

Investors Bank v John Doe #1
2020 NY Slip Op 33240(U)
September 29, 2020
Supreme Court, Kings County
Docket Number: 510450/19
Judge: Lawrence S. Knipel
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29th day of September, 2020.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

INVESTORS BANK,

Plaintiff,

- against -

Index No. 510450/19

"JOHN DOE #1", Individually and as Executor/ Executrix or Administrator/Administratrix of the Estate of Barbara Johnson; DEUTSCHE BANK NATIONAL TRUST COMPANY f/k/a BANKERS TRUST COMPANY OF CALIFORNIA, NA as Trustee Under the Pooling and Service Agreement, Dated as of June 26, 1997 Delta Funding Home Equity Loan Trust 1997-2; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; COMMISSIONER OF JURORS; STATE OF NEW YORK; UNITED STATES OF AMERICA; and "JOHN DOE #2" through "JANE DOE #20", these last names being fictitious and unknown to the Plaintiff and the persons or parties intended being the heirs at law of the Estate of Barbara Johnson, occupants or tenants, and any other persons or entities, if any, having or claiming an interest in or lien upon the mortgaged premises described in the verified complaint,

Defendants.

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

13-32

Upon the foregoing papers in this action to foreclose a mortgage on the property at 292 Jefferson Avenue in Brooklyn (Property), plaintiff, Investors Bank, the successor to

the original lender, moves (in motion sequence [mot. seq.] one) for an order: (1) appointing a referee to compute the amount due, and (2) amending the caption to substitute Bashiri Johnson as John Doe #1, Cyrus McNeal as John Doe #2, Devin Cruz as John Doe #3 and striking the remaining John Doe and Jane Doe defendants from the caption.

Investors Bank submits an affidavit from Michael Begley (Begley), a Vice President of Investors Bank, who attests that on June 11, 2013, the decedent, Barabara Johnson (Johnson), executed and delivered an adjustable rate note in the principal amount of \$570,000.00 (Note) in favor of the original lender, Investors Home Mortgage. Begley attests that the Note was secured by a June 11, 2013 Consolidation Extension and Modification Agreement (CEMA Mortgage), pursuant to which Johnson agreed to mortgage her Property. On or about October 28, 2013, about four months after the loan's origination, Johnson died. Begley attests, upon information and belief, that Bashiri Johnson is the executor/executrix or administrator/administratrix of Johnson's Estate.

Begley attests that Johnson's Estate or Johnson's heirs, if any, "has failed to comply with the terms, covenants and conditions of the Note and [CEMA] Mortgage by defaulting in the payment due on September 1, 2017 and all subsequent monthly payments." Begley attests that Investors Bank "is the owner and holder of the Note and [CEMA] Mortgage" because "[t]he Note was endorsed by Investors Home Mortgage to pay to the order of plaintiff Investors Bank" and the CEMA Mortgage was assigned to Investors Bank by a November 14, 2018 Assignment of Mortgage.

Investors Bank commenced this foreclosure action on May 10, 2019, by filing a

summons, a verified complaint and a notice of pendency against the Property. Bashiri Johnson answered the complaint on behalf of Johnson's estate on July 3, 2019.

On August 29, 2019, the parties entered into a stipulation of settlement and forbearance agreement (Stipulation), pursuant to which Bashiri Johnson acknowledged the amounts owed on the loan and agreed to a payment plan, and Investors Bank agreed to forbear from moving forward with this foreclosure action. Paragraph 4 of the Stipulation, a copy of which is in the record, provides that defendant shall make the following payments to Investors Bank:

- "a. \$25,000.00 in certified funds or attorney trust account check with the execution of this Agreement;
- "b. \$30,000.00 in certified funds or attorney trust account check by September 1, 2019;
- "c. \$3,303.08 per month commencing on September 1, 2019 and continuing through January 1, 2020;
- "d. Balance due on the Loan by January 31, 2019."

According to Begley, "[t]he Estate of Barbara Johnson, or the heirs at law, if any, has failed to comply with the terms, covenants and conditions of the Stipulation by defaulting in the payments of the balance due on the loan by January 31, 2020." Begley further attests that as of February 28, 2020, there is due and owing under the Stipulation, the sum of \$5421,181.66, together with interest on the unpaid principal, additional late charges, fees, costs and advances.

Investors Bank's instant motion for an order appointing a referee to compute the amount due and owing and to amend the caption is granted without opposition.

Accordingly, it is hereby

ORDERED that the branch of Investors Bank's motion (in mot. seq. one) for the appointment of a referee to compute the amount due is granted; and it is further

ORDERED that the caption is hereby amended, and shall hereinafter read:

-----X
INVESTORS BANK,

Plaintiff,

- against -

BASHIRI JOHNSON; CYRUS MCNEAL; DEVIN CRUZ; DEUTSCHE BANK NATIONAL TRUST COMPANY f/k/a BANKERS TRUST COMPANY OF CALIFORNIA, NA as Trustee Under the Pooling and Service Agreement, Dated as of June 26, 1997 Delta Funding Home Equity Loan Trust 1997-2; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; COMMISSIONER OF JURORS; STATE OF NEW YORK; UNITED STATES OF AMERICA,

Defendants

-----X

This constitutes the decision and order of the court. The court will simultaneously execute the proposed order of reference (NYSCEF Doc. No. 14).

E N T E R,

J. S. C.

Justice Lawrence Knipel