

U.S. Bank N.A. v Courtney

2014 NY Slip Op 30517(U)

February 28, 2014

Supreme Court, New York County

Docket Number: 103713/08

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: MADDEN
Justice

PART 11

U.S. BANK NATIONAL ASSOCIATION

INDEX NO. 103713/08

MOTION DATE _____

- v -
TODD COURTNEY, ET AL.

MOTION SEQ. NO. 08

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is determined in accordance with the annexed decision and order.*

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Dated: February 28, 2014

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

-----X

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR GSAA HOME EQUITY TRUST 2007-7, ASSET-
BACKED CERTIFICATES, SERIES 2007-7,

INDEX NO. 103713/08

Plaintiff,

-against-

TODD COURTNEY A/K/A TODD A. COURTNEY, NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY TRANSIT ADJUDICATION BUREAU,
NEW YORK STATE DEPARTMENT OF TAXATION
AND FINANCE, THE BOARD OF MANAGERS OF THE
CHADWIN HOUSE CONDOMINIUM, WELLS FARGO
BANK, N.A.,

Defendants.

-----X

JOAN A. MADDEN, J.:

This is defendant Todd Courtney's second application for an order staying the foreclosure sale to afford him an opportunity to enter into a loan modification agreement with plaintiff. The first application was denied by a decision and order dated July 1, 2013.

On August 20, 2013, this court signed defendant Courtney's instant order to show cause seeking to stay the foreclosure sale scheduled for August 21, 2013, to vacate plaintiff's "default judgment of foreclosure and sale," and to enter a HAMP Loan Modification Agreement with plaintiff "based on new financials." In support of the order to show cause, defendant Courtney submitted an affidavit that he is "committed to doing a HAMP Loan Modification Agreement

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with the Bank and have family members who have committed to making available to me funds in the amount of \$57,250.00 to bring my principal balance down to the ceiling amount of \$729,750.00 which would qualify me for a HAMP Loan Modification Agreement.” Defendant Courtney also states that he “ was “never personally served with a copy of the Summons and Complaint,” and “never received a copy of the Summons and Complaint.” He further states that “[a]lthough I had been communicating regularly with representative from Wells Fargo, the mortgage servicer, I only learned of the foreclosure action when my attorney, Richard T. Sules had done an on line search to check the property address and ascertained that in fact a foreclosure action had been brought against my condominium unit and that a Default Judgment had been entered against me.”

The court’s August 20, 2013 order directed plaintiff to provide defendant Courtney by August 28, 2013, “a written statement of the documentation it requires for consideration of Mr. Courtney’s request for HAMP Modification,” and directed defendant Courtney “to comply with such request by September 12, 2013.” The court also directed defendant Courtney “to escrow with his attorney by September 4, 2013, \$57,250 to be used towards paying down the principal in the event of a HAMP modification.”

On September 27, 2013, the parties appeared before this court and the court issued an order directing plaintiff to provide an affidavit based on personal knowledge that defendant Courtney was not eligible under HAMP Guidelines based on the debt to income ratio, even if the sum of \$57,250 were applied to the principal. Plaintiff submitted an affidavit dated September 29, 2013, from Thomas Wayne, Vice President of plaintiff Wells Fargo Bank, N.A., stating that

the “target debt to income ratio for a HAMP modification is 31% which must also include taxes, insurance, home owner association dues and any escrow shortage,” and that “31% of Mr. Courtney’s gross monthly income of \$8,917.00 is \$2,764.27.” He states that the “current Unpaid Principal Balance is \$787,000.00 with \$355,616.99 in outstanding costs,” and of that “\$4,619.04 would be waived for a modified Unpaid Principal Balance of \$1,137,997.95.” He states that if Mr. Courtney’s deposit of \$57,250.00 were “applied to he principal balance owing on this loan, the modified principal balance would be \$1,080,747.95.” Wayne concludes that a “modified mortgage payment, inclusive of taxes, insurance, homeowners association dues and any escrow shortages, of \$2,764.27 would not be possible with a modified principal balance of \$1,108,747.95.”

In view of plaintiff’s foregoing affidavit, the court is constrained to find that plaintiff has made a sufficient showing that Courtney does not qualify for HAMP modification, and thus, no basis exists for continuing the stay of the foreclosure sale. In reaching this conclusion, the court notes that the parties have appeared numerous times in connection with this proceeding and despite the court’s efforts, a resolution was unable to be reached.

As to the jurisdictional defense, Mr. Courtney asserts this defense for the first time in his affidavit dated August 19, 2013, submitted in support of the instant motion. Mr. Courtney initially appeared in this action pro se and actively participated in numerous appearances before this court. Under these circumstances, the court concludes that defendant Courtney has waived any objection to personal jurisdiction. See Taveras v. City of New York, 108 AD3d 614 (2nd Dept 2013); Finn v. Church for Art of Living, Inc, 90 AD2d 826 (2nd Dept 2011); Ambers v. C.T.


Industries, 161 AD3d 256 (1st), app dism 76 NY2d 888 (1990).

Accordingly, it is

ORDERED that the motion is denied in its entirety, and the stay of the foreclosure sale is lifted forthwith.

DATED: February 28, 2014

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J.S.C.

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