

HSBC Bank USA v Campora
2012 NY Slip Op 32509(U)
September 21, 2012
Sup Ct, Suffolk County
Docket Number: 6874/2012
Judge: Joseph Farneti
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SHORT FORM ORDER

INDEX NO. 6874/2012

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
 Acting Justice Supreme Court

 HSBC BANK USA, NATIONAL ASSOCIATION AS
 TRUSTEE FOR HOMESTAR 2004-2,

Plaintiff,

-against-

JERRY CAMPORA, JR.,

Defendant.

 JERRY CAMPORA, JUNIOR,

Counter-Plaintiff,

-against-

HSBC BANK USA, NATIONAL ASSOCIATION AS
 TRUSTEE FOR HOMESTAR 2004-2, Roger K. McGregor
and/or his successor, individually, and in his official capacity
 as CFO, and, Irene M. Dorner in her official capacity as
 President of HSBC BANK USA, NATIONAL ASSOCIATION
 AS TRUSTEE FOR HOMESTAR 2004-2, Kellie Rohling, in
 her official capacity as alleged Vice President of HSBC
 BANK USA, NATIONAL ASSOCIATION AS TRUSTEE
 FOR HOMESTAR 2004-2, EVERHOME MORTGAGE
 COMPANY and Michael Koster *and/or his successor*,
 individually, and in his official capacity as President of
 EVERHOME MORTGAGE COMPANY, HOMESTAR
 MORTGAGE SERVICES, LLC, and Robert Grosser *and/or*
his successor, individually, and in his official capacity as
 President of HOMESTAR MORTGAGE SERVICES, LLC,
 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
 INC., SUPREME COURT OF THE STATE OF NEW YORK,
 COUNTY OF SUFFOLK, Mark D. Cohen, Melvyn
 Tanenbaum, Bethany Hood, James Chua-MN Notary,

Counter-Defendants.

ORIG. RETURN DATE: APRIL 6, 2012
 FINAL SUBMISSION DATE: MAY 10, 2012
 MTN. SEQ. #: 001
 MOTION: MG

ORIG. RETURN DATE: APRIL 26, 2012
 FINAL SUBMISSION DATE: MAY 10, 2012
 MTN. SEQ. #: 003
 MOTION: MG

ORIG. RETURN DATE: APRIL 30, 2012
 FINAL SUBMISSION DATE: MAY 10, 2012
 MTN. SEQ. #: 004
 MOTION: MD

ORIG. RETURN DATE: MAY 4, 2012
 FINAL SUBMISSION DATE: MAY 10, 2012
 MTN. SEQ. #: 006
 MOTION: MG

ORIG. RETURN DATE: MAY 10, 2012
 FINAL SUBMISSION DATE: MAY 10, 2012
 MTN. SEQ. #: 007
 MOTION: MG

ORIG. RETURN DATE: MAY 16, 2012
 FINAL SUBMISSION DATE: MAY 17, 2012
 MTN. SEQ. #: 008
 MOTION: MD

ORIG. RETURN DATE: MAY 12, 2012
 FINAL SUBMISSION DATE: MAY 17, 2012
 MTN. SEQ. #: 009
 MOTION: MD

ORIG. RETURN DATE: MAY 18, 2012
 FINAL SUBMISSION DATE: MAY 24, 2012
 MTN. SEQ. #: 010
 MOTION: MD

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ORIG. RETURN DATE: MAY 10, 2012
FINAL SUBMISSION DATE: MAY 17, 2012
MTN. SEQ. #: 011
CROSS-MOTION: XMG

ORIG. RETURN DATE: MAY 24, 2012
FINAL SUBMISSION DATE: MAY 24, 2012
MTN. SEQ. #: 012
MOTION: MD

ORIG. RETURN DATE: JUNE 21, 2012
FINAL SUBMISSION DATE: JUNE 21, 2012
MTN. SEQ. #: 013
MOTION: MD

ATTORNEY FOR PLAINTIFF/COUNTER-DEFENDANT
HSBC BANK USA, NATIONAL ASSOCIATION AS
TRUSTEE FOR HOMESTAR 2004-2, AND COUNTER-
DEFENDANTS ROGER K. MCGREGOR AND/OR HIS
SUCCESSOR, INDIVIDUALLY, AND IN HIS OFFICIAL
CAPACITY AS CFO, IRENE M. DORNER IN HER
OFFICIAL CAPACITY AS PRESIDENT OF HSBC BANK
USA, NATIONAL ASSOCIATION AS TRUSTEE FOR
HOMESTAR 2004-2, KELLIE ROHLING, IN HER
OFFICIAL CAPACITY AS ALLEGED VICE PRESIDENT
OF HSBC BANK USA, NATIONAL ASSOCIATION AS
TRUSTEE FOR HOMESTAR 2004-2, EVERHOME
MORTGAGE COMPANY, AND MICHAEL KOSTER
AND/OR HIS SUCCESSOR, INDIVIDUALLY, AND IN HIS
OFFICIAL CAPACITY AS PRESIDENT OF EVERHOME
MORTGAGE COMPANY:
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845-371-4700

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COUNTER-PLAINTIFF:
JERRY CAMPORA, JUNIOR
ONE MARKET PATH
SETAUKET, NEW YORK 11733

ATTORNEY FOR COUNTER-DEFENDANTS
SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF SUFFOLK, MARK D. COHEN
AND MELVYN TANENBAUM:
ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL OF THE
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HAUPPAUGE, NEW YORK 11788
631-231-2424

ATTORNEY FOR COUNTER-DEFENDANTS
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JAMES CHUA-MN NOTARY:
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1251 AVENUE OF THE AMERICAS
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212-508-6100

ATTORNEY FOR COUNTER-DEFENDANTS
ROBERT GROSSER AND
HOMESTAR MORTGAGE SERVICES, LLC:
DAVID S. KRITZER & ASSOCIATES, PC
180 EAST MAIN STREET - SUITE 204
SMITHTOWN, NEW YORK 11787
631-979-4777

COUNTER-DEFENDANT:
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.
1901 EAST VOORHEES STREET - SUITE 3
DANVILLE, IL 61834

Upon the following papers numbered 1 to 48 read on these motions _____
TO EXTEND TIME TO ANSWER, TO DISMISS, AND FOR OTHER RELIEF _____.
 Notice of Motion and supporting papers 1-3; Reply Affidavit 4; Notice of Motion and supporting papers 5-7; Memorandum of Law in Support 8; Reply Affirmation 9; Notice of Motion and supporting papers 10-12; Affirmation in Opposition 13; Notice of Motion and supporting papers 14-16; Notice of Motion and supporting papers 17-19; Memorandum of Law in Support 20; Notice of Motion and supporting papers 21-23; Notice of Motion and supporting papers 24-26; Notice of Motion and supporting papers 27-29; Affirmation in Reply and in Further Support 30; Memorandum of Law in Reply and in Further Support 31; Affidavit in Reply and in Further Support and supporting papers 32, 33; Notice of Cross-Motion and supporting papers 34-36; Notice of Motion and supporting papers 37-39; Affirmation in Reply and in Opposition to Motion to Strike 40; Affidavit in Reply 41; Notice of Motion and supporting papers 42-44; Other "Ruling Re Counter-Defendants' and Third Party Defendants' Motions to Dismiss by Rachael C. Anello" - 45; "Ruling Re Counter-Defendants' and Third Party Defendants' Motion to Dismiss by Richard A. Gerbino" - 46; "Ruling Re Counter-Plaintiff's Motion to Strike Michael C. Hefter's Motions" - 47; "Ruling Re Robert Grosser's and Homestar Mortgage Services' Cross-Motion to Dismiss by David S. Kritzer" - 48; it is,

ORDERED that this motion (seq. #001) by counter-defendants, MARK D. COHEN and MELVYN TANENBAUM, for an Order, pursuant to CPLR 2004, extending the time to answer, move or otherwise respond to the complaint to May 4, 2012, is hereby **GRANTED**, upon consent of the self-represented counter-plaintiff, JERRY CAMPORA, JUNIOR ("Campora"); and it is further

ORDERED that this motion (seq. #003) by counter-defendants, BETHANY HOOD and JAMES CHUA-MN Notary, for an Order, pursuant to CPLR 3211 (a) (5) and (7), dismissing the verified complaint, dated February 28, 2012, as asserted against these defendants, is hereby **GRANTED** for the reasons set forth hereinafter; and it is further

ORDERED that this "motion in limine" (seq. #004) by Campora to "acknowledge the law regarding collateral attacks," is hereby **DENIED**; and it is further

ORDERED that this motion (seq. #006) by counter-defendants, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR HOMESTAR 2004-2, ROGER K. MCGREGOR and/or his successor, individually, and in his official capacity as CFO, IRENE M. DORNER in her official capacity as President of HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR HOMESTAR 2004-2, KELLIE ROHLING, in her official capacity as Vice President

of HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR HOMESTAR 2004-2, EVERHOME MORTGAGE COMPANY, and MICHAEL KOSTER and/or his successor, individually, and in his official capacity as President of EVERHOME MORTGAGE COMPANY ("HSBC Defendants"), for an Order, pursuant to CPLR 3211 (a) (5) and (7), dismissing the verified complaint as asserted against the HSBC Defendants, is hereby **GRANTED** for the reasons set forth hereinafter; and it is further

ORDERED that this motion (seq. #007) by counter-defendants, SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF SUFFOLK, MARK D. COHEN, and MELVYN TANENBAUM, for an Order, pursuant to CPLR 3211 (a) (1), (2), (5), (7) and (8), dismissing the verified complaint as asserted against these defendants, is hereby **GRANTED** for the reasons set forth hereinafter; and it is further

ORDERED that this motion (seq. #008) by Campora in opposition to the motion to dismiss filed by the HSBC defendants, is hereby **DENIED**; and it is further

ORDERED that this duplicative motion (seq. #009) by Campora in opposition to the motion to dismiss filed by the HSBC defendants, is similarly **DENIED**; and it is further

ORDERED that this motion (seq. #010) by Campora in opposition to the motion to dismiss filed by counter-defendants, BETHANY HOOD and JAMES CHUA-MN Notary, is hereby **DENIED**; and it is further

ORDERED that this cross-motion (seq. #011) by counter-defendants, ROBERT GROSSER and HOMESTAR MORTGAGE SERVICES, LLC, for an Order, pursuant to CPLR 3211 (a) (5) and (7), dismissing the verified complaint as asserted against these defendants, is hereby **GRANTED** for the reasons set forth hereinafter; and it is further

ORDERED that this motion (seq. #012) by Campora in opposition to the motion to dismiss filed by counter-defendants, SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF SUFFOLK, MARK D. COHEN, and MELVYN TANENBAUM, is hereby **DENIED**; and it is further

ORDERED that this motion (seq. #013) by Campora in opposition to the cross-motion to dismiss filed by counter-defendants, ROBERT GROSSER and HOMESTAR MORTGAGE SERVICES, LLC, is hereby **DENIED**; and it is further

ORDERED that the Court, *sua sponte*, dismisses the remainder of the complaint herein in its entirety.

In this action, Campora, labeling himself "counter-plaintiff," has drafted and filed a complaint entitled "Verified Counterclaim," dated February 28, 2012 and bearing the caption above, wherein he seeks the following relief against the "counter-defendants": (1) a temporary restraining Order and preliminary injunction; (2) damages based upon fraud; (3) to vacate "a void judgment and collateral attack"; and (4) a constructive trust. The complaint is accompanied by twenty-eight exhibits, and the footer found at the bottom of all twenty-five pages thereof contains the words, "Counter Claim & Collateral Attack."

This action stems from a prior foreclosure action under Index No. 43034/2009, where the plaintiff therein, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR HOMESTAR 2004-2, sought to foreclose a mortgage dated April 13, 2004, executed by Campora in the principal sum of \$513,000.00 affecting the real property commonly known as 1 Market Path, Setauket, New York. Plaintiff had alleged that Campora failed to make the monthly mortgage payments since May 1, 2009. By Order dated July 27, 2010 (Cohen, J.), the Court granted the plaintiff's application for summary judgment and for the appointment of a referee. Notably, that Court expressly found that the plaintiff had standing to commence the foreclosure action as the proper assignee of the subject mortgage.

After the Order of July 27, 2010, Campora filed at least five applications seeking various relief, including, among other things, to vacate the Order of July 27, 2010, and to dismiss the foreclosure complaint based upon lack of standing and fraud. All of his applications were denied. Furthermore, Campora filed a Notice of Appeal from the Order of July 27, 2010, which was dismissed by Decision and Order of the Appellate Division, Second Department dated December 13, 2010.

Campora has now filed the instant action seeking the relief described hereinabove, and has raised the identical issues that were raised and decided in the related foreclosure action. The counter-defendants have filed the motions to dismiss as delineated above, seeking to dismiss the complaint on the grounds of, among other things, *res judicata*, collateral estoppel, and failure to state a cause of action. For the following reasons, the Court finds that Campora's complaint must be dismissed in its entirety.

New York law analyzes *res judicata* questions using a transactional approach. Once a claim has been adjudicated, all other claims arising out of the same transaction or series of transactions are barred. This is true even if the new allegations are based upon different theories or seek a different remedy (see *O'Brien v City of Syracuse*, 54 NY2d 353 [1981]; *Matter of Allstate Ins. Co. v Williams*, 29 AD3d 688 [2006]). It is well-settled that if the party against whom *res judicata* is invoked had a full and fair opportunity to litigate the claim in a prior proceeding based on the same transaction, but did not raise it therein, he will be barred from raising it in a subsequent action (*Browning Ave. Realty Corp. v Rubin*, 207 AD2d 263 [1994]). Generally, a set of facts will be deemed a single "transaction" for *res judicata* purposes if the facts are closely related in time, space, motivation, or origin, such that treating them as a unit would be convenient for trial and would conform to the parties' expectations (see *Smith v Russell Sage Coll.*, 54 NY2d 185 [1981]).

Moreover, in order to invoke the doctrine of collateral estoppel, two well-settled requirements must be satisfied: "First, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination" (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449 [1985]). The policies underlying its application are avoiding relitigation of a decided issue and the possibility of an inconsistent result (see *Buechel v Bain*, 97 NY2d 295 [2001]; *Altegra Credit Co. v. Tin Chu*, 2006 NY Slip Op 3826 [2006]).

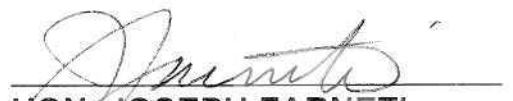
In the instant matter, the Court finds that the doctrines of *res judicata* and collateral estoppel act as a bar to the instant action and the claims raised herein. As discussed, Campora repeatedly raised the same arguments in the related foreclosure action, to wit: jurisdiction, standing, and fraud, among others, which were wholly and repeatedly rejected by the Court on numerous occasions.

Accordingly, Campora is barred from relitigating those claims in this plenary action. Indeed, Campora himself has designated this action as a collateral attack on the foreclosure action. In view of the foregoing, these motions to dismiss Campora's complaint are all **GRANTED**, and the Court, *sua sponte*, dismisses the remainder of the complaint in its entirety.

Finally, Campora has filed certain documents with the Court entitled: "Ruling Re Counter-Defendants' and Third Party Defendants' Motions to Dismiss by Rachael C. Anello"; "Ruling Re Counter-Defendants' and Third Party Defendants' Motion to Dismiss by Richard A. Gerbino"; "Ruling Re Counter-Plaintiff's Motion to Strike Michael C. Hefter's Motions"; and "Ruling Re Robert Grosser's and Homestar Mortgage Services' Cross-Motion to Dismiss by David S. Kritzer," which all provide Campora's "rulings" on the various motions to dismiss at bar. Campora has evidently conjured up an alternative legal universe in which he is the sovereign and the courts merely exist as ministerial bodies to do his bidding. This Court will not countenance any such conduct by Campora in the future.

The foregoing constitutes the decision and Order of the Court.

Dated: September 21, 2012


HON. JOSEPH FARNETI
Acting Justice Supreme Court

 X FINAL DISPOSITION NON-FINAL DISPOSITION