

JPMorgan Chase Bank, N.A. v Hackett

2008 NY Slip Op 31850(U)

June 20, 2008

Supreme Court, Nassau County

Docket Number: 3137-07/

Judge: Kenneth A. Davis

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SCAW

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK
NASSAU COUNTY

Present:

HON. KENNETH A. DAVIS
Justice

_____ x TRIAL/IAS, PART 3
JPMorgan Chase Bank, N.A.,

Plaintiff,

INDEX NO.07/23137
MOTION SEQUENCE: 1

-against-

Alexandra M. Hackett aka Alexandra H.
Sandoval aka Alexandra H. Hackett aka
Alexandra M. Sandoval, JPMorgan Chase
Bank, N.A.,

"JOHN DOE" and "JANE DOE" said names being
fictitious, parties intended being possible
tenants or occupants of premises,

Defendant.

_____ x

The following papers were read on this motion:

- Notice of Motion..... x
- Notice of Cross- Motion..... x
- Affirmation in Opposition..... x
- Affirmation in Reply..... x
- Reply Affirmation..... x

Upon the foregoing papers, plaintiff's motion for an order granting summary judgment pursuant to CPLR § 3212; striking the answer interposed by the defendant; appointing a referee to compute the total sums due and owing to lender; and amending the caption. The defendant opposes the motion and cross-moves for an order pursuant to CPLR § 3025 granting leave to serve an amended answer to plaintiff's complaint.

The plaintiff commenced the within foreclosure action by Notice of Pendency, and Summons and Complaint on December 27, 2007.

In support of the motion, the plaintiff claims in September 2006 the defendant borrower consolidated two prior mortgages into a single lien totaling \$255,000. The defendant borrower executed and delivered to plaintiff a Consolidated Note in September 2006. In November 2007 the defendant borrower was notified of her default under the terms of the Note and Mortgage, based on her failure to pay the installment payment for September 1, 2007, and each installment due thereafter. According to the plaintiff, the defendant remains in default and has failed to bring the loan current. The plaintiff claims that based on the defendant's default, it has established prima facie proof of entitlement to summary judgment.

The plaintiff also submits the affidavit of the "assistant secretary" of JPMorgan Chase Bank, Whitney Cook, who claims that she is the officer primarily responsible for the collection of the defendant's loan. The deponent claims that the defendant failed to make the September 2007 installment payment and each installment thereafter.

Regarding the motion to strike the answer, the plaintiff maintains that the defendant has not established its entitlement to denial of summary judgment as the Answer provided is insufficient to defend the motion. The plaintiff states that the defendants' "naked denials" and conclusory assertions create no triable issues of fact.

In opposition, the defendant claims that the plaintiff has failed to establish entitlement to summary judgment because it has failed to eliminate any and all triable issues of material facts in this case. The defendant disputes the validity of the debt at issue in this matter.

Regarding the motion to strike the answer, the defendant claims that she has "unambiguously disputed the validity of the debt at issue" and has raised issues of impropriety and predatory lending in her answer. The defendant maintains that she seeks to propose an additional theory in support of her defense, and that the plaintiff will suffer no prejudice if the motion is granted. Moreover, the defendant claims that the initial "Answer" was made without the assistance of counsel.

Upon the foregoing, the plaintiff's motion for summary judgment is granted. Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue." Andre v. Pomeroy, 35 NY2d 361, (1974); Rotuba Extruders v. Ceppos, 46 NY2d 223 (Ct. Of App., 1978); Bank of New York v. Granat, 197 A.D.2d 653 (2nd Dept., 1993). In order to

prevail upon a motion for summary judgment, the movant must first make a showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851 (Ct. Of App., 1985); Zuckerman v. City of New York, 49 NY2d 557 (Ct. Of App., 1980); Sillman v. Twentieth Century-Fox., 3 NY2d 395 (Ct. Of App., 1957).

In this foreclosure action, the plaintiff has presented sufficient evidence to eliminate any material issues of fact from the case. The plaintiff has established prima facie that a mortgage note exists. Moreover, through submission of an affidavit of a person with personal knowledge, the plaintiff has also established that the defendant has failed to make installment payment since September 2007 and is currently in default.

Once the movant in a summary judgment action has met his burden, it is incumbent upon the party opposing said motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which warrant a trial. Alvarez v. Prospect Hosp., 68 NY2d 320 (Ct. Of App., 1986). The opposing party is obligated "to lay bear his proofs" to sufficiently demonstrate, with admissible evidence, that a triable issue of fact will exist. Behar v. Ordover, 92 AD2d 557 (2nd Dept., 1983); LoBreglio v. Marks, 105 AD2d 621 (1st Dept., 1984). The defendant here has failed to do so. The defendant has admitted to being in default, and has made conclusory, unsupported allegations of predatory lending and impropriety on the part of the defendant. The defendant has failed to tender sufficient evidence, in the proof laid bare by its submissions, to substantiate its claim.

The defendant's motion to amend the answer is denied. Pursuant to CPLR §3025(b) a party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Absent prejudice or surprise to the opposing party, leave to amend a pleading is to be freely given upon such terms as are just, unless the proposed amendment is palpably insufficient or patently devoid of merit. CPLR § 3025; Girardin v. Town of Hampstead, 209 AD2d 668; Nassau County v. Incorporated Village of Roslyn, 182 A.D.2d 678. The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis. Mayers v. D'Agostino, 58 NY2d 696; Skinner v. Scobbo, 221 AD2d 334.

In determining whether to grant leave, the court's scope of inquiry should be restricted to the propriety of an amended or supplemental pleading. No evidentiary showing of merit is required under CPLR §3025 (b). While it is clear that the rule is liberal,

the court finds that the proposed amendment is a delaying tactic which, if granted, will only prolong the litigation and ultimately prejudice the plaintiff. The plaintiff submits proof of a letter sent to defendant indicating that it would accept the defendant's amended pleading, however the defendant never responded. The defendant acknowledges receipt of the letter and acknowledges not taking any action on such.

Finally, the plaintiff's unopposed motion for an order granting judgment and appointing a referee to compute the total sums due and owing on the mortgage is granted, it appearing from a review of the documentation presented that all necessary parties have been served with notice of this application, and further that the relief requested is appropriate.

The proposed order appointing referee to compute, as annexed to the moving papers, shall be forwarded this date to the Motion Support Unit of this Court, and should it be found to be consistent with the terms of this and prior orders, it shall be executed upon completion of such review.

Accordingly, the motion for summary judgment is granted as no triable issues of fact exists.

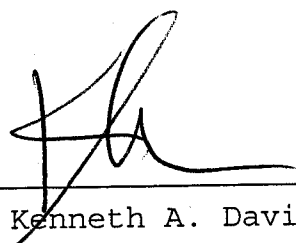
Plaintiff's motion to amend the caption and delete "John Doe" and "Jane Doe", and all descriptive language is granted. The application to amend the caption to name the defendant answered under, Alexandra Hackett Sandoval, is also granted.

Plaintiff's motion for an order granting judgment and appointing a is granted.

Defendant's motion for an order granting leave to serve an amended answer to plaintiff's complaint is denied.

This constitutes the decision and order of the court.

DATED: JUN 20 2008



Hon. Kenneth A. Davis, J.S.C.

ENTERED

JUN 25 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE