

Emigrant Mtge. Co. v Commonwealth Land Tit.

2014 NY Slip Op 30622(U)

March 10, 2014

Supreme Court, New York County

Docket Number: 153150/12

Judge: Joan M. Kenney

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
J.S.C.
Justice

PART 8

Index Number : 153150/2012
EMIGRANT MORTGAGE COMPANY,
vs.
COMMONWEALTH LAND TITLE
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT



INDEX NO. 153150/12
MOTION DATE 4/10/13
MOTION SEQ. NO. 002

The following papers, numbered 1 to 17, were read on this motion to/for Sj motion

Notice of Motion/Order to Show Cause — Affidavits — Exhibits memo 7 LAW | No(s). 1-7

Answering Affidavits — Exhibits Opp + X motion + memo 7 LAW | No(s). 8-14

Replying Affidavits + Opp w X motion + memo 7 LAW | No(s). 15, 16
Reply w X motion | 17

Upon the foregoing papers, it is ordered that this motion is

In this breach of contract action, defendant, Commonwealth Land Title Insurance Company (Commonwealth), seeks an Order, pursuant to CPLR 3212, dismissing the complaint. Plaintiff, cross-moves for an Order, pursuant to CPLR 3212, for judgment in its favor.

It is alleged in the Amended Complaint that on or about March 10, 2008, plaintiff, Emigrant Mortgage Company, Inc., (Emigrant), in connection with a loan made to Sean Hudson (Hudson) was granted a mortgage (Mortgage), for property located at 187-17 119 Drive, St. Albans, New York 11412 (the Premises). In connection with the Mortgage, Emigrant engaged Commonwealth to, inter alia, obtain and provide title insurance for the Mortgage. Emigrant purchased title insurance from Commonwealth and was issued policy number K57-0120247 (the insurance policy). It is further alleged that the title insurance purchased from Commonwealth insured that the Mortgage was a valid first priority lien against the Premises. However, on or about September 1, 2008, when Hudson

Dated: MARCH 10, 2014

[Signature], J.S.C.
JOAN M. KENNEY
J.S.C.

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

- 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

pg 195

*2] defaulted in repayment of the loan to Emigrant, a foreclosure search was done and it was discovered that there were various title defects which prevented Emigrant from foreclosing on the Mortgage.

Specifically, plaintiff avers that at the time of the Mortgage, Hudson gained title to the Premises by a deed from the heirs of Dillard Matthews, Jr. and that said deed was a "no consideration" deed. Plaintiff also discovered that the deed by which Hudson gained title to the Premises was not issued by all the heirs of Dillard Matthews, Jr. as listed in the administration petition in the estate proceeding of Dillard Matthews, Jr. in the Surrogate's Court, County of Queens under File No. 2008-2595/B (Estate Proceeding).

On or about October 5, 2009, Emigrant initiated title claim process with Commonwealth raising both the outstanding lien issue, as well as the issue of the deficient Grantor heirs. To address Emigrant's claim, Commonwealth retained defendants, Robert J. Hopp Associates, LLC and The Hopp Law Firm, LLC (the Hopp Firm) to represent Emigrant in an action to quiet title to the Premises on behalf of Emigrant and on or about April 26, 2010, the Hopp Firm filed a complaint in the Supreme Court of the State of New York, County of Queens under Index No. 11016/10 (the Quiet Title Action).

On or about June 13, 2011, the Surrogate's Court, County of Queens issued a decision voiding the deed to Hudson as it appears that none of the persons that executed the deed to Hudson for the Premises were the legitimate next-in-line heirs to the Estate. Thereafter, by letter dated October 4, 2011, Commonwealth denied Emigrant's title insurance claim.

Plaintiff claims that it entered into a binding agreement with Commonwealth when Emigrant purchased title insurance from Commonwealth, that the agreement was supported by valuable consideration and that by denying Emigrant's title claim, Commonwealth intentionally breached this agreement because Plaintiff contends that the title defects existed when Commonwealth issued the

title policy covering the Premises in the first instance. Plaintiff asserts that Commonwealth failed to properly determine, at the time of the issuance of the title insurance policy, that the deed to Hudson was improper due to existence of heirs who had priority interest to the Premises. Plaintiff now seeks damages against Commonwealth alleging that Commonwealth breached the contractual agreement to investigate the chain of title for the Premises - the very purpose for which Commonwealth was retained (1st cause of action).

Commonwealth generally denied the allegations in the complaint and interposed the following affirmative defenses seven (7) affirmative defense and the following two counterclaims: (1) breach of contract against plaintiff for failure to promptly notify movant of the Estate Proceeding; and (2) a claim for indemnification against the Hopp Firm.

Movant contends that summary judgment dismissing the complaint must be granted because plaintiff failed to notify defendant of the Estate Proceeding pending in Surrogate Court and only notified defendant movant *after* the Surrogate Court's decision declaring the deed to the mortgagee void. In accordance with the parties' policy, Section 3 of the Conditions and Stipulations of the Policy states, in pertinent part, that Notice of Claim must be provided by the insured claimant. In this case, movant asserts that said notification was not provided.

Although movant failed to submit a copy of the pertinent insurance policy, plaintiff did submit said copy in its Notice of Cross motion, Exhibit "B" to the cross motion papers. Defendant argues that because it was unaware of the pending litigation in Probate Court, it could not properly defend itself against the Estate Petition wherein the Court declared the pertinent deed to be invalid. Based upon the lack of timely notice, defendant denied plaintiff's claims.

In opposition to defendant's herein application for dismissal, plaintiff, contends that defendant was notified of the Estate Proceeding as it was the very reason why plaintiff initiated the

Quiet Title Action - to defend the title and plaintiff's interest in connection with the title claim. The fact that defendant was

Here, it is undisputed that plaintiff provided defendant with notice of the Estate Proceeding. Defendant, however, contends that any such notification was essentially too late as they were notified of the Estate Proceeding after the Quiet Title Action was commenced and after the Probate Court made a determination as to the validity of the deed, thus prejudicing defendant's right to litigate the matter. It is unclear, however, based on the submitted papers, when exactly defendant was made aware of the Estate Proceeding. Plaintiff asserts that defendant was notified of the Estate Proceeding when the Quiet Title Action was commenced and defendant avers that it was notified after the Probate matter had concluded. In any event, the failure to comply with a condition precedent to insurance coverage, may be proper grounds for denying plaintiff's claim. However, the breach of this condition precedent addresses whether or not defendant properly denied the claim and fails to address whether or not moving defendant failed to perform its agreed upon duty to investigate the chain of title at the time it issued the policy upon which plaintiff relied before making the mortgage loan to Hudson. In fact, moving defendant fails to rebut (with admissible evidence and/or an affidavit from someone with personal knowledge of the facts) plaintiff's argument for judgment respecting defendant's failure to perform the agreed upon duty to investigate the chain of title for the Premises.

Based upon the foregoing, it is hereby

ORDERED that defendant's motion for summary judgment is denied, as a factual dispute exists regarding when defendant was notified and/or had actual knowledge of the Estate Proceeding; and it is further

ORDERED that plaintiff's cross motion for summary judgment on its breach of contract claim defendant, Commonwealth Land Title Insurance Company's failure to perform the agreed

upon duty to investigate the chain of title at the time it issued the policy upon which plaintiff relied before making the mortgage loan to Hudson, is granted, in as much as defendant failed to address the merits of this claim; and it is further

ORDERED that judgment is granted, on the issue of liability respecting the breach of contract claim (1st cause of action), in favor of plaintiff and against defendant, Commonwealth Land Title Insurance Company; and it is further

ORDERED that the parties proceed to mediation/trial, forthwith.


3/10/14

JOAN M. KENNEY
J.S.C.