

M&T Mtge. Corp. v Romanello
2009 NY Slip Op 32140(U)
September 17, 2009
Supreme Court, New York County
Docket Number: 115872/08
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JUDITH J. GISCHE, J.S.C.

PART 10

Index Number : 115872/2008

M&T MORTGAGE CORP.

vs
ROMANELLO, WILLIAM

Sequence Number : 001

DEFAULT JUDGMENT

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

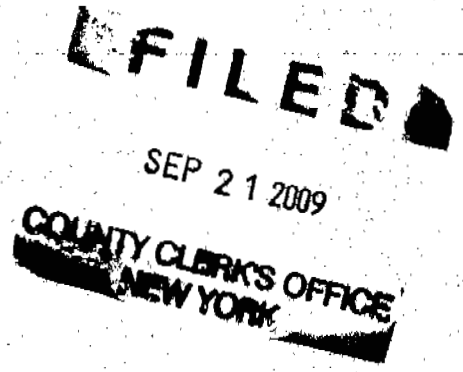
The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion



**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

Dated: 9/17/09

JJG
JUDITH J. GISCHE, 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 10

-----x
M&T MORTGAGE CORPORATION,

Plaintiff,

-against-

WILLIAM ROMANELLO, BERNICE ROMANELLO
THE OFFICE OF THE NEW YORK CITY
REGISTER, NEW YORK COUNTY.

Defendants.
-----x

Decision/Order

Index No.: 115872/08

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

FILED

SEP 21 2009

**COUNTY CLERK'S OFFICE
NEW YORK**

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Pltf's motion [d j/mt] w/ECK affirm, exhs 1

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff moves, pursuant to RPAPL Article 15 and CPLR § 3215, for an judgment and/or declaration of mortgage rights and to record a copy of a mortgage consolidation agreement and assignments thereof in the land records. None of the defendants have opposed the motion, despite proof of service. The court's decision follows.

Plaintiff has provided proof of service of the summons and complaint upon each of the defendants. Defendant Bernice Romanello ("Ms. Romanello") was served personally on December 12, 2008. Defendant William Romanello ("Mr. Romanello") was served pursuant to CPLR § 308 (2), by delivery of the summons and complaint to a person of suitable age and discretion at his abode on December 12, 2008. The Romanello's served plaintiff with a Notice of Appearance dated January 20, 2009.

The Office of the New York City Register, New York County (the "Register") was

served on December 3, 2008 by personal service. To date, none of the defendants have answered the complaint, nor received an order from the court extending their time to do so. Accordingly, the court finds that the defendants have defaulted in appearing in this action.

The following facts are based upon the Verified Complaint and/or documentary evidence. On or about February 26, 2003, the Romanellos executed and delivered to plaintiff's assignor a Consolidated Mortgage (the "Mortgage") in the principal amount of \$146,000 and encumbering the property known as 511 East 11th Street, Apt 2A, New York, New York, Block 405, Lot 1202 (the "property"). The Mortgage was made and delivered to secure the Romanellos' obligations under a certain promissory note in favor of plaintiff's assignor. In conjunction with the execution and delivery of the Mortgage, the Romanellos executed and delivered a Consolidation, Extension and Modification Agreement dated February 25, 2003 (the "CEMA"). By virtue of the assignments, plaintiff claims that it is the holder and owner of the Mortgage and has not otherwise sold or assigned the mortgage.

The Mortgage was recorded thereafter, but plaintiff has subsequently learned that the CEMA and certain assignments were not recorded in the land records. Moreover, plaintiff claims that after a diligent search was made by it and the title company present at the closing, the original Assignments and CEMA cannot be found and are lost. A description of these documents follows:

[1] Assignment of Mortgage for Block 405, Lot 1202 dated December 16, 1999 made and executed by William Romanello & Bernice Romanello to CFS Bank;

[2] Assignment of Mortgage dated December 16, 1999 made and executed by Norwest Mortgage, Inc. to CFS Bank;

[3] Assignment of Mortgage dated February 20, 2003 made and executed by New York Community Bank Successor to CFS Bank to M&T Mortgage Corp; and

[4] Consolidation, Extension and Modification Agreement dated February 26, 2003 between William Romanello and Bernice Romanello, borrowers, and M&T Mortgage Corporation, Lender (the CEMA).

Plaintiff maintains that its rights as the Mortgage holder and its security interest in the property are imperiled. Plaintiff has, therefore, brought this action under RPAPL Article 15 to provide public notice of the Assignments and CEMA by recording as required under the Real Property Law and to bar any adverse claimants. Plaintiff's first cause of action is for an order or declaration of the court directing the Register to accept for recording and to record upon the public land records a copy of the CEMA and a copy of the Assignments, upon payment of all applicable taxes, fees and charges, in lieu of the originals thereof. Plaintiff's second cause of action is for an order directing and compelling the Romanellos to execute a duplicate original CEMA together with such forms and documents as the City Register may required to effect recording of the CEMA or, in the alternative, the appointment of a Referee to execute the CEMA and such forms and documents in the Romanellos stead.

Discussion

Plaintiff is entitled to a default judgment against defendants and in its favor, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3d Dept 2001). While Tristate's default in answering the complaint constitutes an admission of the relevant factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 (1984).

RPAPL Article 15 provides as follows:

Where a person claims an estate or interest in real property... such

person... may maintain an action against any other person, known or unknown, including one under disability as hereinafter specified, to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make...

Based upon the undisputed facts contained in the Verified Complaint, plaintiff's motion must be granted on default. Accordingly, plaintiff is entitled to an order directing the Register to accept for recording and to record upon the public land records a copy of the CEMA and Assignments, upon payment of all applicable taxes, fees and charges, in lieu of the originals thereof. Plaintiff, in its motion, has abandoned its second cause of action by requesting only the relief sought in the first cause of action. Accordingly, the second cause of action is hereby severed and dismissed.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted on default; and it is further

ORDERED that The Office of the New York City Register, New York County, is hereby directed to accept for recording and to record upon the public land records a copy of the documents that follow, upon payment of all applicable taxes, fees and charges, in lieu of originals thereof:

[1] Assignment of Mortgage for Block 405, Lot 1202 dated December 16, 1999 made and executed by William Romanello & Bernice Romanello to CFS Bank;

[2] Assignment of Mortgage dated December 16, 1999 made and executed by Norwest Mortgage, Inc. to CFS Bank;

[3] Assignment of Mortgage dated February 20, 2003 made and executed by New York Community Bank Successor to CFS Bank to M&T Mortgage Corp

(plaintiff herein); and

[4] Consolidation, Extension and Modification Agreement dated February 26, 2003 between William Romanello and Bernice Romanello, borrowers, and M&T Mortgage Corporation, Lender.

And it is further

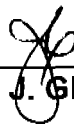
ORDERED that plaintiff's second cause of action is hereby severed and dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered by the court and is hereby denied.

This constitutes the decision and order of the court.

Dated: New York, New York
September 17, 2009

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
SEP 21 2009
COUNTY CLERK'S OFFICE
NEW YORK