

Becker v Federal Home Loan Mtge. Corp.

2013 NY Slip Op 31817(U)

August 5, 2013

Sup Ct, New York County

Docket Number: 150838/12

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 150838/2012
BECKER, LARRY T.
vs
FEDERAL HOME LOAN MORTGAGE
Sequence Number : 003
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 8/15/13

Anil C Singh, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
LARRY T. BECKER and ILONA BECKER,

Plaintiffs,

-against-

FEDERAL HOME LOAN MORTGAGE
CORPORATION, et al.,

Defendant.
-----X

DECISION AND
ORDER

Index No.
150838/12

HON. ANIL C. SINGH, J.:

Defendant moves to dismiss the amended complaint pursuant to CPLR 327(a) on forum non conveniens grounds, contending that this lawsuit should not have been brought in New York because it pertains to a mortgage loan on real property located in Illinois. Plaintiffs oppose the motion.

Plaintiffs commenced this action by filing a summon and complaint on March 15, 2012. The amended complaint alleges as follows:

Plaintiffs Larry T. Becker and his wife Ilona Becker reside at 3415 Landstrom Road in Rockford, Illinois (Amended Complaint, para. 3). Larry Becker executed a note and mortgage on their Illinois real property, and Ilona Becker executed only the note (Id., para. 3A).

Defendant Federal Home Loan Mortgage Corporation (“Freddie Mac”)

purports to be the owner of a \$164,000 note and mortgage resulting from a refinancing of plaintiffs' home on May 29, 2009 (Id., para. 4). Freddie Mac is doing business in New York and has an office at 122 East 42nd Street in Manhattan. As part of the refinancing, the mortgage named Mortgage Electronic Registration Systems, Inc., as mortgagee, and at the closing, the loan was already part of a package of loans being securitized, under a pooling and servicing agreement.

Plaintiffs are current in making their loan payments. After commencing this action, plaintiff Larry Becker retired, and the plaintiffs are now financially unable to continue making the monthly loan payments based on the \$164,000 note and mortgage, and are in need of a loan modification agreement.

The amended complaint asserts four causes of action. The first cause of action seeks a declaratory judgment: 1) that defendant does not own the note and is not in the chain of title for the note; and 2) recovery of note payments made to defendant. The second cause of action is for fraud. The third cause of action is for reformation of the note. The fourth cause of action alleges that defendant manipulated securities and real estate markets causing frustration of plaintiffs' performance under the note.

CPLR 327(a) states:

When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any

party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

The conveniens doctrine is one of judicial discretion “to be exercised by reviewing and evaluating all the pertinent competing considerations,” which include among other things the burden on the court, the hardship to the defendants that an action in New York would entail, and the availability of a reputable forum (Varkonyi v. S.A. Empresa de Viacao A.R.G., 22 N.Y.2d 333, 337-8 [1968]).

Upon balancing the relevant factors, the Court finds that defendant has met its heavy burden to demonstrate that plaintiffs’ forum selection for litigation is not in the interest of substantial justice (Islamic Republic of Iran v. Pahlavi, 62 N.Y.2d 474, 479 [1984], cert denied 469 U.S. 1108 [1985]). Plaintiffs reside in Illinois. The note and mortgage are secured by real property located in Illinois. Moreover plaintiffs have an alternative in their home state of Illinois.

That defendant allegedly has a business location in New York, and that plaintiffs’ note and mortgage were eventually securitized by a pooling and servicing agreement allegedly executed in New York, are insufficient to create a “factual connection between New York and the dispute” (Ziska v. Bank of America., N.A., 99 A.D.3d 602 [1st Dept., 2012]). In the absence of a substantial nexus to New York, it would be a burden on this Court to permit this litigation to continue here

(see, for example, Brunelle v. Federal National Mortgage Association, 2012 WL 5815729 [Sup. Ct., N.Y. Co., 2012]).

Accordingly, it is


ORDERED that the motion of defendant to dismiss this action on the ground that New York is an inconvenient forum is granted on condition that defendant stipulates to accept service of process in the event that this action is commenced in Illinois; and it is further

ORDERED that, within 30 days from service of a copy of this order with notice of entry, defendant shall file proof of compliance with the above condition with the Clerk of the Part and with the County Clerk (Room 141B), together with a copy of this order with notice of entry and proof of service of the foregoing on counsel for plaintiffs; and it is further

ORDERED that, upon the timely filing of the foregoing, the County Clerk shall enter judgment dismissing the action.

The foregoing constitutes the decision and order of the court.

Date: 8/15/13
New York, New York



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE