

Washington Mut. Bank, FA v Maradiaga

2008 NY Slip Op 31020(U)

April 2, 2008

Supreme Court, Nassau County

Docket Number: 1247-02/

Judge: Edward G. McCabe

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SUPREME COURT OF THE STATE OF NEW YORK

Present: **HON. EDWARD G. McCABE**

Justice

TRIAL/IAS PART 1
NASSAU COUNTY

WASHINGTON MUTUAL BANK, FA SUCCESSOR
IN INTEREST BY MERGER TO GREAT WESTERN
BANK

INDEX NO.: 1247/2002

Plaintiff,

DATE: March 24, 2008

-against-

**DECISION AFTER
HEARING**

NOE R. MARADIAGA, RENEE MARADIAGA, EAB
MORTGAGE COMPANY INC., PEOPLE OF NEW YORK
STATE, "JOHN DOE #1 TO #12", the latest twelve names
being fictitious and unknown to plaintiff, the persons or
parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or
lien upon the premises, described in the complaint,

Defendants.

X

On July 23, 2003, the premises owned by Noe R. Maradiaga and Renee
Maradiaga, located at 45 Franklin Square, was sold at public auction, pursuant to a
Judgment of Foreclosure and Sale. The proceeds of the sale were disposed in
accordance with judgment of this Court, dated May 12, 2006, and the Referee paid

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over all surplus monies to the Treasurer of Nassau County (hereinafter “Treasurer”).

Thereafter, CitiMortgage, as successor in interest to EAB Mortgage Company, made a motion to confirm the Referee’s Report and pay its’ claim on a subordinate equity loan of \$39,628.12, leaving a balance on deposit with the Treasurer of \$20,271.07 as of November 7, 2007.

On December 27, 2007, Christopher Reinhardt, as the assignee of the interest of Noe R. Maradiaga and Renee Maradiaga, the owners of the equity of redemption in this action, made an ex parte application to this Court requesting the monies on deposit with the Treasurer be paid to him as the proper claimant and for such other relief as the Court may deem equitable and proper.

The Court, having reviewed the application, issued a short form order setting the matter down for a hearing to determine the validity of the assignment agreements signed on September 18, 2007 and September 25, 2007.

While it is the general rule that Courts do not question the adequacy of consideration, absent fraud or unconscionability, in cases where the consideration is so grossly inadequate, the Court may inquire into the circumstances through its’ equitable jurisdiction, to determine if the assignment

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agreements are so unreasonable as to be unenforceable. Mandel vs. Liebman, 303 NY 88 (1951); Gillman vs. Chase Manhattan Bank, 73 N.Y. 2d 1, 537 N.Y.S. 2d 787 (1988).

During the hearing, the Claimant, Christopher Reinhardt, testified that he is a broker and that from time to time he buys such claims through assignments. He was evasive as to how he knew about the Maradiagas' claim. Reinhardt stated he called Noe R. Maradiaga, who is estranged from his wife Renee, and told him that he had some money he would give him if he would sign the assignment of any monies left over from the foreclosure of the property. Noe R. Maradiaga testified he didn't think anything was left and that the banks took all the money, so he agreed to meet Reinhardt at a bank, they could not remember the name of the bank, whereupon he accepted a bank check for \$875.00 and signed the assignment agreement without reading it. Noe Maradiaga testified Reinhardt then had a notary at the bank notarize the assignment. According to Noe Maradiaga's testimony, Reinhardt never told him that there was over \$20,000.00 on deposit and that as of the date of the assignment, no other claims had been made against this balance. While Noe R. Maradiaga reads and writes English, he appeared to have little understanding of the proceedings and seemed to look upon the \$875.00 as a "windfall".

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Reinhardt then obtained the telephone number of Renee Maradiaga from Noe R. Maradiaga. Renee Maradiaga and her children now live with her father, William Earle. Reinhardt then called William Earle.

William Earle testified that he was Renee Maradiaga's father and that he had power of attorney to conduct her affairs. At various stages of the foreclosure proceedings, William Earle was listed as William Earle, Esq. No power of attorney was ever produced. He testified that Noe R. Maradiaga had severely injured his daughter Renee, causing her to lapse into a coma from which she emerged physically and mentally disabled. William Earle cares for Renee and her children. He testified that Reinhardt told him he had given Noe Maradiaga \$875.00 for his assignment and would give Renee the same amount, if she signed an assignment. Reinhardt arranged for Earle to bring his daughter to a bank, whereupon he repeated the transaction of having a bank clerk draw the assignment, she signed the agreement and the bank employee notarized her signature.

Renee Maradiaga clearly has both physical and mental disabilities. While she is competent enough to testify, she clearly did not understand the circumstances surrounding the assignment. She, like her estranged husband,

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believed that there was no money left after the foreclosure. She certainly did not know there was over \$20,000.00 remaining or that they or their lawyer could make a claim against it. She thought that the \$875.00 was her one half of any monies left over. She asked that the check be cashed immediately, so that she could have currency rather than a bank check. She would not have understood the assignment, even if she was able to read it. She obviously didn't want Noe Maradiaga to get something that she would not get.

I find the actions of Christopher Reinhardt to be predatory. There was no risk to him when he offered \$1,750.00 for the assignments to an account of \$20,271.07, plus interest from November 7, 2007. He made it appear to a man of limited intelligence and a brain damaged woman that they were assigning a very speculative claim for real money, even if it were only \$875.00 apiece. He was well aware that no one, except Citi Mortgage, made a previous claim and that they had been paid.

The inadequacy of consideration, when combined with fraud, misrepresentation, studied suppression of the true value of the property or other circumstances of oppression or even of ignorance, is a material element affecting the determination of the validity of a contract. In the Matter of the Estate of Bennett, 205 N.Y.S. 2d 50, Lexis 3880. To justify a court in considering the

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adequacy of consideration, the inequality must be so strong and manifest as to shock the conscience and confound the judgment of any person of common sense, Mandel, supra.

The doctrine of unconscionability, which is based on public policy considerations, has been defined as contractual overreaching, imposition, oppressiveness and/or patent unfairness. It has generally been recognized to require an absence of meaningful choice on the part of one of the parties, with contract terms which are unreasonably favorable to the other party. State vs. Avco Financial Servicing Inc., 50 N.Y. 2d 383, 429 N.Y.S. 2d 181 (1980).

The presence of consideration is a fundamental requisite to a binding contract. Weiner vs. McGraw Hill, Inc. 57 N.Y. 2d 458, 457 N.Y.S. 2d 193 (1982). In order for an agreement to be enforceable as a contract, it must be supported by valid consideration. Umscheid vs. Simnacher, 106 A.D. 2d 380, 482 N.Y.S. 2d 295 (Second Dept., 1984).

Based upon all of the foregoing, the Court finds that the consideration paid to the Maradiaga's was both substantively and procedurally unconscionable under all of the circumstances and declares the subject assignment agreements to be void and unenforceable.

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Accordingly, it is hereby

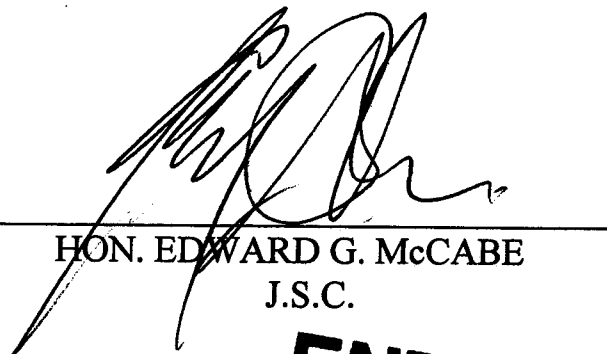
ORDERED, that the application of the Claimant, Christopher Reinhardt is denied, in all respects; and it is further

ORDERED, that the Maradiagas are authorized to submit a proposed order for the distribution of the surplus funds on deposit with the County Treasurer, on notice to any of their lienholders, including the Department of Social Services, if applicable.

This constitutes the decision and order of the Court.

ENTER:

Dated: April 2, 2008
Mineola, NY



HON. EDWARD G. McCABE
J.S.C.

ENTERED
APR 04 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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