

39 College Point Corp. v Transpac Capital Corp.

2004 NY Slip Op 30019(U)

October 7, 2004

Supreme Court, Queens County

Docket Number: _400031/2722

Judge: Joseph P. Dorsa

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SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA IAS PART 12
Justice.

39 COLLEGE POINT CORP.,

Plaintiff,

Index No.: 31272/02

Motion Date: 9/15/04

- against -

Motion No: 29

TRANSPAC CAPITAL CORP., YU JU SU,
GOLDEN CHOICE REALTY, INC., ASIA BANK,
N.A., JIMMY SHAO, THE OFFICE OF THE CITY
REGISTER OF THE CITY OF NEW YORK and
JOHN DOES 1-20 Who are Persons or Entities
Whom May Be Interested in This Action and
Who Are Unknown to Plaintiffs,

Defendant.

The following papers numbered 1 to 9 on this motion:

Papers Numbered

Plaintiff's Amended Notice of Motion-Affid(s)-Exh(s) and Memorandum of Law.....	1-5
Defendant Transpac Capital Corp.'s, Answering Affidavit(s)-Exh(s) and Memorandum of Law....	6-9

By amended notice of motion, plaintiff seeks summary judgment to extinguish and remove of record a mortgage filed by defendant Transpac Capital Corp. and a declaration that said mortgage is invalid and void.

Defendant files an affidavit in opposition.

At the outset, the court notes that a previous order in

which the Hon. Duane Hart, J.S.C., Queens County, denied both the motion for summary judgment by defendant Transpac Capital Corp., and the motion to dismiss defendant's counterclaims by plaintiff, 39 College Point, is currently perfected and on appeal in the Appellate Division, Second Department (39 College Point v. Transpac Capital Corp., IA Part 18, 6/5/03)).

And, it is also worth noting that in a related matter, Jimmy Shao v. College Point, Golden Choice Realty, Inc. And Yu Ju Su, Index No. 14317/00, that on October 20, 2003, the Appellate Division, Second Department, reversed an order of now retired Supreme Court Justice John A. Milano, which denied defendant Yu Ju Su's motion for summary judgment seeking dismissal of the action as against her as well as plaintiff's motion for leave to serve an amended complaint (Shao v. 39 College Point, 309 AD2d 850 (2nd Dep't. 2003)).

In this action, plaintiff, 39 College Point Corp., seeks a judgment of this court declaring the mortgage lien on the property located at 133-04 39th Avenue to be invalid, null and void pursuant to RPAPL, Article 15.

Defendant, Transpac Capital Corp. answers, alleging a number of affirmative defenses and counterclaims against plaintiff for the right to a judgment for \$499,999.99 of principal plus interest at 12.25% annually from August 1, 2000 based on a promissory note, and an equitable lien and/or constructive trust on the proceeds of the sale of the property currently held by a title company up to an amount sufficient to satisfy plaintiff's obligations on the note.

Essentially, defendant Transpac Capital Corp. maintains that the principal amount noted above was loaned to plaintiff, 39 College Point Corp., on or about December 1995 and that plaintiff used said sums along with monies borrowed from Asia Bank, N.A. to purchase the property located at 133-04 39th Avenue, sometime in January 1996. Defendant maintains that there are bank records which support the claim that the money was received by the plaintiff corporation and used in the manner claimed. Defendant maintains that from January 1996 until sometime in 2000 plaintiff made interest payments on the loan.

Plaintiff maintains, for various reasons including the alleged "back dating" of the note, the failure to record the mortgage and Yu Ju Su's lack of authority that the purported promissory note and mortgage are invalid and that the corporation did not receive any "loan, funding, property or value of any kind whatsoever in consideration from Transpac."

On or about March 2003, plaintiff sold the property in question for 2.45 million dollars. The proceeds of this sale are being held in escrow by Lawyer's Title Insurance Corp.


"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact from the case, and such showing must be made by producing evidentiary proof in admissible form" (Santanastasio v. John Doe and T.I. Transport, Inc., 301 AD2d 511 (2nd Dep't. 2003)).

Here, plaintiff has failed to make such a showing and there remains various triable issues of fact as to whether plaintiff did or did not receive the sum of money claimed to have been loaned by defendant.

Accordingly, plaintiff's motion for summary judgment is denied.

Dated: Jamaica, New York

OCT 7, 2004


JOSEPH P. DORSA
J.S.C.