

114 Realty LLC v First Cent. Sav Bank
2012 NY Slip Op 31921(U)
July 16, 2012
Supreme Court, New York County
Docket Number: 111846/2011
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Joan A. Urbano Medler
Justice

PART 11

Index Number : 111846/2011
1141 REALTY LLC
vs
FIRST CENTRAL SAVINGS BANK
Sequence Number : 002
DISMISS

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 is decided in accordance with the annexed Memorandum Decision + Order.

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

FILED

JUL 20 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: July 16, 2012

[Signature]
J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE
☐ SUBMIT ORDER/JUDG. ☐ SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
1141 REALTY LLC,

Plaintiff,

Index No. 111846/2011

- against -

FIRST CENTRAL SAVINGS BANK, and
BRICK 1141 CAPITAL LLC,

Defendants.
-----X

JOAN A. MADDEN, J.:

FILED

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Defendant First Central Savings Bank ("First Central") moves to dismiss the complaint against it pursuant to CPLR 3211(a)(2) and (7). Plaintiff 1141 Realty LLC ("1141 Realty") opposes the motion, which is granted for the reasons below.

This action arises out of two construction loans made by First Central to 1141 Realty in 2007. The loan money was used to conduct extensive renovations on a hotel property owned by 1141 Realty. Defendant Brick 1141 Capital LLC ("Brick") purchased, by assignment, the notes on both loans in August 2011. Unless otherwise noted, the following facts are based on the allegations in the complaint which, for the purposes of this motion, must be accepted as true.

The loans were in the amount of \$5,000,000 ("First Mortgage") and \$3,000,000 ("Second Mortgage"), respectively, on an interest only basis. The regular interest rate on both loans was 9.25%, while the default interest rate was 24%. The maturity date of both mortgages was changed from May 1, 2009 to November 1, 2009 by written agreement between First Central and 1141 Realty dated August 27, 2009.

The maturity dates of the First Mortgage and Second Mortgage were further modified by successive actions of 1141 Realty and First Central. Specifically, 1141 Realty alleges that prior and after November 1, 2009, it made efforts to further extend the maturity date of both loans. As a result of these efforts, the First and Second Mortgages were modified by the execution of a document for each loan provided by First Central, dated February 23, 2010. Each document provided an extension of the maturity date to May 1, 2010 and required the payment of a fee by 1141 Realty. The document was executed by 1141 Realty and First Central, and required the payment by 1141 Realty of a fee of \$50,000 for the First Mortgage and a fee of \$30,000 for the Second Mortgage in consideration for the extension of the maturity date.

As a result of negotiations to further extend the maturity date of the loans, First Central's attorney provided 1141 Realty attorney with a draft of extension documents for the First and Second Mortgages, which proposed to extend the maturity dates of the loans from November 1, 2009, to November 1, 2010. 1141 Realty alleges that in order to meet with the requirements stipulated in the extension document, it paid for a comprehensive appraisal of the property. However, the documents were not executed because of an issue with some liens on the property, but that the extensions "were confirmed" on May 25, 2011 by Thomas J. Steven, Vice President and Chief Lending Officer of First Central, in an email to John Mei, general manager of 1141 Realty.

1141 Realty further alleges that the extension of the maturity dates of the loan continued until First Central sold the mortgages and notes to Brick, and that First Central never demanded a payment in excess of the 9.25 % interest rate and never rejected the payments based on this rate up until July 11, 2011.

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First Central filed a foreclosure action on July 15, 2011 (hereinafter “the Foreclosure Action”), and stopped accepting 1141 Realty’s payments in August 2011. On August 16, 2011, it sold the notes made in connection with the First and Second Mortgages by assignment to Brick, which substituted itself as the plaintiff in the Foreclosure Action. 1141 Realty alleges that Brick refused to meet to discuss the terms of the mortgages and refused to provide a preliminary payoff statement. Brick demanded that 1141 Realty pay the entire principal on the mortgages at a default rate of 24% from November 1, 2009.

1141 Realty commenced this action on October 11, 2011, against First Central and Brick. The complaint seeks a judicial declaration that the proper interests rate for calculating amounts due under the First Mortgage and note and the Second Mortgage and note is 9.25%. Brick interposed an answer to the complaint generally denying its allegations and asserting four affirmative defenses, including that the issues raised in this action are properly raised in connection with the Foreclosure Action. First Central did not answer and, instead, made this motion to dismiss the complaint against it on the grounds that this court has no subject matter jurisdiction to render a declaratory judgment against First Central, as it no longer has any interest in the loans assigned to Brick. First Central also argues that exercise of jurisdiction is improper in this declaratory judgment action as the issues raised herein can be resolved in the Foreclosure Action.

1141 Realty opposes the motion, arguing that First Central is a necessary and indispensable party to the action as it is a party to the controversy surrounding the assignment of the two mortgages, which assignment 1141 Realty asserts has caused it harm. 1141 Realty also contends that the Foreclosure Action cannot adequately address

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the underlying controversy as “special and extenuating circumstances require judicial intervention in the form of declaratory judgment.” In particular, 1141 Realty argues that any delay in the Foreclosure Action will benefit Brick and harm it by creating a risk that it will have to pay default interest on its outstanding obligations, and that a judicial declaration will clarify the rights and liability of the parties more efficiently than the Foreclosure Action.

The purpose of a declaratory judgment is to establish the respective legal rights of the parties to a justiciable controversy. See CPLR 3001. It must “serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations.” James v. Alderton Dock Yards, 256 NY 298, 305 (1931), see also, Thome v. Alexander & Louisa Calder Found., 70 AD3d 88 (1st Dept 2009), lv. denied, 15 NY3d 703 (2010). “[T]he only question raised on a motion to dismiss in a declaratory judgment action is whether a proper case is presented for invoking the jurisdiction of the court to make a declaratory judgment.” Hallock v. State of New York, 32 NY2d 599 (1973).

The first issue is whether this action presents a justiciable controversy as to First Central. Here, 1141 Realty is seeking a declaration that the proper interest rate in calculating the amount due under the mortgages and notes is 9.25% as opposed to the default interest rate of 24%. As First Central has assigned its interest in the notes and mortgages to Brick, the declaration sought by 1141 Realty will have no impact on the rights of First Central, and thus the court action must be dismissed against First Central. See Nasa Auto Supplies, Inc. v. 319 Main Street Corp., 133 AD2d 265 (2d Dept 1987)(reversing trial court and granting motion to dismiss complaint as against party who

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assigned its interest in the property prior to the commencement of the action); Ramunno v. Skydeck Corp., 30 AD3d 1074 (4th Dept 2006)(trial court erred in failing to dismiss declaratory judgment action against City of Buffalo where the City of Buffalo has no interest in the property at issue).

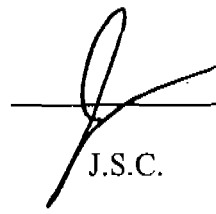
In any event, even if there existed a justiciable issue with respect to First Central, the complaint must be dismissed based on the pendency of the Foreclosure Action. In general, "a court should not entertain an action for a declaratory judgment where there is no necessity of doing so...[and] it is an abuse of discretion to entertain jurisdiction when another action is pending where all factual and legal issues can be determined" Davis Const. Corp. v. Suffolk County, 122 Misc2d 652, 656 (Sup Ct Suffolk Co. 1982), aff'd, 95 AD2d 819 (2d Dept 1983)(internal citations omitted); cf. Abed v. Zach Associates, 124 AD2d 531, 532 (2d Dept 1986). Under this standard, this action must be dismissed as the issue of the proper interest rate may be raised as an affirmative defense in the Foreclosure Action, and 1141 Realty can seek expeditious relief in the Foreclosure Action based on this defense.

In view of the above, it is

ORDERED that the motion to dismiss is granted; and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint in its entirety.

DATED: July 16 2012

 **FILED**
J.S.C.
JUL 20 2012

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