JP Morgan Chase Bank Natl. Assoc. v Greene
2013 NY Slip Op 31137(U)
May 7, 2013
Sup Ct, New York County
Docket Number: 810039/12
Judge: Joan A. Madden
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SCANNED ON 5/22/2013

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Joan A. Madden
Justice

PART 11

JPMorgan Chase Bank, Et Al.

- v -

Ernest C. Greene, Et Al.

INDEX NO. 810039/12

MOTION DATE ______

MOTION SEQ. NO. 1

MOTION CAL. NO. ______

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

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

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
MAY 2 1 2013
COUNTY CLERK'S OFFICE
NEW YORK

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MOTION SUPPORT OFFICE
NYS SUPREME COURT CIVIL

Dated: May 7, 2013

______ **J.S.C.**

Check one: ☐ **FINAL DISPOSITION** ☒ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SUBMIT ORDER/ JUDG.** ☐ **SETTLE ORDER/ JUDG.**

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

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JP MORGAN CHASE BANK NATIONAL ASSOCIATION

Plaintiff,

Index No. 810039/12

-against-

ERNEST C GREENE; CHERYL B GREENE; IRINA BERLIN, CRIMINAL COURT OF THE CITY OF NEW YORK; HOWARD, ADAMS AND ROSE AS ASSIGNEE OF ASSOCIATES BANK, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR M&T BANK; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU; THE BOARD OF MANAGERS OF GRAMERCY PLACE CONDOMINIUM; "JOHN DOES" and "JANE DOES", said names being fictitious, parties intended being possible tenants or occupants of premises, and corporations, other entities or persons who claim, or may claim, a lien against the premises,

Defendant.

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COUNTY CLERK'S OFFICE
NEW YORK

JOAN MADDEN, J.:

Royal Abstract of New York LLC ("Royal") moves, by order to show cause, for an order: i) permitting discovery of certain checks that defendants Ernest C. Greene ("Ernest Greene") and Cheryl B. Greene ("Cheryl Greene")(together, the "Greenes") are alleged to have drawn on the line of credit at issue in this action, ii) permitting Royal to intervene in the present action as a defendant, pursuant to CPLR Section 1013 or, alternatively, iii) permitting Royal to consolidate this action with another action, pending in this court, captioned United General Title Insurance Company v. Royal Abstract of New York LLC (Index No. 153622/12) (the "Indemnification

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Action"), pursuant to CPLR Section 602. Plaintiff JP Morgan Chase Bank National Association ("Chase") opposes the motion, which is denied for the reasons below.

Background

This is a mortgage foreclosure action arising out the failure of the Greenes to pay $500,000, plus interest allegedly due and owing under a Home Equity Line of Credit Account Agreement.

On June 17, 2003, the Greenes obtained title to condominium unit 23M (the "Unit") located at 280 Park Avenue South, New York, New York. In 2004, the Greenes obtained from Chase a $500,000 credit line secured by a mortgage of the Unit. On January 17, 2006, the Greenes conveyed their title to the Unit to June Furman Associates, LLC ("Furman"), which appears to be beneficially owned by the Greenes. Furman subsequently agreed to sell the Unit to Irina Berlin ("Berlin").

In connection with the anticipated purchase of the Unit, United General Title Insurance Company ("United"),[1] a title insurance underwriter, was engaged to prepare a title report (the "Title Report") on the Unit. United instructed its title agent, Royal Abstract of New York LLC ("Royal"), to prepare the Title Report pursuant to an agreement (the "Agency Agreement") into which Royal and United had entered on or about April 12, 1999. The complaint in the Indemnification Action asserts that Paragraph 3(l) of the Agency Agreement provides in pertinent part that:

> "[Royal] agrees to indemnify [United] for all loss, costs, or damages...which [United] may sustain or become liable for on account of...
>
> (ii) Any... grossly negligent act, or... grossly negligent omission by [Royal]...in connection with either:

[1] United is now First American Title Insurance Company.

> (a) The issuance of...an abstract of title, commitment, evidence of title or policy of the company, or
> (b) A closing by [Royal], its employees, or its agents of any transaction involving the issuance of a policy of the company..."

The Title Report failed to identify the Chase credit line, which Royal contends to have been paid off at the time the Title Report was prepared, but which was nonetheless left open. On or about September 11, 2007 (the "Closing Date"), Berlin and Furman closed on the sale of the Unit and Berlin acquired title to the Unit. On or about the Closing Date, Berlin purchased an owner's title insurance policy with respect to the Unit from United for $1,285,000.00. This policy insured against any non-disclosed mortgage liens of record and obligates United to provide a defense in the event of challenges to title.

In this foreclosure action, Chase alleges that the Greenes drew the credit line to the maximum of $500,000, and failed to repay the loan. The Greenes issued a general denial in their answer.

Berlin informed Royal and/or United of this action and her entitlement to a legal defense pursuant to the terms of her title insurance policy. Both United and Royal claim they have expended funds to provide a legal defense for Berlin.

On or about June 14, 2012, United commenced the Indemnification Action against Royal. In the Indemnification Action, United alleges that it has incurred damages as a result of Royal's gross negligence and breach of its obligations under the Agency Agreement in failing to disclose the existence of the Chase credit line secured by the Unit.

Royal now moves, by order to show cause, for an order permitting Royal to obtain discovery of the checks that the Greenes are alleged to have drawn on the Chase credit line which Royal maintains occurred after the sale of the Unit, permitting Royal to intervene in this

action as a defendant, or, in the alternative, permitting Royal to consolidate this action with the Indemnification Action. Royal argues that such an order is appropriate since Royal has a substantial interest in the outcome of this litigation, and the interests of judicial economy would be served by the consolidation of this action and the Indemnification Action.

In opposition, Chase argues that Royal's motion should be denied as there is no statute that authorizes intervention. Specifically, Chase argues that none of the sections of the Real Property Actions and Proceedings Law ("RPAPL") that relate to intervention in foreclosure actions are applicable. Specifically, Chase asserts that Royal does not qualify as a necessary defendant under RPAPL Section 1311 as Royal has no property interest in the Unit, and that Royal is not a permissible defendant under RPAPL Section 1313, since Royal is not directly liable to Chase for payment of the debt secured by the mortgage.

Chase further argues that are no questions of fact or law common to the instant action and the Indemnification Action, since this action concerns Chase's right to foreclose on the mortgage it holds, whereas the Indemnification Action relates to United's right to indemnification from Royal under the Agency Agreement. Chase also argues that it would be prejudiced if Royal was permitted to intervene as the issues involved in the Indemnification Action would complicate an otherwise straightforward foreclosure action, and, thus, delay it from obtaining relief. Additionally, Chase asserts that Royal's request to intervene should be denied since Royal has failed to submit a proposed pleading setting forth Royal's claim or defense as required by CPLR 1014.

With respect to Royal's request to consolidate, Chase argues that the motion should be denied as the two actions do not have common issues of law and fact and the consolidation of the two actions would prejudice Chase and unduly delay the resolution of this foreclose action.

Discussion

CPLR 1013 provides that:

> Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

Thus, in order to demonstrate a right to intervene in this action, Royal must show either e that intervention is authorized by statute or that it is asserting a defense in the Indemnification Action that shares common questions of law or fact with the present action. See Ocelot Capital Management, LLC v. Hershkovitz, 90 A.D.3d 464, 465 (1st Dept 2011). Moreover, in connection with a motion to intervene the court may also consider whether granting leave to intervene will result in prejudice or delay. Gladstein v. Martorella, 75 A.D.3d 465, 466 (1st Dept 2010).

Here, Royal has not shown that it is entitled to intervene in this action. First, Royal cites no statutes that support its claim for intervention, and, as Chase argues in opposition, none of the sections of the RPAPL that relate to intervention in foreclosure actions, apply here.

Royal has also failed to demonstrate that this court should exercise its discretion under CPLR 1013 to allow Royal to intervene in the present action on the ground that Royal's defense in the Indemnification Action and the claims in this action share a common issue of law or fact. Specifically, while in this action, Chase seeks to foreclose on a mortgage, the Indemnification Action concerns whether Royal can be held liable to United under the Agency Agreement for any damages incurred by United as a result of Royal's alleged failure to identify the Chase credit line. In other words, as the issues raised in the Indemnification Action are "neither material nor relevant to the resolution" of this foreclosure action, intervention should not be permitted. East Side Car Wash, Inc. v. K.R.K. Capitol, Inc., 102 A.D.2d 157, 160 (1st Dept), appeal dismissed,

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63 N.Y.2d 770 (1984). Furthermore, Royal's intervention in this action will unnecessarily complicate the issues in this foreclosure action, particularly as Royal will have an opportunity to litigate the issues related to its liability in the Indemnification Action. See Ocelot Capital Management, LLC v. Hershkovitz, 90 A.D.3d at 465 (trial court properly denied motion to intervene where party seeking intervention would have a "complicating effect on the [plaintiff's] action" and were prosecuting their claims in another action). In addition, Royal has failed to submit a proposed pleading setting forth its claim or defense, as required by CPLR Section 1014.

The next issue concerns Royal's request to consolidate the Indemnification Action with the present action for joint trial. When two or more actions are pending before the same court, they may be consolidated for joint trial, upon motion, if they involve "a common question of law or fact." CPLR Section 602(a). A determination as to whether to permit or deny a motion to consolidate rests in "the sound discretion of the court, and the court is given wide latitude in the exercise thereof." Inspiration Enters. v. Inland Credit Corp., 54 A.D.2d 839 , 839 (1st Dept 1976), appeal dismissed, 40 N.Y.2d 901 (1976)(internal citations omitted)..

Here, the court finds that the Indemnification Action should not be consolidated with the present action. As indicated above, the issues of fact and law to be determined in the two actions are different. The present action is a foreclosure action, primarily involving questions of title to real property and rights pursuant to a loan agreement, whereas the Indemnification Action concerns Royal's indemnification obligations pursuant to the terms of the Agency Agreement. Additionally, the actions involve entirely different parties. As such, Royal's motion for consolidation must be denied. See H. H. Robertson Co. v. New York Convention Ctr. Dev. Corp., 160 A.D.2d 524 (1st Dept 1990); Ventures Intl. v. Uppstrom, 166 A.D.2d 321 (1st Dept 1990).

Finally, to the extent Royal seeks discovery of checks written by the Greenes on the line of credit, such non-party discovery can be obtained in connection with the Indemnification Action. See CPLR 3120.

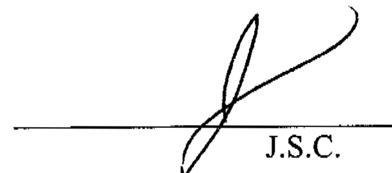
Conclusion

In view of the above, it is

ORDERED that Royal's motion to consolidate and to intervene is denied; and it is further

ORDERED that the parties to this action shall appear for a preliminary conference on May 30, 2012 in Part 11, room 351, 60 Centre Street, NY, NY.

Dated: May 7, 2013



J.S.C.

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