

**JP Morgan Chase Bank, N.A. v Kwang Suk Lee**

2011 NY Slip Op 34330(U)

March 21, 2011

Supreme Court, New York County

Docket Number: 109966/09

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
JP MORGAN CHASE BANK, NATIONAL  
ASSOCIATION,

Plaintiff,

Index No.  
109966/09

Seq No.: 003

- against -

Decision and  
Order

KWANG SUK LEE; SU HAK LEE;  
WASHINGTON MUTUAL BANK, FA;  
BOARD OF MANAGERS OF ATELIER  
CONDOMINIUM; NYC ENVIRONMENTAL  
CONTROL BOARD; NEW YORK SUPREME  
COURT; CRIMINAL COURT OF THE CITY  
OF NEW YORK; NYC DEPARTMENT OF FINANCE-  
PARKING VIOLATIONS BUREAU PAYMENT  
AND ADJUDICATION CENTER OF MANHATTAN;  
ROCENWASSER GROSSMAN CONSULTING  
ENGINEERS PC,

Defendants.

**FILED**

MAR 24 2011

NEW YORK  
COUNTY CLERKS OFFICE

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff brings this action to foreclose upon a mortgage on real property located at 635 West 42<sup>nd</sup> Street, Unit 25D in the County and State of New York. Defendants Kwang Suk Lee ("K. Lee") and Su Hak Lee ("S. Lee") now move, *pro se*, to vacate the judgment of foreclosure, issued by the Honorable Michael D. Stallman on June 30, 2010<sup>1</sup>, to amend their answer in order to add several affirmative defenses and counterclaims, and assert a demand for production of documents. Plaintiff opposes.

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<sup>1</sup>Although both defendants move here, only K. Lee answered the complaint, and the judgment was issued as against K. Lee only.

Plaintiff commenced this action on or about July 17, 2009, and defendant K. Lee answered the complaint on or about August 3, 2009. Thereafter, plaintiff moved for a judgment of foreclosure and sought to strike K. Lee's answer. By Order of Justice Stallman, dated April 13, 2010, the motion was referred to the mortgage foreclosure part for a settlement conference. K. Lee failed to appear at the conference, and it was adjourned to June 23, 2010. K. Lee did not appear at the second conference. Thereafter, the judgment of foreclosure was granted.

Defendants assert that they have come across newly discovered information that proves that plaintiff lacked standing to foreclose on their property because plaintiff was not the holder of the mortgage and the note at the time plaintiff commenced the foreclosure action. Nor does plaintiff, defendants argue, show a proper assignment of the loan from Washington Mutual Bank. Defendants point to recent decisions of this Court which, they claim, support their arguments.

Plaintiff, in opposition, submits K. Lee's original answer; a copy of Justice Stallman's April 13, 2010 order; two letters to defendants regarding a settlement conference; and the affidavit of Robert C. Shoppe, Receiver in Charge for FDIC as Receiver of Washington Mutual Bank. Plaintiff points to Mr. Shoppe's affidavit to show that, pursuant to a "Purchase and Assumption Agreement" entered into between it and the FDIC on September 25, 2008, plaintiff became the owner of Washington Mutual's loans by operation of law. As such, plaintiff need not show any assignment of the loan. Plaintiff also points out that K. Lee already raised a lack of standing defense in his original answer.

This Court, in two cases unrelated to the instant action, vacated its own prior judgment of default, and a prior judgment striking defendants' answer, and permitted those defendants to amend their answers to add affirmative defenses. In *JP Morgan Chase Bank National Association v. Byung Hun Seung, et al*, Index Number 109137/09, this Court noted:

Recently, foreclosures which were otherwise unopposed have come under great scrutiny, and many irregularities have forced courts to take additional measures to ensure proper judgments . . .

There, the motions to vacate and amend were granted in light of plaintiff bank's

failure to submit proof that it had standing to foreclose upon the defendants' mortgages. However, the motion presently before this Court is distinguishable.

Initially, pursuant to CPLR 5015(a), "a court may vacate its own judgment for sufficient reason and in the interests of substantial justice." (*Woodson v. Mendon Leasing Corporation*, 100 NY2d 62,66[2003])(internal citations omitted) The order defendants seek to vacate here was not issued by *this* Court. Rather, the order was issued by Justice Stallman. As such, CPLR 5015(a) would not apply.

Turning now to the issue of standing, Mr. Shoppe, in his affidavit, states, in relevant part:

As authorized by Section 11(d)(2)(G)(i)(II) of the Federal Deposit Insurance Act, 12 U.S.C. §1821(d)(2)(G)(i)(II), the FDIC, as receiver of Washington Mutual, may transfer any asset or liability of Washington Mutual without any approval, assignment, or consent with respect to such transfer . . . [p]ursuant to the terms and conditions of a Purchase and Assumption Agreement between the FDIC as receiver to Washington Mutual and JP Morgan Chase Bank . . . dated September 25, 2008 . . . JP Morgan Chase acquired certain of the assets, including all loans and all loan commitments, of Washington Mutual.

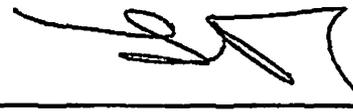
Defendants do not dispute that the original holder of the note was Washington Mutual. Mr. Shoppe's affidavit establishes that the purchase of Washington Mutual's "loans and loan commitments" occurred on September 25, 2008, prior to the commencement of the action against defendants. Thus, plaintiff has sufficiently demonstrated that it had standing to bring the instant foreclosure action. (see *Washington Mutual Bank v. LKH Assets, LLC*, 2009 WL 2134026[Sup. Ct. NY County]). In light of the foregoing, the motion must be denied.

Wherefore it is hereby

ORDERED that the motion is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: March 21, 2011



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EILEEN A. RAKOWER, J.S.C

**FILED**

**MAR 24 2011**

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