

Citibank, N.A. v Walker
2006 NY Slip Op 30021(U)
May 18, 2006
Supreme Court, Kings County
Docket Number: 0019232/2002
Judge: Martin Schneier
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PRESENT:

HON. MARTIN SCHNEIER,
Justice

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CITIBANK, N.A.,

Plaintiff,

-against-

DECISION AND ORDER
Index No. 19232/2002

PATRICIA B. WALKER, JAMES SAMUEL,
AMERICA'S WHOLESALE LENDER, MARTIN,
MARTIN & WOODARD, LLP, NYS DEPT. OF
TAXATION & FINANCE, NYCPVB, CRIMINAL
COURT OF THE CITY OF NY, NYCTAB, NYCECB &
JOHN DOE (1-10).

Defendants.

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At IAS, Part 36 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of May, 2006.

PRESENT:

HON. MARTIN SCHNEIER,
Justice

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CITIBANK, N.A.,

Plaintiff,

-against-

DECISION AND ORDER
Index No. 19232/2002
Motion # 9-13

PATRICIA B. WALKER, JAMES SAMUEL, AMERICA'S WHOLESALE LENDER, MARTIN, MARTIN & WOODARD, LLP, NYS DEPT. OF TAXATION & FINANCE, NYCPVB, CRIMINAL COURT OF THE CITY OF NY, NYCTAB, NYCECB & JOHN DOE (1-10).

Defendants.

-----X

On December 15, 1988, defendant Patricia B. Walker ("Walker") and Thomas O. Edwards ("Edwards") acquired title to the subject property at 1831 Albany Avenue, Brooklyn, New York. Walker and Edwards executed and delivered a mortgage in the sum of \$170,000.00 to Citibank. The Deed and the Citibank Mortgage were recorded January 13, 1989. On June 13, 1989, Walker acquired sole title. The Deed executed

by Walker and Edwards conveying title to Walker solely was recorded June 22, 1989.

On March 17, 1995, Citibank filed a mortgage foreclosure action entitled Citibank, N.A. v. Patricia B. Walker, et al., Index No. 8603/95 together with a notice of pendency. Thereafter, Walker filed several bankruptcy petitions delaying the progress of the foreclosure proceedings.

On March 29, 1999, the court granted a Judgment of Foreclosure and Sale (“the Judgment”) directing that the subject property be sold and payment made to Citibank in the amount of \$292,217.01. The Judgment, at pages 8 and 9, decreed that Walker, and any persons whose claims to the property arose after the filing of the notice of pendency, were: “forever barred and foreclosed of all right, claim lien, title, interest and equity of redemption in the said mortgaged premises and each and part thereof.”

Thereafter, on August 31, 2000, a public action was held and Citibank purchased the property for \$150,000.00 A Referee signed and delivered a Deed to the property to Citibank. The Referee’s Report of Sale was filed October 31, 2000. Citibank did not, however, immediately file the deed.

Prior to the conveyance from Walker to Samuel on July 20, 2001, a Judgment of foreclosure and sale in favor of Citibank had been entered in the Kings County Clerk's office on April 15, 1999. The Judgment confirmed the Referee's Report of the total amount then due in the sum of \$292,217.01.

On October 31, 2000, the Referee issued a Report of Sale that was filed in the Kings County Clerk's Office. Citibank, represented by its attorneys Martin Martin Woodard LLP ("MMW"), moved to confirm the Report of Sale and to enter a deficiency judgment against Walker and Edwards. By decision dated February 26, 2001, the court directed that a fair market value hearing be held.

After the foreclosure sale, Citibank, by DeRose and Surico, commenced a summary proceeding originally returnable October 24, 2000 to evict Walker from the subject property. On March 27, 2001, Citibank and Walker entered into a Stipulation of Settlement of the summary whereby Walker agreed to vacate the subject property by July 31, 2001.

In or about July, 2001, while the deficiency proceeding was pending and the parties were awaiting a date for the fair market value hearing, Walker entered into an undated contract to sell the foreclosed property to

defendant Samuel. Samuel applied to AWL for a mortgage loan. Title insurance was sought and, in connection therewith a title report, dated July 10, 2001, was prepared. The title report, on Schedule B, page 8, identified the Citibank mortgage in the sum of \$170,000.00. The title report further identified in paragraph 16 of Schedule B, page 6, that a notice of pendency had been filed in conjunction with an action to foreclose the Citibank mortgage.

Paragraph 16, Schedule B of the title report stated:

“The following must be done:

A. Action must be discontinued

B. Lis Pendens must be cancelled of record; AND

C. Judgement, if any must be vacated by court order.”

On July 11, 2001, shortly after Citibank’s attorneys had tried to schedule a date for the fair market value hearing with the Kings County Supreme Court JHO Part, Walker called Citibank’s attorneys and spoke to paralegal Hebert. According to Hebert’s notes, Walker requested a letter be faxed to her stating the balance she owed. Hebert sent Walker a letter which stated that the matter could be settled for \$69,162.75. The letter did not state if this was for the deficiency or the mortgage, but it did reference

the account number of the mortgage.

Unknown to Citibank, on July 20, 2001, a closing was conducted at which Walker purported to convey title to the foreclosed property to defendant Samuel. On the same date, Samuel granted a mortgage upon the subject property to AWL.

During the closing, Walker allegedly presented the MMW letter to the title closer, Agusta Uwechue. Uwechue then allegedly telephoned MMW. The substance of this alleged call is in dispute. In an affidavit, Uwechue averred that she spoke to Betty at MMW who confirmed that payment of the \$69,192.75 would satisfy the mortgage. She further averred that she wrote the words "Betty" and "verified \$69,162.75" on her copy of the MMW letter. At her subsequent deposition, however, Uwechue testified that she wasn't sure whether, at the time she signed the affidavit, she had any recollection of the phone call or the closing. She also testified that the handwriting on the MMW letter is not hers.

MMW's system notes reflect the following entry dated July 20, 2001:

'JHO Part called to varify fax came from this
Office and to varify \$ amount is supposed to be
mailing check to day. Very hard to understand

broken English.

These notes bear the initials of an MMW employee named Betty Snyder who has no recollection of making them.

A week later, Walker told Hebert that she had sold the subject property on July 20, 2001. Approximately three weeks after the closing, a check from Realty Reports Inc., dated August 8, 2001, in the amount of \$69,162.75 was sent to MMW, with a letter signed by Uwechue dated July 23, 2001, describing the check as a pay-off of the Citibank mortgage recorded January 13, 1989. MMW rejected and returned the tendered funds on September 17, 2001.

The Referee's Deed to Citibank was filed and recorded in the Kings County Clerk's Office on August 3, 2001. The deed from Walker to Samuel was filed and recorded in the Kings County Clerk's Office on September 28, 2001. The mortgage executed by Samuel in favor of AWL was also filed and recorded on September 28, 2001.

Defendant MMW moves for summary judgment dismissing Citibank's legal malpractice claim and the cross-claims by co-defendants AWL and Samuel. MMW argues that it was not negligent and, in the alternative, that

its negligence was not a “but for” cause of the plaintiff’s damages. The Court finds that the actions of MMW’s employee on the date of the closing is a disputed issue of material fact that, when resolved in favor of the non-movant, is sufficient to establish a claim of legal malpractice. MMW also argues that the cause of the Citibank’s loss, the sale of the foreclosed property, was Citibank’s failure to promptly record its referee’s deed. The fact that there may have been other causes of the loss does not absolve the possible negligence of MMW. An issue of fact exists as to whether MMW’s negligence, if proven, contributed to Citibank’s loss.

MMW also moves to dismiss the cross-claims by AWL and Samuel on the grounds that there is no privity between MMW and these co-defendants and, accordingly, there can be no legal malpractice claim. This motion is denied on the grounds that neither AWL nor Samuel have asserted a legal malpractice claim against MMW.

AWL and Samuel both move in separate motions for summary judgment against Citibank on two grounds. First, AWL and Samuel argue that their reliance on the letter and phone conversation with MMW led them to reasonably believe that they were being given a mortgage payoff amount. The Court finds that this issue cannot be resolved until a trial

establishes what took place during the closing. This same issue of fact compels denial of AWL and Samuel's motions for summary judgment against MMW.

AWL and Samuel also argues that the assignment of the underlying mortgage was defective and, therefore, Citibank lacked standing to prosecute the foreclosure action. The Court finds that to pursue this argument AWL and Samuel must move to vacate the judgment in the underlying action pursuant to CPLR § 5015.

Finally, Citibank cross moves for summary judgment. This motion is denied on the grounds that an issue of fact exists as to what occurred at the closing.

Accordingly, the motion and cross-motions are all denied.

This shall constitute the Decision and Order of the Court.



J.S.C.