



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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October 13, 2023

RETIRED JUDGES

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Respondents (Self Represented)

Beverly T. Jenkins
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Respondent (Self Represented)

Re: *Wells Fargo Bank, NA v. Beverly T. Jenkins, et. al.*
Case No. CL-2022-15714

Dear Counsel and Parties:

After a federal court held that Wells Fargo has the right of possession of real property on which it ruled Charles Jenkins and any other occupant is squatting, Wells Fargo petitions this Court for a Writ of Eviction. However, because the federal court's order is over 180 days old, this Court lacks authority to issue a writ based on it. The Court reads Virginia Code §§ 8.01-470 and 471 to mean that a petitioner must obtain a Writ of Eviction within 180 days of the issuance

OPINION LETTER

of its Order of Possession. Because Wells Fargo’s Order of Possession is stale, the Court may not issue the Writ of Eviction based on it and will deny its’ Motion for Summary Judgment.

I. FACTUAL OVERVIEW.

Petitioner Wells Fargo Bank, N.A. (“Wells Fargo”) filed its Petition for a Writ of Eviction November 18, 2022. It states that on November 16, 2017, it purchased real property in Fairfax County at a trustee’s foreclosure sale—6320 Windpatterns Trail, Fairfax Station, Virginia 22039 (the “Property”). (Pet. at 2.) The Deed, attached as Exhibit A to the Petition, “grant[s] unto Wells Fargo Bank, National Association, as Trustee for Morgan Stanley ABS . . . with Covenants of Special Warranty of Title, all of the following lot . . . known as 6320 Windpatterns Trail . . .” (Trustees’ Deed, at 3.) This matter came before the Court on September 22, 2023, on Wells Fargo’s Motion for Summary Judgment.

Defendant Charles Jenkins (“Jenkins”) refuses to vacate the property. He asserts that Wells Fargo did not acquire good title to the Property at the sale and was not entitled to possession. (Def.’s Opp’n at 3–4.)

On January 8, 2021, Wells Fargo filed an Ejectment action against the Defendants in the United States District Court for the Eastern District of Virginia (“EDVA”). (*See* Pet., Ex. B.) There, Wells Fargo moved for Summary Judgment and Judgment on the Pleadings, while Defendants moved to Dismiss Wells Fargo’s action. (*Id.*, Ex. C, at 1.) By Order dated August 30, 2021, the EDVA found that “(i) [Wells Fargo] purchased the Property in 1993, (ii) [Defendants] conveyed the Property to Beverly Jenkins in 2002, (iii) . . . Beverly Jenkins took out a mortgage loan secured by the Property in 2005, and (iv) . . . in 2017, following a default on the mortgage, a trustee’s deed was executed conveying the Property to [Wells Fargo].” (*Id.* at 4.) The EDVA also determined that the Deed was and is valid, Wells Fargo was properly before the Court, and was not required to prove standing to initiate foreclosure. (*Id.* at 5–6.) As a result, the EDVA granted Wells Fargo’s Motion for Summary Judgment, holding that it “has sole title to the Property and can proceed through the proper procedures and effect ejectment of defendants.” (*Id.* at 6.)¹

Wells Fargo presented the EDVA Order to the Clerk of this Court and requested a Writ of Eviction. (Pet. at 4). The Clerk declined to issue the writ, prompting the present action pursuant to the EDVA’s Order.

Wells Fargo argues there are no genuine disputes of material fact that require a trial to be resolved, and that Defendants’ defenses have already been adjudicated and rejected by the EDVA. (Pl.’s Mot. Summ. J. at 4.) Wells Fargo further argues that the EDVA is a court of competent jurisdiction, and that its decisions are entitled to full faith and credit. (*Id.* at 4–5).

¹ The United States Court of Appeals for the Fourth Circuit affirmed the EDVA’s Order June 16, 2022. *Id.* Wells Fargo never asserted the EDVA Order was stayed or tolled pending appeal, or argued that it submitted the Order within 180 days of entry. Instead, Wells Fargo argues that the 180-day limitation period does not apply to Orders of Possession.

Wells Fargo finally argues that under VA. CODE ANN. § 8.01–470 this Court is authorized to issue a Writ of Eviction based upon a federal court judgment for Ejectment. (*Id.* at 5.)

Jenkins argues through his opposition, filed on September 15, 2023, that Wells Fargo lacks standing to bring this action because it sold its Corporate Trust Services branch in 2021, and avers that it is no longer trustee of the property at issue.² (Def.’s Opp’n at 1–2.) Jenkins further argues that the EDVA Order does not include an adequate legal description of the property pursuant to VA. CODE ANN. § 8.01–470, which renders the Order of Possession deficient. (*Id.* at 2.) Likewise, he argues that this Court lacks subject matter jurisdiction to adjudicate this matter since he believes (1) that this matter should really be styled as an unlawful detainer action, and (2) this Court lacks jurisdiction to adjudicate matters of unlawful detainer. (*Id.* at 3.)

The dispositive issue before the Court is whether an Order of Possession may be used to obtain a Writ of Eviction more than 180 days after issuance.

II. STANDARD OF REVIEW.

Under Rule 3:20 of the Supreme Court of Virginia, a motion for summary judgment shall be granted if the “moving party is entitled to judgment” as a matter of law. “Summary judgment shall not be entered if any material fact is genuinely in dispute.” VA. R. S. CT. 3:20. A fact is material if it is “a matter that is properly at issue in the case . . . requiring the court to view the putative factual dispute through the prism of the controlling legal principles.” *Albritton v. Commonwealth*, 299 Va. 392, 403 (2021) (citing *Commonwealth v. Proffitt*, 292 Va. 626, 635 (2016)) (internal quotation marks omitted). A material fact is in genuine dispute when reasonable factfinders could “draw different conclusions from the evidence.” *Fultz v. Delhaize Am., Inc.*, 278 Va. 84, 88 (2009). In reviewing a motion for summary judgment, the Court must draw all reasonable inferences in favor of the nonmoving party. *Id.*

III. ANALYSIS.

A. Ejectment and Unlawful Detainer.

“Ejectment is an action at law to determine title and right of possession of real property.” *Brown v. Haley*, 233 Va. 210, 216 (1987). The occupant of the premises, any person claiming title to the premises, and any person claiming any interest in the property adverse to the plaintiff may be named as defendants in the action. VA. CODE ANN. § 8.01–133. “A verdict for the plaintiff must specify the share or interest of the plaintiff, whether in the whole or a part of the premises claimed, and the estate of the plaintiff, whether in fee, for life, or for a term of years.” *Haley*, 233 Va. at 216 (citing VA. CODE ANN. § 8.01–152). Because Ejectment is “only concerned with the ownership rights of the plaintiff,” the plaintiff need only support the action with documents which vest title in the owner and any other relevant evidence. *Id.* A judgment

² Because the Court will deny the Motion for Summary Judgment for other reasons, it will not adjudicate this issue.

entered in an action for Ejectment is “conclusive as to the title or right of possession established in such action . . . by title accruing after the commencement of such action” VA. CODE ANN. § 8.01–163.

On the other hand, “[u]nlawful detainer is an action against a defendant who lawfully entered into possession of real property but whose right to lawful possession has since expired.” *Parrish v. Federal Nat’l Mortgage Ass’n*, 292 Va. 44, 50 (2016). The proper plaintiff in an unlawful detainer action is lawfully entitled to possession at the time of suit, while the defendant unlawfully withholds possession of the property. *Id.* (citing *Allen v. Gibson*, 25 Va. 468, 473 (1826)). “The validity of the plaintiff’s right of possession is an issue that, when disputed, must be determined in the adjudication of the unlawful detainer action.” *Id.* (requiring that the plaintiff show either (i) prior actual possession, or (ii) an after-acquired right of possession following defendant’s entry). A plaintiff who claims an after-acquired right of possession based on a claim of title may be required to establish validity of that title. *Id.* (“Actions for unlawful detainer in the foreclosure context generally fall into this category.”) (citing *Corbett v. Nutt*, 59 Va. 624, 648 (1868)).

Here, the EDVA has already adjudicated the issue of title in this matter and issued an Order of Possession. Thus, Wells Fargo need only obtain a Writ of Eviction on it.

B. Writs of Eviction and Orders of Possession.

In the context of Ejectment, Orders of Possession lead to Writs of Eviction. Virginia Code § 8.01–470 reads, in relevant part:

On a judgment for the recovery of specific property . . . a *writ of eviction* for real property may issue for the specific property *pursuant to an order of possession* entered into by a court of competent jurisdiction, which shall conform to the judgment as to the description of the property and the estate, title, and interest recovered In the cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of eviction has been delivered shall, at least 72 hours before execution, serve notice of intent to execute *An order of possession shall remain valid for 180 days from the date granted by the court.*

(emphasis added).

Similarly, in the context of Unlawful Detainer, Judgments of Possession lead to Writs of Eviction. VA. CODE ANN. § 8.01–471 (“Writs of eviction, in case[s] of unlawful entry and detainer, shall be issued within 180 days from the date of judgment for possession.”).

Both Orders of Possession and Judgments of Possession may support a subsequent Writ of Eviction, but only if used 180 days from the date granted.

Thus, there are two paths to obtaining a Writ of Eviction to evict a squatter. A complainant may, as Wells Fargo did, obtain an Order of Possession from a court under an Ejectment action. Alternatively, it could sue for Unlawful Detainer and win a Judgment for Possession. Then, with either the Order of Possession or Judgment for Possession, it could seek a Writ of Eviction within 180 days of entry of the underlying order or judgment.

Whichever statutory path a litigant treads—an Ejectment Order of Possession or an Unlawful Detainer Judgment of Possession—the litigant must follow up with the Writ of Eviction within 180 days of winning the Order of Possession or Judgment of Possession. This is because a Writ of Eviction is, at its core, merely a *remedy* issued pursuant to an Order of Possession handed down in an Ejectment action or pursuant to a Judgment of Possession from an Unlawful Detainer action. *See In re Amendment of Eighth Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency*, 299 Va. 99 (2020) (Kelsey, J. dissenting) (“Here, the general rule of law pursuant to Code §§ 8.01–470 and –471 provides the remedy of a writ of eviction upon a judgment for the recovery of property in an unlawful detainer action.”).

C. Wells Fargo’s Petition for a Writ of Eviction is Untimely.

Wells Fargo’s “Petition for a Writ of Eviction” seeks its writ as a remedy pursuant to an existing Order of Possession issued by the EDVA. However, the Court cannot issue the writ because it is untimely. The usefulness of the Order of Possession for the purpose of obtaining a Writ of Eviction expired 180 days after the EDVA issued it.

Wells Fargo argues that the 180-day time limitation on an Order of Possession does not apply to such orders issued pursuant to an Ejectment action. It claims the time limitation Virginia Code § 8.01–470 applies only to Unlawful Detainer actions. However, Wells Fargo’s interpretation makes that statute both internally inconsistent and inconsistent with § 8.01–471. In § 470, the term “Order of Possession” in the first sentence clearly applies only to Writs of Eviction or Writs of Possession. In § 471, the term “judgment for possession” applies to “unlawful entry and detainer.” Combined, the statutes make clear that one either (1) obtains an Order of Possession to then seek a Writ of Eviction; or (2) obtains a Judgment for Possession in an Unlawful Detainer action to then seek a Writ of Eviction. Either way, under either statute, there is a 180-day expiration date of the predicate order to use it to obtain a Writ of Eviction. For Wells Fargo, that 180-day period expired. Therefore, the Court may not issue a Writ of Eviction based on its predicate order from the EDVA.

D. As an Alternate Ruling, Wells Fargo’s Order of Possession is Deficient.

As an alternative ruling, even if the 180-day time limitation does not apply to Orders of Possession issued pursuant to an Ejectment action, the Order of Possession at issue in this case is deficient.

The Order of Possession “is required to be very specific” and must “set out with particularity, either directly or by reference, the premises recovered, and must specify the estate found in the plaintiff, whether in fee, for life or years.” *White v. Lee*, 144 Va. 523, 527 (1926) (discussing predecessor statutes to VA. CODE ANN. § 8.01–470) (emphasis omitted). Virginia Code § 8.01–470 specifically provides that an Order of Possession “shall conform to the judgment as to the description of the property and the estate, title, and interest recovered”

The Order of Possession in this case merely provides that Petitioner has “sole title to the Property and can proceed through the proper procedures to effect ejection of [Respondents].” (Pet., Ex. C, at 6.) The EDVA’s Order does not describe with particularity “the premises recovered,” or “specify the estate found in the plaintiff, whether in fee, for life or years.” *White*, 144 Va. at 527. Granted, this evidence is in the record, (*see* Pet., Ex. A), but these details must be included in the Order of Possession itself.

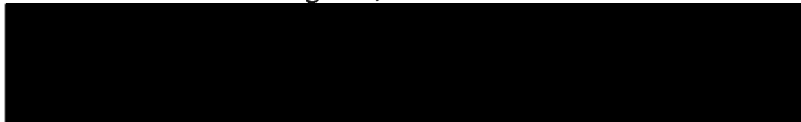
IV. CONCLUSION.

A federal court already ruled that Wells Fargo has the right to 6320 Windpatterns Trail, Fairfax Station, Virginia 22039. Respondents are squatters. However, the Court must do “the right thing, the right way, for the right reason.” *In re Amendment of Eighth Order*, 299 Va. 99 (2020) (Kelsey, J. dissenting)³. It must follow Virginia law. At this time, Wells Fargo may not obtain a Writ of Eviction more than 180 days after having won its Order of Possession. The Court lacks statutory authority to grant the relief Wells Fargo requests at this time in this way.

While the Court sees no path to judgment for Wells Fargo under the current posture of the case, the only issue before it is Wells Fargo’s Motion for Summary Judgment and Mr. Jenkins’ opposition to that motion. Wells Fargo needs a fresh Order of Possession or Unlawful Detainer Judgment for Possession to timely obtain a Writ of Eviction. It has neither and the Motion for Summary Judgment will be denied.

An appropriate Order is attached.

Kind regards,



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

³ The Dissent wrote: “One out of the three is not enough.” Two out of the three is not enough, either.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

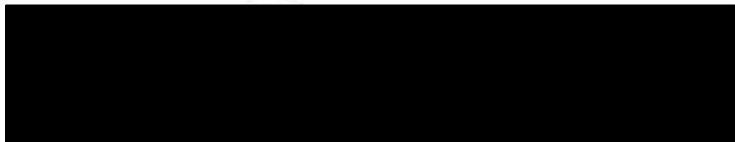
WELLS FARGO BANK, NA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	CL-2022-15714
)	
BEVERLY T. JENKINS, <i>et. al.</i>)	
)	
<i>Defendant.</i>)	

ORDER

THIS MATTER came before the Court September 22, 2023, on Plaintiff’s Motion for Summary Judgment. For the reasons set forth in the Opinion Letter of October 13, 2023, incorporated by reference, it is

ORDERED Plaintiff’s Motion for Summary Judgment is DENIED.

THIS CAUSE CONTINUES.



Judge David A. Oblon

OCT 13 2023

Entered

PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA, ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT. ANY DESIRED ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN TEN DAYS.