

Prashad v Deutsche Bank Natl. Trust Co.
2013 NY Slip Op 30941(U)
April 30, 2013
Supreme Court, Queens County
Docket Number: 16510/2012
Judge: Robert J. McDonald
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SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

DOODNAUTH PRASHAD, Index No.: 16510/2012

Plaintiff, Motion Date: 02/22/13

- against - Motion No.: 78

DEUTSCHE BANK NATIONAL TRUST COMPANY, Motion Seq.: 1
AS TRUSTEE FOR MORGAN STANLEY ABS
CAPITAL I INC TRUST 2006-NC4,

Defendants.

- - - - - x

The following papers numbered 1 to 17 were read on this motion by defendant for an order pursuant to CPLR 3211(a) dismissing the complaint of plaintiff Doodnauth Prashad dated August 6, 2012 and for sanctions pursuant to NYCRR § 130-1.1(a) based upon frivoulous conduct:

Papers
Numbered

Notice of Motion Affidavits-Exhibits-Memo of Law.....1 - 10
Affirmation in Opposition-Affidavits.....11 - 13
Reply Affirmation-Memo of Law.....14 - 17

This is an action commenced by the plaintiff to quiet title to premises located at 86-73 78th Street, Woodhaven, New York. The premises were the subject of a foreclosure action commenced on April 5, 2007 by New Century Mortgage Corp against Doodnauth Prashad, the plaintiff herein. The complaint in the foreclosure action alleged that on March 28, 2006, Prashad borrowed \$660,250.00 from New Century Mortgage Corporation and beginning on December 1, 2006, he defaulted in making his monthly installment payments. New Century Mortgage subsequently accelerated the defendant's mortgage and brought an action to

foreclose by filing a lis pendens and summons and complaint on April 5, 2007. Prashad was served personally with a copy of the summons and complaint in the foreclosure action on April 9, 2007. Prashad did not serve an answer or otherwise appear in the foreclosure action. On June 12, 2007, New Century filed a motion for an order of reference which was not opposed. Justice Kitze signed the order of reference on July 25, 2007 and appointed Christopher Renfroe, Esq. as referee to compute the amounts due and owing to New Century. The referee filed his report on September 20, 2007 stating that the amount due on the mortgage was \$713,138.29. On November 2, 2007, based upon the report of the referee, New Century moved for a Judgment of Foreclosure and Sale which was not opposed by Prashad. On December 21, 2007, Justice Kitze signed the Judgment of Foreclosure and Sale. On October 16, 2009 Prashad was served by mail with a Notice of Sale of the property. The foreclosure sale was scheduled for October 30, 2009.

The report of sale, filed by referee Wallace Leinhardt, Esq., dated November 17, 2009, states that the foreclosure sale took place on October 30, 2009 at which time New Century purchased the property for \$574,500 and assigned its winning bid to Deutsche Bank National Trust Company as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-NC4. Deutsche Bank National Trust Company is the current record owner of the property which it acquired by Referee's deed dated November 11, 2009 and recorded on November 30, 2009. Plaintiff is still residing at the property and a holdover proceeding is presently pending in Queens County Civil Court.

On November 19, 2009, Prashad filed a motion to vacate the judgment of foreclosure alleging that the plaintiff made material misrepresentations to the Court and did not have standing to bring the action. By decision dated May 14, 2010, Justice Kitze denied the motion on the ground that the defendant failed to provide a reasonable excuse for his default and failed to provide a meritorious defense. The Court also held that defendant's claim that plaintiff filed false documents with the Court was without merit. By decision dated October 20, 2010 the Court denied Prashad's motion to reargue. On March 12, 2012 defendant filed an order to show cause to renew the motion to reargue on the ground that New Century could not assign its bid to Deutsche Bank due to the purported Bankruptcy filing. By decision dated May 3, 2012 Justice Kitze denied Prashad's motion to renew his motion to reargue. The plaintiff raised the same issue of bankruptcy a second time in a further motion to reargue in June 2012. By decision and order dated July 11, 2012 the Court denied said motion to reargue.

On February 11, 2011, Prashad commenced a collateral action under Index No. 3431/2011, naming New Century Mortgage Corp as defendant. Prashad alleged in that action that "plaintiff suffered the loss of his real property due to predatory lending and refusal of the lender to honor a modification of mortgage." By decision dated September 7, 2011 Prashad's complaint was dismissed by Justice Weiss on the ground that personal jurisdiction was not obtained over the defendant New Century.

In the present action, Prashad brings an action against Deutsche Bank National Trust Company seeking to quiet title and to invalidate defendant's assignment of bid from New Century. Plaintiff contends that the assignment of bid to the Deutsche Bank National Trust Company by New Century was invalid based upon the fraud and misconduct in its execution which fraud should have been known to Deutsche Bank. Plaintiff contends that on April 2, 2007, New Century filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware and that on August 1, 2008, Alan M. Jacobs was appointed Plan Administrator of the New Century Liquidating Trust. Plaintiff claims that as restraints had been placed on New Century based upon its bankruptcy filing that its deed to the premises based upon an invalid assignment of bid from New Century is invalid. Plaintiff reasons that as the deed to Deutsche Bank is invalid, the only valid deed to the premises at this time is the deed wherein the plaintiff acquired title on March 27, 2006. The complaint therefore, seeks an order declaring that the deed dated November 11, 2009 to Deutsche Bank National Trust Company was invalid and that title to the premises is presently still held by plaintiff.

In lieu of serving an answer, the defendant moves for an order pursuant to CPLR 3211(a)(1), (5) and (7) to dismiss the complaint. Defendant claims that the complaint does not set forth a legally recognized cause of action, that all claims that might exist are barred by res judicata since the same issues have already been raised by plaintiff and rejected by the Court in several determinations of post foreclosure motions and that documentary evidence, including the referee's deed of sale, demonstrates that the allegations in the complaint are without merit.

Upon review and consideration of the defendant's motion to dismiss the complaint, plaintiff's affirmation in opposition and defendant's reply thereto, this court finds that the complaint must be dismissed pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(5) and CPLR 3211(a)(7).

The complaint alleges a cause of action to quiet title pursuant to RPAPL § 1515 on the ground that the referee's deed to Deutsche Bank National Trust Company is invalid and therefore the deed under which plaintiff took title in 2006 is still valid. Counsel alleges that because New Century was in bankruptcy at the time of the foreclosure sale it could not validly assign its right to bid to the Deutsche Bank National Trust Company. Counsel contends that complete control of New Century's affairs was in the hands of the Bankruptcy Plan Administrator and the Administrator did not participate in the assignment. Counsel states that as the assignment was invalid the referee's deed is also invalid.

However, pursuant to RPAPL § 1515:

"The complaint must state that the action is brought pursuant to this article and must set forth facts showing:

a. The plaintiff's estate or interest in the real property, the particular nature of such estate or interest, and the source from or means by which the plaintiff's estate or interest immediately accrued to him; and if his estate or interest therein is for a term of years, that the balance remaining of such term of years is not less than five.

b. That the defendant claims, or that it appears from the public records or from the allegations of the complaint, that the defendant might claim an estate or interest in the real property, adverse to that of the plaintiff, and the particular nature of such estate or interest.

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Greer v National Grid, 89 AD3d 1059 [2d Dept. 2011]; also see Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]; Leon v Martinez, 84 NY2d 83[1994]; Prestige Caterers, Inc. v Siegel, 88 AD3d 679[2d Dept. 2011]; Peery v United Capital Corp., 84 AD3d 1201 [2011]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]).

Generally, the test of the sufficiency of the complaint is whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments. (see JP Morgan Chase v J.H. Elec. of New York, Inc., 69 AD3d 802 [2d

Dept. 2010])). However, a court may consider evidentiary material submitted by a defendant in support of a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) (see CPLR 3211[c]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010])). When evidentiary material is considered" on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one (see Basile v Wiggs, 98 AD3d 640 [2d Dept. 2012])).

"A motion to dismiss a complaint based on documentary evidence "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Stein v Garfield Regency Condominium, 65 AD3d 1126 [2009], quoting Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]).

This Court finds that the complaint fails to state a cause of action to quiet title pursuant to RPAPL § 1515 as the plaintiff's claims are not adverse to the defendant's title because the premises were conveyed by referee's deed to the defendant on November 11, 2009. The plaintiff was not a party to the assignment of the bid to the Deutsche Bank Trust nor a party to the referee's deed and therefore has no grounds to challenge those instruments. Further, plaintiff has no basis to question title to the property at this time as his title to the property was properly divested as of the time the referee's sale was consummated (see Forbes v Aaron, 81 AD3d 876 [2d Dept. 2011]; Carnavalla v Ferraro, 281 AD2d 443 [2d Dept. 2001])). Therefore, as of the date of the referee's deed plaintiff was no longer the title owner of record. Although the plaintiff presents a letter indicating that New Century Mortgage Corporation filed for bankruptcy on April 2, 2007 and that there was an injunction prohibiting actions by creditors against New Century, plaintiff does not provide documentation or evidence in affidavit form indicating that New Century was prohibited by any court from participating in the public auction or that the assignment of the bid is invalid. If the assignment of the bid to Deutsche Bank National Trust Company was invalid for any reason than Deutsche Bank would be the proper party to contest the validity of the referee's deed. Therefore, this court finds that the referee's deed provides sufficient documentary proof of the sale of the property to New Century and proper assignment to Deutsche Bank [see CPLR 3211(a)(1))].

In addition, the plaintiff specifically referenced the fact that New Century had filed for bankruptcy in two of his prior motions to vacate the judgment of foreclosure. Justice Kitze denied the motion despite the same evidence of New Century's

bankruptcy filing having been raised before him. In several decisions, as set forth above, the court confirmed in reviewing Prashad's post-judgment motions, that the judgment of foreclosure and sale was properly entered and there was no basis to vacate the courts prior holdings. Therefore the motion is also denied pursuant to CPLR 3211(a)(5) on the grounds of as res judicata.

Thus, the evidence is sufficient to demonstrate that the plaintiff is no longer the title owner of the property, has no interest in the property and as the validity of the Judgment of Foreclosure has been upheld, plaintiff has no standing to contest the sale or the assignment of the property or the referee's deed which was subsequent to the entry of the judgment of foreclosure.

Accordingly, for all of the above stated reasons, it is hereby

ORDERED, that the defendant's motion for an order dismissing the plaintiff's complaint is granted and it is further,

ORDERED that the branch of the defendant's motion seeking sanctions against the plaintiff is denied.

Dated: April 30, 2013
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.