

Washington Mut. Mtge. Sec. Corp. v Jackson

2008 NY Slip Op 31152(U)

April 18, 2008

Supreme Court, New York County

Docket Number: 0110621/2007

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: RAKOWER
Justice

PART 5

Index Number : 110621/2007
WASHINGTON MUTUAL MORTGAGE
vs
JACKSON, VINCENT
Sequence Number : 002
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

is motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
_____	1
_____	2
_____	3


Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
APR 22 2008
COUNTY CLERK'S OFFICE
NEW YORK

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 4/18/08



EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
WASHINGTON MUTUAL MORTGAGE
SECURITIES CORP.,

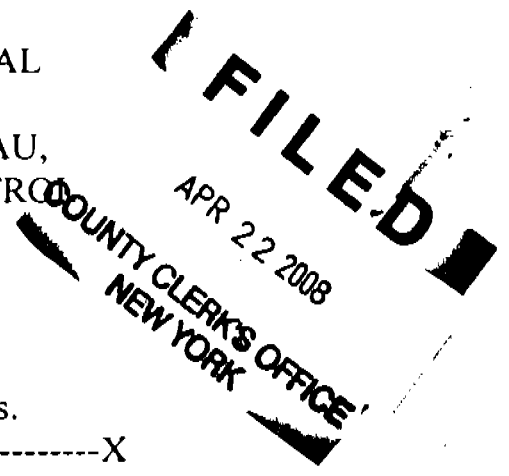
Plaintiff,

Index No.
110621/07
**ORDER AND
DECISION**
Mot. Seq.: 002

- against -

VINCENT JACKSON A/K/A VINCENT R.
JACKSON, Sole Heir at Law and Administrator
of the Estate of Faye Echols, decedent, CRIMINAL
COURT OF THE CITY OF NEW YORK, NEW
YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, BOARD OF
MANAGERS OF ST. NICHOLAS COURT
CONDOMINIUM,

Defendants.



-----X
EILEEN A. RAKOWER, J.S.C.

Plaintiff, Washington Mutual Mortgage Securities Corp., brings this action to foreclose a mortgage on the real property located at 66-72 St. Nicholas Avenue, Unit 1A in the State and County of New York. Defendant Vincent Jackson, son of the mortgage holder, moves to: dismiss the action for failure to join a necessary party; dismiss the action for lack of personal jurisdiction; stay the foreclosure action; or in the alternative, an order permitting Mr. Jackson to intervene as an interested party and interpose an answer. Plaintiff opposes the motion and no other party has appeared in the action.

The mortgage at issue was a refinancing mortgage that was taken out on October 19, 2006 in the amount of \$400,000.00 and allegedly executed by Faye

Echols, owner of the subject condominium. Ms. Echols defaulted on the mortgage and plaintiff filed a summons and complaint on August 2, 2007. Plaintiff submits an affidavit of service showing that Mr. Jackson accepted service of the summons and complaint on behalf of himself and on behalf of Ms. Echols on August 9, 2007. Mr. Jackson, through his attorney, filed a notice of appearance which stated that Ms. Echols had passed away on February 25, 2007 and that he was the sole beneficiary of her estate. Mr. Jackson filed a petition with the Surrogate Court seeking letters of Administration, which were granted on October 18, 2007. Thereafter, plaintiff filed a Reference Motion and a motion to amend the caption to substitute Mr. Jackson, as sole heir and Administrator of the estate. Mr. Jackson was served with the motion, by mailing a copy to his attorney, on December 28, 2007. Both motions were granted January 25, 2008 and the matter was referred to a referee to compute the sums due.

Initially, Mr. Jackson claims that the court does not have personal jurisdiction. Plaintiff submits the affidavit of service upon Mr. Jackson personally and his notice of appearance in response to that service. Although Mr. Jackson filed his appearance, he did not answer or otherwise preserve his jurisdictional objection in a pre-answer motion to dismiss. Further, Mr. Jackson's claim that the action should be dismissed for failure to join him as a necessary party is moot pursuant to this court's order granting leave to amend the caption dated January 25, 2008.

The remaining issue in this case is whether the foreclosure action should be stayed due to the allegations that the subject mortgage was fraudulently obtained. Mr. Jackson claims that Mrs. Echols did not authorize the refinancing, was severely ill and was not present on the closing date of the mortgage. The documents were signed by Estella Johnson, Mrs. Echols sister. Mr. Jackson claims that he did not receive any of the money from the refinancing. Mr. Jackson submits a bank statement from Citibank attempting to show that monies were debited from Mrs. Echols account between the date of the refinancing and the date of her death. Specifically, Mr. Jackson alleges that money was taken out of ATM's near Mrs. Johnson's house and that several checks were forged. Mr. Jackson asserts that the checks must have been forged because some were signed by Mrs. Echols using her middle initial and some without. Plaintiff, in opposition, argues that Mr. Jackson is making conclusory allegations and that he has not submitted evidence sufficient to warrant the granting of a stay.

CPLR §2201 states:

Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

In order for a stay to be granted there must be good cause shown as to why the stay is necessary. An example of such a situation is where there is another action pending and the resolution of that action would “determine all the questions in the other, and where the judgment in one trial will dispose of the controversy in both actions.” (Eisner v. Goldberger, 28 AD3d 354[1st Dept. 2006]). Here, Mr. Jackson makes several allegations that the subject mortgage was fraudulently obtained but has neither shown sufficient evidence of that fraud or shown that there is a separate action sounding in fraud which will resolve that issue. Finally, Mr. Jackson was served with the reference motion and failed to oppose that motion, nor does he move to vacate the resulting order here.

Wherefore it is hereby

ORDERED that defendant Vincent Jackson A/K/A Vincent R. Jackson, Sole Heir at Law and Administrator of the Estate of Faye Echols decedent’s motion to stay the foreclosure action is denied; and it is further

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: April 18, 2008



EILEEN A. RAKOWER, J.S.C.

FILED

APR 22 2008

COUNTY CLERK'S OFFICE
NEW YORK