

<b>USR Group, Inc. v Wells Fargo Home Mtge., Inc.</b>
2007 NY Slip Op 31710(U)
May 9, 2007
Supreme Court, Albany County
Docket Number: 0023162/0051
Judge: Joseph C. Teresi
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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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USR GROUP, INC.

*Plaintiff,*

**DECISION and ORDER**  
**RJI NO.: 01-05-083243**  
**INDEX NOS.: 2316-05**

-against-

WELLS FARGO HOME MORTGAGE, INC.

*Defendant.*

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WELLS FARGO BANK, NA SUCCESSOR  
BY MERGER TO WELLS FARGO HOME  
MORTGAGE, INC.,

*Plaintiff,*

**RJI NO.: 01-05-082693**  
**INDEX NO.: 2726-05**

-against-

USR GROUP, INC., DENNIS L. WILLIAMS,  
CITIBANK, NA SUCCESSOR BY MERGER  
TO CITIBANK (NEW YORK STATE), NEW  
YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE, PEOPLE OF THE STATE OF  
NEW YORK,

*Defendants.*

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Albany County Supreme County All Purpose Term, April 10, 2007  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J.:**

Plaintiff, USR Group, Inc., brings a motion for summary judgment pursuant to CPLR § 3212 regarding the action to quiet title (Index No. 2316-05). Defendant, Wells Fargo Home Mortgage, Inc., withdrew a cross-motion for summary judgment containing opposition to Plaintiff's motion originally brought on the action to foreclose (Index No. 2726-05).

After fully reviewing the record, this Court denies Plaintiff's motion for summary judgment and further Orders that this action be consolidated with another action pending in New York State Supreme Court, Albany County: *Citibank (New York) v. USR Group, Inc.* (Index No. 2669/05- J. Teresi).

Three separate lawsuits are now pending before the New York State Supreme Court, Albany County regarding the rights and liabilities of two mortgages on the 318 Osborne Street property as opposed to USR Group, Inc.'s fee interest in the property. Dennis L. Williams, the original owner of the 318 Osborne Street property, entered into an agreement with Homestead Funding Corporation to refinance the property on October 15, 2003. This transaction created the Wells Fargo mortgage on the above property. As part of this transaction, Citibank subordinated its existing mortgage (executed on July 7, 2003 for \$67,000.00 and recorded on September 3, 2003) on the property to the Wells Fargo mortgage. On October 31, 2003, Mr. Williams filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Northern District of New York (hereinafter Bankruptcy Court). Thereafter, the Wells Fargo mortgage, along with the

subordination agreement, were recorded on December 26, 2003. In Schedule D to the petition, however, Mr. Williams identified Citibank as holding a secured claim of \$67,000.00 and Wells Fargo Home Mortgage, Inc. as holding a secured claim of \$102,000.00. The Bankruptcy Court appointed Gregory Harris, Esq. as Bankruptcy Trustee. The Trustee made a motion to approve transfer of title of the 318 Osborne Road property (valued at \$160,000.00 in the Bankruptcy Petition) to USR Group, Inc. on October 1, 2004. Judge Littlefield approved the sale on November 22, 2004 to be effective after January 31, 2005. The deed was recorded on March 24, 2005. USR Group, Inc. paid \$12,500.00 for the property, but specifically took it subject to all existing liens.

Wells Fargo commenced a action to foreclose against USR with regards to its first position mortgage (Index No. 2726/05- J. Spargo), Citibank commenced a foreclosure action with regard to its junior mortgage against USR (Index No. 2669/05- J. Teresi) and USR commenced an action to quiet title against Wells Fargo (Index No. 2316/05- J.Doyle) which has been consolidated with Wells Fargo's foreclosure action on May 24, 2006 to become the instant case. Additionally, Wells Fargo brought a motion in bankruptcy court before Judge Littlefield seeking an Order clarifying the November 22, 2004 Order granting the Trustee's motion to sell. Despite a prolonged adjournment awaiting the clarification by Judge Littlefield, no party has provided this Court with any further information and the motion will therefore be resolved without further information.

USR Group, Inc. contends that because the Wells Fargo mortgage and the subordination agreement were not recorded until after Mr. Williams declared Bankruptcy, the Trustee obtained title free of those liens as a bona fide purchaser pursuant to 11 USC § 544(a)(3) and transferred

that status to defendant. Further, USR Group, Inc. contends that because the Wells Fargo lien was not recorded and the Citibank lien is subordinate to that unrecorded lien, they are not valid liens of the type to which Defendant's interest in the 318 Osborne Street property is subject.

This Court declines to reach the merits of the summary judgment motion and denies it without prejudice. "Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue" (Napierski v. Finn, 229 AD2d 869, 870 [3d Dept 1996]). The court's main function in granting summary judgment is issue identification, rather than issue determination (See Sillman v. Twentieth Century Fox Film Corp., 3 NY2d 395 [1957]). The party seeking summary judgment has the burden of establishing its entitlement thereto as a matter of law (See Wingrad v. New York University Medical Center, 64 NY2d 851 [1985]). The party opposing the motion will be given the benefit of every reasonable inference (See Boyce v. Vazquez, 249 AD2d 724; see also Dykestra v. Winridge Condominium One, 175 AD2d 482 [3d Dept 1991]). In the current case, there appear to be no factual disputes between the parties who disagree on the application of the law. The case is not ripe for summary judgment, however, because it appears from the papers that the resolution of this matter could have implication for the Citibank mortgage and the rights and liabilities of non-party Citibank.

As an exercise of discretion this Court Orders that the above action be consolidated with *Citibank (New York) v. USR Group, Inc.* (Index No. 2669/05), pursuant to CPLR § 602(a) which allows for consolidation:

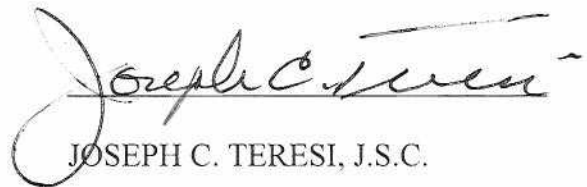
[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions

consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Each of the three actions involve the validity of two mortgages (one held by Wells Fargo Home Mortgage, Inc and the other by Plaintiff, Citibank) as related to Defendant's fee interest in the 318 Osborne Road property. Accordingly, the actions are consolidated in the interest of judicial economy, simplicity and uniformity. "Where complex issues are intertwined, albeit in technically different actions, it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time." (*Shanley v. Callanan Industries, Inc.*, 54 N.Y.2d 52 [1981]).

All papers, including this Decision and Order, are being returned to the attorney for USR Group, Inc . The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!  
Dated: May 9 2007  
Albany, New York



JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. USR Group, Inc.'s Notice of Motion, dated September 6, 2005 with Attached Exhibits A-I.
2. USR Group, Inc.'s Attorney Affirmation in Reply and Opposition to Cross-Motion, dated July 20, 2006.