

Bank of Am., N.A. v Snyder
2013 NY Slip Op 34176(U)
June 26, 2013
Supreme Court, Kings County
Docket Number: 13402/12
Judge: Ellen M. Spodek
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At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 26th day of June, 2013.

P R E S E N T:

HON. ELLEN M. SPODEK,
Justice.

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BANK OF AMERICA, N.A., Successor by Merger
to BAC HOME LOANS SERVICING, L.P., f/k/a
COUNTRYWIDE HOME LOANS SERVICING, L.P.,

Plaintiff,

- against -

YAFFA SNYDER a/k/a JAFFA SNYDER,
SHABBIR MOHAMMAD and
3028 BRIGHTON 8 ST. RAINSPRING, LLC,

Defendants.
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DECISION/ORDER/JUDGMENT

Index No. 13402/12

Mot. Seq. No. 1, 2

The following papers numbered 1 to 9 read herein:

Papers Numbered

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>1-3; 4-6</u> _____
Opposing and Reply Affidavits (Affirmations) _____	<u>7-8</u> _____
Memorandum of Law _____	<u>9</u> _____

In this action to quiet title to residential real property, the following motion and cross motion are resolved as follows.

Request for a Default Judgment Against Snyder

In sequence No. 1, the branch of the motion of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P., formerly known as Countrywide Home Loans Servicing, L.P. (BANA), for a default judgment against Yaffa Snyder, also known as

Jaffa Snyder, is granted. According to the Jan. 10, 2012 affidavit of Terry Love, a litigation specialist with BANA, BANA has been in physical possession of the underlying note since 2009 (*i.e.*, before the inception of this action) (§ 7).¹ In addition, BANA obtained the rights to the underlying mortgage by assignment dated June 8, 2012, which was 20 days before the inception of this action. Thus, BANA has standing to commence this action. The merits of plaintiff's claim, insofar as asserted against Mr. Snyder, are established by the Dec. 12, 2012 affidavit of Donlita Cloud, Assistant Vice President, Operations Team Lead of Bank of America, N.A.² Service of process on Mr. Snyder is established by the Aug. 14, 2012 affidavit of licensed processed server Ben Cohen.³ In addition, service of the instant motion on Mr. Snyder is established by the Jan. 3, 2013 affidavit of Joel Jean. Mr. Snyder has not answered or otherwise appeared in this action. Accordingly, BANA is granted a default judgment as against Yaffa Snyder, also known as Jaffa Snyder.

Request for a Default Judgment Against Rainspring LLC

In sequence No. 1, the remaining branch of BANA's motion for a default judgment against 3028 Brighton 8 St. Rainspring, LLC (Rainspring LLC) is denied. It is undisputed that, before the inception of this action, Rainspring LLC acted as an intermediary in the

¹ The Court takes judicial notice of Ms. Love's affidavit which was filed with County Clerk in connection with the Court's Jan. 14, 2013 decision and order in a related action of *Snyder v M.E. Registration Systems, Inc.*, index No. 24846/10 (Sup Ct, Kings County).

² Although the affidavits of Ms. Cloud as well as the affidavit of Ms. Love were executed in Texas and are not accompanied by a certificate of conformity as required by CPLR 2309 (c), the requirement of certification may be dispensed with where, as here, the person administering the oath for the out-of-state affidavits is a notary (*see JPMorgan Chase Bank, N.A. v S.I. Wood Furniture Corp.*, 34 Misc 3d 1214[A], 2012 NY Slip Op 50074[U] [Sup Ct, Kings County 2012] [collecting authorities]).

³ See Exhibit H to BANA's motion.

initial conveyance of the underlying property from Mr. Snyder to Rainspring LLC and in the subsequent conveyance of the underlying property from Rainspring LLC to Shabbir Mohammed. Thus, at the inception of this action, Rainspring LLC possessed no right, title, or interest in or to the underlying property. Moreover, Rainspring LLC was never a party to the related action of *Snyder v M.E. Registration Sys., Inc.*, index No. 24846/10 (Sup Ct, Kings County).⁴ Thus, insofar as Rainspring LLC is concerned, BANA cannot claim that Rainspring LLC should “be barred from all claims to any estate or interest in the [underlying property] . . . adverse to or in derogation of [the underlying] mortgage” and “be enjoined and restrained from selling, mortgaging, encumbering or transferring [the underlying property] and from interfering with [the underlying] mortgage. . . . (Complaint, “Wherefore” clauses [a] and [c]). Moreover, Rainspring LLC was never an obligor on the underlying loan. Hence, BANA cannot claim, as against Rainspring LLC, that BANA “has a valid and existing . . . mortgage . . . encumbering the [underlying property]. . . .” (Complaint, “Wherefore” clause [b]).

Request for a Bona Fide Purchaser Status

In sequence No. 2, Mr. Mohammed’s motion which is, in effect, for summary judgment on his counterclaim against BANA for a declaration that his title to the underlying property is superior to the underlying mortgage (now held by BANA) is denied with leave

⁴ In the *Snyder* action, the underlying mortgage was invalidated by order, on default, dated Feb. 14, 2011. The default order was subsequently vacated by decision and order, dated Jan. 14, 2013. See Exhibit A to BANA’s motion for a copy of the Feb. 14, 2011 default order. See Exhibit A to BANA’s affirmation in opposition for a copy of the Jan. 14, 2013 decision and order.

to renew within sixty days after the completion of discovery and the filing of a note of issue.⁵ Triable issues of material fact exist as to whether Mr. Mohammed was a bona fide purchaser for value, given (1) the discrepancy between what he paid for the underlying property (\$160,000) in 2011 and what Mr. Snyder paid for the same property (\$700,000) about five years prior, and (2) the lack of any admissible evidence indicating that Mr. Mohammad's purchase price for the underlying property (\$160,000) was fair, considering, *inter alia*, that Mr. Mohammed's own moving papers suggest that the underlying property had a market value of \$548,000 in 2012⁶ (*see Beltway Capital, LLC v Soleil*, 104 AD3d 628, 631-632 [2d Dept 2013]).

Miscellaneous Matters

It appears that some explanation of the wording of the conclusion in the Court's Jan. 14, 2013 decision and order entered in the related action of *Snyder v M.E. Registration Sys., Inc.*, index No. 24846/10 (Sup Ct, Kings County), is necessary. In particular, the Jan. 14, 2013 decision and order concluded (at page 3):

“Therefore, both of the non-party motions to intervene are moot.
Non-party BANA's *motion to vacate the court order is granted.*
It is hereby,

⁵ No copy of Mr. Mohammad's answer to BANA's complaint and BANA's reply to his counterclaim are annexed to his cross motion, in derogation of CPLR 3212 (b).

⁶ Mohammad avers (in ¶ 21 of his Mar. 8, 2013 affidavit) that “[t]he Court should . . . take judicial notice of the sale prices for houses in the surrounding area. According to an online search, it appears that houses in the surrounding area have sold for \$125,000 on 1/31/13, \$171,400 on 6/19/12, \$175,750 on 9/12/12 and \$243,000 on 11/9/12. (See a printout annexed to the Lederman Aff. as Exhibit ‘L’)” (emphasis omitted). However, Exhibit L, which is a two-page print-out from www.trulia.com, says nothing of the sort. It does not reference any of the aforementioned sales. Rather, it states that the 2012 market value of the underlying property was \$548,000, at least for real estate tax purposes.

ORDERED, that the court order issued on February 14, 2011 is *sua sponte* vacated. . . ." (emphasis added).

There is no inconsistency between the Court granting the branch of BANA's motion which was to vacate the Feb. 14, 2011 default order and the Court concurrently exercising its *sua sponte* powers to vacate the remainder of the Feb. 14, 2011 default order. The Feb. 14, 2011 default order canceled two mortgages: the first was the underlying mortgage (now held by BANA); the second was a subordinate mortgage held by National City Bank. Insofar as the underlying mortgage was concerned, the Court granted the branch of BANA's motion which was to vacate the Feb. 14, 2011 default order that had canceled the underlying mortgage. Significantly, BANA did not move to vacate the remaining portion of the Feb. 14, 2011 default order that had canceled the National City Bank mortgage. Hence, the Court, in exercising its *sua sponte* powers, concurrently vacated the remainder of the Feb. 14, 2011 default order insofar as it canceled the National City Bank mortgage.

Lastly, the Court notes that the docket in yet another (and also related) action of *Countrywide Home Loans, Inc. v Snyder*, index No. 10840/08 (Sup Ct, Kings County), needs to be supplemented. In particular, the docket in the aforementioned action reflects the entry of the Feb. 14, 2011 default order but fails to reflect the subsequent entry of the Court's Jan. 14, 2013 decision and order in the *Snyder* action under index No. 24846/10, which decision and order vacated the Feb. 14, 2011 default order. Accordingly, the County Clerk

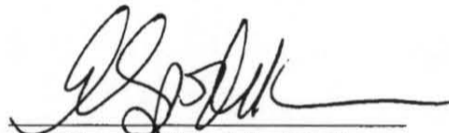
is directed to add the following notation to its records for *Countrywide Home Loans, Inc. v Snyder*, index No. 10840/08:


Order discontinuing action, canceling notice of pendency
ORDER FILED UNDER # 24846/10 vacated by DECISION
AND ORDER dated 1/14/13 and FILED 3/5/13
UNDER # 24846/10.

The remaining parties (BAMA and Shabbir Mohammad) shall appear for a preliminary conference in the PCP at 360 Adams Street, Room 282, on July 30, 2013, at 9:30 A.M.

The foregoing constitutes the decision, order, and judgment of the Court.

E N T E R,


Ellen M. Spodek, J.S.C.


2013 JUL 10 AM 9:13
COUNTY CLERK
FILED