

LaSalle Bank N.A. v Mirville

2011 NY Slip Op 34320(U)

February 10, 2011

Supreme Court, Kings County

Docket Number: 1604/09

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 10th day of February, 2011

P R E S E N T:
HON. FRANCOIS A. RIVERA
Justice.

LaSalle Bank National Association, as Trustee for Certificate Holders of Bear Sterns Asset Backed Securities I LLC, Asset-Backed Certificates, Series 2007-HE1,

Plaintiff,

- against -

Mitchell Mirville, *et. al.*,

Defendants.

DECISION & ORDER

Index No.: 1604/09

In this foreclosure action, plaintiff, LaSalle Bank, moved for an order of reference and related relief for the premises located at 293 New Jersey Avenue, Brooklyn, NY, 11207 Block: 3722 Lot: 1. For this Court to consider the instant motion for an order of reference, plaintiff's counsel must comply with the new Rule, promulgated by Chief Administrative Judge Ann T. Pfau on October 20, 2010 and announced that day by Chief Judge Jonathan Lippman, within sixty (60) days of this decision and order, or the instant foreclosure action will be dismissed with prejudice. The new Rule mandates an

affirmation by plaintiff's counsel, which must be submitted to my Chambers (not the Foreclosure Department), 360 Adams Street, Room 1136, Brooklyn, NY 11201, requiring plaintiff's counsel to state that he or she communicated on a specific date with a named representative of plaintiff LaSalle Bank, who informed counsel that he or she:

(a) has personally reviewed plaintiff's documents and records relating to this case; (b) has reviewed the Summons and Complaint, and all other papers filed in this matter in support of foreclosure; and, (c) has confirmed both the factual accuracy of these court filings and the accuracy of the notarizations contained therein.

Further, plaintiff's counsel, based upon his or her communication with plaintiff's representative named above, must upon his or her "inspection of the papers filed with the Court and other diligent inquiry, . . . certify that, to the best of [his or her] knowledge, information, and belief, the Summons and Complaint filed in support of this action for foreclosure are complete and accurate in all relevant respect."

Counsel is reminded that the new standard Court affirmation form states in a note at the top of the first page:

During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities. These insufficiencies include: failure of plaintiffs and their counsel to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits which falsely attest to such review and to other

critical facts in the foreclosure process; and “robo signing” of documents by parties and counsel. *The wrongful filing and prosecution of foreclosure proceedings which are discovered to suffer from these defects may be cause for disciplinary and other sanctions upon participating counsel. [Emphasis added]*

According to the October 20, 2010 Office of Court Administration press release about the new filing requirement:

The New York State court system has instituted a new filing requirement in residential foreclosure cases to protect the integrity of the foreclosure process and prevent wrongful foreclosures. Chief Judge Jonathan Lippman today announced that plaintiff’s counsel in foreclosure actions will be required to file an affirmation certifying that counsel has taken reasonable steps – including inquiry to banks and lenders and careful review of the papers filed in the case – to verify the accuracy of documents filed in support of residential foreclosures. The new filing requirement was introduced by the Chief Judge in response to recent disclosures by major mortgage lenders of significant insufficiencies – including widespread deficiencies in notarization and “robo signing” of supporting documents – in

residential foreclosure filings in courts nationwide. The new requirement is effective immediately and was created with the approval of the Presiding Justices of all four Judicial Departments.

Chief Judge Lippman said, “*We cannot allow the courts in New York State to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs – such as a family home – during this period of economic crisis.* This new filing requirement will play a vital role in ensuring that the documents judges rely on will be thoroughly examined, accurate, and error-free before any judge is asked to take the drastic step of foreclosure.” [*Emphasis added*]

(See Gretchen Morgenson and Andrew Martin, *Big Legal Clash on Foreclosure is Taking Shape*, New York Times, Oct. 21, 2010; Andrew Keshner, *New Court Rules Says Attorneys Must Verify Foreclosure Papers*, NYLJ, Oct. 21, 2010).

Conclusion

Accordingly, it is

ORDERED, that plaintiff LaSalle Bank’s motion for an order of reference and related relief for the premises located at 293 New Jersey Avenue, Brooklyn, NY, 11207

Block: 3722 Lot: 1 and the instant foreclosure action will be dismissed with prejudice, unless, within sixty (60) days from this decision and order, counsel for plaintiff, LaSalle Bank, complies with the new Rule, promulgated by the Chief Administrative Judge Ann T. Pfau on October 20, 2010, by submitting an affirmation, to my Chambers (not the Foreclosure Department), 360 Adams Street, Room 1136, Brooklyn, NY 11201, using the new standard Court form, pursuant to CPLR Rule 2106 and under the penalties of perjury, that counsel for plaintiff, LaSalle Bank has personally reviewed plaintiff's documents and records in the instant action; confirms the factual accuracy of plaintiff's court filings; and, confirms the accuracy of the notarizations in plaintiff's documents.

This constitutes the Decision and Order of the Court.

E N T E R



HON. FRANCOIS A. RIVERA
J. S. C.