

Pryce v Nationstar Mtge. LLC
2019 NY Slip Op 34032(U)
October 9, 2019
Supreme Court, Orange County
Docket Number: EF004283-2017
Judge: Catherine M. Bartlett
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SUPREME COURT-STATE OF NEW YORK
IAS PART- ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

CASSIUS PRYCE,

Plaintiff,

-against-

NATIONSTAR MORTGAGE LLC et al.,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. EF004283-2017

THE BANK OF NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS SUCCESSOR IN INTEREST TO
JP MORGAN CHASE BANK, N.A. etc.,

Plaintiff,

-against-

CASSIUS PRYCE et al.,

Defendants.

Index No. EF005923-2017

Motion Date: September 24, 2019

The following papers numbered 1 to 6 were read on the motion of Nationstar Mortgage
LLC, attorney-in-fact for plaintiff The Bank of New York Mellon for partial summary judgment:
Notice of Motion - Affirmation / Exhibits - Affidavit / Exhibits 1-3
Affirmation in Opposition / Exhibits - Affidavit 4-5
Reply Affirmation / Exhibit 6

Upon the foregoing papers, it is ORDERED that the motion is disposed of as follows:

Cassius Pryce commenced the first of the above-entitled actions for a judgment cancelling and discharging the mortgage at issue herein, enforcement of which he claims is barred by the Statute of Limitations. The Bank of New York Mellon commenced the second of the above-entitled actions to foreclose on the said mortgage. Nationstar Mortgage LLC, attorney-in-fact for The Bank of New York Mellon, moves for partial summary judgment in the second action with respect to all issues except the Statute of Limitations and Mr. Pryce's claim for attorney's fees. Mr. Pryce opposes the motion on the purported ground that the Bank failed to demonstrate *prima facie* its mailing of RPAPL §1304 notices or the default notices required under the terms of the mortgage.

The Bank demonstrated *prima facie* entitlement to partial summary judgment on all issues except the Statute of Limitations and Mr. Pryce's claim for attorney's fees. Contrary to Mr. Pryce's suggestion, the Bank's evidence was sufficient to demonstrate *prima facie* proper service of RPAPL §1304 notices and the default notices required under ¶22 of the mortgage. In the face of the Bank's evidence, Mr. Pryce's bald denial of receipt is insufficient to demonstrate the existence of any triable issue of fact. *See, Nationstar Mortgage, LLC v. Durane-Bolivard*, 2019 WL 4281868 at *1 (2d Dept., Sept. 11, 2019). *Cf., Citibank, N.A. v. Conti-Scheurer*, 172 AD3d 17, 21 (2d Dept. 2019). *See also, Chase v. Wells Fargo Bank, N.A.*, 106 NYS3d 889 (2d Dept. 2019).

It is therefore

ORDERED, that the motion of Nationstar Mortgage LLC, attorney-in-fact for plaintiff The Bank of New York Mellon, for partial summary judgment in the second of the above-entitled actions is granted, and it is further

ORDERED, that with the exception of the Eighth Affirmative Defense and the Tenth, Eleventh and Twelfth Counterclaims set forth in the Answer of defendant Cassius Pryce, the said Answer, including Affirmative Defenses denominated First through Seventh and Ninth through Nineteenth, and Counterclaims denominated First through Tenth, are hereby stricken.

The foregoing constitutes the decision and order of the Court.

Dated: October 9, 2019 ENTER
Goshen, New York



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE