VERMONT SUPERIOR COURT
Rutland Unit
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CIVIL DIVISION
Case No. 22-CV-00199

U.S. Bank Trust National Association, not in its individual capacity, but solely as trustee of Citigroup Mortgage Loan Trust 2020-RP2 v. Victor Gittens

ENTRY REGARDING MOTION

Title:	Motion for Change of Venue; Motion for Extension of Time for Service ; (Motion: 1; 2)
Filer:	Jeffrey J. Hardiman; Jeffrey J. Hardiman
Filed Date:	February 15, 2022; February 15, 2022

This is a foreclosure case. The property is in Addison County, but the case was filed in Rutland County. Plaintiff, having realized the error, moves for a change of venue and an extension of time to complete service.

Plaintiff cites case law from other jurisdictions in support of the concept that courts have discretionary power to transfer venue "absent contravening statute or rule." Motion at 1. What Plaintiff fails to cite is applicable Vermont statutes, rules, or case law. The applicable statute is entitled "Removal to Another Unit," which provides as follows:

> When it appears to a presiding judge of a Superior Court that there is reason to believe that a civil action pending in such court cannot be impartially tried in the unit where it is pending, on petition of either party, such judge shall order the cause removed to the Superior Court in another unit for trial.

12 V.S.A. § 404(a). This specifies a limited basis on which the court may change venue, and does not contain any broad power to do so. Moreover, 12 V.S.A. § 402 provides that

if a case is filed in a county in which neither party resides "the complaint shall be dismissed." This is in contrast to, for example, the small claims rules, which provide that the court may transfer venue for "the convenience of the parties, witnesses, or counsel and in the interest of justice. . ." V.R.S.C.P. 2(b). There are similarly broad provisions in the probate and criminal rules. V.R.P.P. 38; V.R.Cr.P. 21(b). The lack of such a provision in the civil arena speaks volumes.

The Vermont Supreme Court has held that it has "supervisory authority" to order a change in venue "to prevent a failure of justice," but has not held that trial courts have the discretion to do so. *See, e.g.*, State v. Hunt, 150 Vt. 483, 488 (1988). To the contrary, it has held that statutory authority is required:

> It has been said that at common law, a court possesses the inherent power to change the venue of a cause pending before it, when it clearly appears that a fair and impartial trial cannot be had in the county where the venue is laid, and statutes which specifically confer this power are merely declaratory of the common law. . . This rule is, no doubt, supported by the weight of authority, but a different doctrine obtains in this jurisdiction.

State v. Stacy, 104 Vt. 379, 388 (1932), *abrogated on other grounds by* State v. Blondin, 128 Vt. 613 (1970). While the Supreme Court has statutory authority to create broader provisions for change of venue—see 4 V.S.A. § 37(b)—it has not done so. Thus, this court has no authority to grant the motion here.

Order

The motion to change venue is denied. The motion for an extension of time to complete service is moot. The case is dismissed without prejudice.

Electronically signed on March 10, 2022 pursuant to V.R.E.F. 9(d).

Helen M. Toor
Superior Court Judge