

State of New York Mtge. Agency v Vaccerino

2012 NY Slip Op 31299(U)

May 7, 2012

Supreme Court, Suffolk County

Docket Number: 15445/2010

Judge: Jerry Garguilo

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SHORT FORM ORDER

INDEX NO. 15445/2010

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 47 - SUFFOLK COUNTY

PRESENT:

HON. JERRY GARGUILO
 Supreme Court Justice

 State of New York Mortgage Agency,

Plaintiff,

-against-

Jacqueline F. Vaccerino, and "JOHN DOE #1" through "JOHN DOE #10", the last ten names being fictitious and unknown to the plaintiff, the person or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the Mortgage premises described in the Complaint,

Defendants.

ORIG. RETURN DATE: 5/2/2011
 FINAL SUBMISSION DATE: 4/18/2012
 MTN. SEQ. #: 001, 002
 MOTION: RRH

PLTF'S/PET'S ATTORNEY:

Frenkel, Lambert, Weiss, Weisman
 & Gordon, LLP
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 Bay Shore, New York 11706
 (631) 969-3100

DEFT'S/RESP ATTORNEY:

Silverman Acamproa LLP
 Stanley P. Amelkin, Esq.
 100 Jericho Quadrangle, Suite 300
 Jericho, NY 11753

Before the Court is a petition commenced by Notice of Motion. The Petitioner, State of New York Mortgage Agency (hereinafter SONYMA), submits what has become in today's post mortgage collapse environment, a very standard petition seeking the appointment of a referee to ascertain the amount due plaintiff, and to determine whether the mortgaged premises can be sold in parcels. The caption presents itself as noted hereinabove. However, as additional relief, Petitioner seeks an order "that Greg Penna, be dropped as a party defendant and that the caption be amended to reflect said substitution." It is apparent that Petitioner sought to name Greg Penna a defendant as in counsel's Affirmation of Regularity it is noted at paragraph 12 that the relief sought is to actually add Greg Penna as a party in place of "John Doe." Is this an irregularity, an excusable oversight, or a clue, considering defendant's allegations, that something requires explanation?

The essential allegation against the defendants is that an action was brought to

foreclose the mortgage executed by the defendant Jacqueline F. Vaccerino on or about the 14th day of June 2005, that the defendants are in default, failed to raise as a defense any issues concerning plaintiff's standing, or a defense based on documentary evidence including any issue regarding notice of default. Petitioner goes on to note that "the respondent waived any argument that [the plaintiff] lacked standing to commence the foreclosure action. Having failed to interpose an answer or file a timely pre-answer motion which asserted the defense of standing, the respondent waived such defense pursuant to CPLR § 3211(e)," citations omitted.

Petitioner's arguments are not uncommon. It should be noted that in support of its petition, the Court has been supplied with the Notice, the Affirmation of Regularity of Scott C. Vadnais, Esq., and among the exhibits, an Affidavit Of Merit And Amount Due In Support Of Application For An Order Of Reference And Compliance With CPLR §3408 of Christopher M. Zeis. The Court notes that it has considered the Petitioner's moving papers as well as Exhibits A through P.

The defendants have submitted in response and opposition a Notice of Cross Motion. The cross petition seeks relief in the alternative to wit:

1. An order dismissing the Summons and Complaint on the grounds that the plaintiff is not a proper party plaintiff;
2. Denying plaintiff's motion on the grounds that plaintiff has failed to show proper grounds for the relief requested;
3. Staying the plaintiff from proceeding until such time as the plaintiff engages in meaningful settlement discussions by counsel authorized to dispose of this case.

The Court has considered defendant's cross petition with Exhibits A and B.

The Court notes is has been apprised that the Law Firm of Silverman Acampora, LLP through Stanley P. Amelkin, Esq., on a *pro bono* basis, offered advice and counsel to the defendants.

Although imaginative, the Court is not inclined to grant the defendants relief, including a finding that the plaintiff is not a proper party plaintiff and/or denying relief on the grounds that plaintiff has failed to show "proper grounds" to support its claims.

The defendants do however, raise troubling questions of fact and procedure which the Court is compelled to address. The defendant suggests that the mandatory settlement conference held on December 7, 2010, was essentially an illusion. She claims "a person unknown to the defendant appeared on behalf of this plaintiff. This person was merely a "body," a person with no authority, who was sent there for the sole purpose of technically complying with the CPLR by appearing, so that the plaintiff could assert that they complied with the mandatory conference, but, in reality, is a sham." The defendant's claim is that

the spirit of the CPLR mandatory conference is to allow the parties to "enter into meaningful discussion for the resolution of the case."

In plaintiff's reply it notes the following at paragraph 39

her argument that the conference was not meaningful is purely sour grapes because the matter was not resolved at the conference. There is absolutely no evidence that there was no "meaningful" settlement negotiations.

The Court disagrees. Under oath the defendant notes that the person appearing for the plaintiff had no authority. She was there. The plaintiff fails to submit any proof that compliance with the mandatory foreclosure conference (other than mere attendance) was held.

The defendants next raise a series of allegations that plaintiff's supporting papers are acknowledged either not at all, or by someone without first-hand knowledge of the events and/or transactions. The Court has reviewed those allegations and will detail the same.

Defendant claims that a review of the papers submitted confirms that "there is submitted in support of the plaintiff's motion an Affidavit of Merit and Amount Due In Support of Application for an Order of Reference and compliance with CPLR § 3408." This Affidavit is signed by Christopher M. Zeis, who identifies himself as "vice president of loan documentation of State of New York Mortgage Agency." The defendant goes on to note "SONYMA is not a corporation and state agencies do not have vice presidents. This title is obviously a fictitious title that someone invented solely to get around the issue of 'robo-signer' which this person clearly is." The jurat of Mr. Zies's Affidavit is:

State of New York
County of Erie
City of Buffalo

Defendant continues, "this locality is without any doubt within the territorial borders of the State of New York. Yet Mr. Zeis in paragraph 12 of his affidavit states: 12... Although this affidavit is being executed and notarized outside of New York State...." Clearly the affidavit submitted purports to be acknowledged in New York State.

The defendant seeks the Court to conclude that "either Mr. Zeis is a liar or he never read the affidavit that he signed, which makes everything in his affidavit suspect."

Next the defendant points out that "Mr. Zeis's Affidavit is undated, yet the notary states that he appeared before her eleven (11) months ago, in June 2010 and before all of the required steps to foreclose a mortgage in this state had to be taken, including the

mandatory conference. Therefore, the affidavit of merits is flawed and ineffectual.”

Lastly, and perhaps most compellingly, the defendant notes the following concerning Mr. Zeis.

In this day and age with the use of Google, a search of the name of Christopher Zeis reveals that Mr. Zeis claims to be the vice president of a number of companies and governmental agencies, all in different parts of the United States.

In the Circuit Court of Baltimore County, Maryland, in the case of *Dore et al v. Wetzelberger*- case No. 03C-10-000465, it shows Christopher Zeis is the vice president of MERS and at the same time, a vice president of M & T Bank.

In a Florida case, *M & T Bank v. Smith* - St. John's County case No. 09-0418, Christopher Zeis is identified as "Vice President, Mortgage Electronic Registration System, Inc., as nominee for First Bank Mortgage, Division of First Bank of Georgia. The court in Florida found that he was not really what he claimed to be, but was really an officer of M & T Bank.

In a Kings County, New York case, *Property Asset Management, Inc v. Junior Theodore*- Index No. 21597/2007, Christopher M. Zeis is identified as "Assistant Vice President of Chase Home Finance, LLC, as servicing agent for Property Asset Management, Inc.," in that case, as in the present case, it was Mr. Zeis who submitted an "Affidavit of Merit." The court, in that case, was unsatisfied with Mr. Zeis's role and denied plaintiff's request for an Order of Reference. In fact, Judge Schack has named Christopher Zeis as a robo-signer.

The Court anticipated the Affirmation of the plaintiff in response to address the claims involving Mr. Zeis. The defendant's claims involving Mr. Zeis are compelling. Society, through the courts, rely on an orderly process by which disputes are resolved. In motion practice, we rely on candor, and an appreciation of the sanctity of an oath to the person who submits data for the court which impacts possessory rights of people. The Court will not turn a blind eye toward these serious allegations.

Plaintiff's counsel (Scott C. Vadnais) in the face of defendant's allegations of serious irregularities submitted an affirmation. In essence, Mr. Vadnais assures the Court that he communicated with one Daryle Deveso, "AVP" and representative of plaintiff. "He/she/they (a) personally reviewed plaintiff's documents and records... for factual accuracy; and (b) confirmed the factual accuracy..."

However, the Court is aware that in the Florida case noted earlier (*M & T Bank v. Lisa D. Smith et al.*, St. Johns County Florida, Case No. CA 09-0418), those persons identified as Daryl J. Deveso and Christopher M. Zeis were alleged to have involvement with questionable practices.

Therefore, the Court will reserve its decision on plaintiff's application and stay further proceeding. Pursuant to Uniform Rule 2020.8(d) which notes the following:

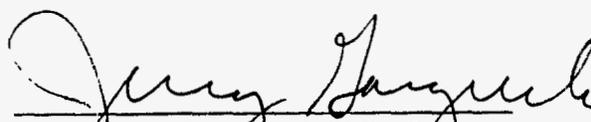
The assigned judge, in his or her discretion, or at the request of party, thereafter may determine that any motion be orally argued and may fix a time for oral argument.

The Court hereby **ORDERS** and directs the parties to be present on **June 13, 2012 at 11 a.m.** At that time two matters will be addressed by the Court:

1. Given the positive change of circumstances in the defendants' life vis a vis her employment and income, the Court directs the plaintiff and defendant to conduct a CPLR § 3408 conference.
2. The plaintiff is ordered to produce Mr. Zeis. This is required as the plaintiff's response to the cross motion fails to address, with even a single meaningful word, the troubling allegations that Mr. Zeis is a robo-signer with zero first hand knowledge of the events and transactions which form the foundation of plaintiff's claims.

The foregoing constitutes the decision and **Order** of this Court.

Dated: May 7, 2012


HON. JERRY GARGUILO
Supreme Court Justice

____ FINAL DISPOSITION

X NON-FINAL DISPOSITION

HON. JERRY GARGUILO