon QET was purportedly made by serving a Helen "Doe" at Wright's business address. Since the process in this case was not personally delivered to Wright nor any other corporate representative, service was not effectively made upon Queen Esther. When the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents (*see Raschel v. Rish*, 69 NY2d 694 [1986]; *Macchia v. Russo*, 67 NY2d 592 [1986]; *McDonald v. Ames Supply Co.*, 22 NY2d 111 [1968]).

Further, the underlying mortgage is a nullity as it did not comply with the requirements of Religious Corporation Law §12 which provides that:

"A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court."

Plaintiff misconstrues the meaning of §12 by applying the cited five year limitation on mortgages, when it only applies to leases (*see Berlin v. New Hope Holiness Church of God, Inc.*, 93 AD2d 798 [1983]). As leave of court was not obtained in accordance with Religious Corporation Law §12, the underlying mortgage is invalid and thus no action to foreclose is maintainable (*see Bernstein v. Friedlander*, 58 Misc 2d 492 [1968]). The purpose of this requirement is to protect the religious purpose of the corporation and prevent a dissipation and perversion in corporate assets (*see Church of God of Prospect Plaza v. Fourth Church of Christ, Scientist, of Brooklyn*, 76 AD2d 712 [1980]).

Accordingly, the order of reference dated October 23, 2007 is vacated and the within foreclosure action is dismissed.

Dated: May 2, 2008

J.S.C.