

**JP Morgan Chase Bank, N.A. v 1215 Church Ave.
LLC**

2014 NY Slip Op 32376(U)

August 12, 2014

Supreme Court, Kings County

Docket Number: 503801/2013

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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JP MORGAN CHASE BANK, N.A., As Assignee of
FEDERAL DEPOSIT INSURANCE CORPORATION,
Acting in its receivership capacity as receiver
of WASHINGTON MUTUAL BANK,

Plaintiff, Decision and order

- against -

Index No. 503801/13

1215 CHURCH AVENUE LLC, NEW YORK CITY
PARKING VIOLATIONS BUREAU, JP MORGAN
CHASE BANK, N.A., NYC CRIMINAL COURTS,
AND "JOHN DOE NO. 1" THROUGH "JOHN DOE NO. 100",
defendants being fictitious and unknown to
plaintiff but intended to be parties who
are occupants, persons-in-possession,
tenants or parties having or claiming an
interest in, or lien upon the real property
referred to as 1215 Church Avenue Brooklyn,
New York and more particularly described
in the Complaint,

Defendants, August 12, 2014

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking summary judgement and an order of reference concerning property located at 1215 Church Avenue in Kings County. The defendant 1215 Church Avenue LLC through its principal Sharmin Karim opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

This lawsuit concerns a mortgage foreclosure action regarding property located at 1215 Church Avenue in Kings County. On May 12, 2000 Mr. Karim purchased the above noted two family property. On May 7, 2007 the defendant refinanced the original

mortgage and executed a guaranty to Washington Mutual Bank. That loan was purchased by the current plaintiff pursuant to a purchase and assumption agreement dated September 25, 2008. Following the defendant's failure to make timely monthly payments a summons and complaint seeking foreclosure followed. This motion seeking summary judgement and an order of reference have been filed. The defendant essentially presents two arguments why the motion should be denied. First, they argue they were fraudulently induced by Washington Mutual. Moreover, they argue the plaintiff does not maintain standing to pursue the action. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

Conclusions of Law

Concerning standing it is well settled that a mortgage may not be foreclosed unless the plaintiff maintains a legal or equitable interest in the mortgage (Wells Fargo Bank N.A., v. Marchione, 69 AD3d 204, 887 NYS2d 615 [2d Dept., 2009]). Thus, for a plaintiff to establish standing it must be demonstrated that the plaintiff was both (1) the holder or assignee of the subject mortgage and (2) the holder or assignee of the underlying note, either by physical delivery or execution of a written assignment prior to the commencement of the action with the

filing of the complaint (see, U.S. Bank, N.A. v. Collymore, 68 AD3d 752, 890 NYS2d 578 [2d Dept., 2009]).

There is no dispute between the parties that the mortgages were initially the property of Washington Mutual Bank. Further, there is no dispute that pursuant to Section 11(d)(2)(G)(i)(II) of the Federal Deposit Insurance Act, 12 USC §1821(d)(2)(G)(i)(II), JPMorgan Chase through the Federal Deposit Insurance Corporation as receiver of Washington Mutual through a Purchase and Assumption Agreement dated September 25, 2008 acquired "all of Assignor's right, title and interest in and to the following documents" namely the loan that is the subject of this lawsuit (see, Affidavit of Mary Hollingsworth on behalf of plaintiff as Attorney in Fact for the FDIC as Receiver of Washington Mutual Bank). Rather East River Mortgage Corp., argues that JPMorgan Chase still has failed to establish standing. Thus, the plaintiff has established standing. The case of FTBK Investor II LLC v. Mercy Holding LLC et al., 36 Misc3d 1219(A), 959 NYS2d 89 [Supreme Court Kings County 2012] does not demand a contrary result. That case held that even though the plaintiff there assumed the loans of Washington Mutual pursuant to the FDIC agreement it could not establish standing unless it could provide "testimony from an individual with personal knowledge stating the circumstances in which the note and mortgage were delivered to" the plaintiff before the

commencement of the action (id). However, that requirement is only applicable where there is no other evidence of a valid assignment. Thus, in Citimortgage Inc., v. Stosel, 89 AD3d 887, 934 NYS2d 182 [2d Dept., 2011] the court held the plaintiff can establish standing by proving "how or when it became the lawful holder of the note either by delivery or valid assignment of the note to it" (id). Therefore, a written assignment of a note obviates the need to provide details concerning its physical delivery (Bank of New York Mellon v. Gales, 116 AD3d 723, 982 NYS2d 911 [2d Dept., 2014] "Here, the evidence submitted by the plaintiff in support of its motion did not demonstrate that the note was physically delivered to it prior to the commencement of the action, and the plaintiff similarly failed to submit a written assignment of the note"). Indeed, in a subsequent decision in that case dated April 22, 2014 (FTBK Investor II LLC v. Mercy Holding LLC et al.,) the same court held the plaintiff had standing because the Purchase and Assumption Agreement (PAA) "was the written instrument by which the loan was assigned" (id). As the court held in Beka Realty LLC v. JPMorgan Chase Bank N.A., 41 Misc3d 1213(A), 980 NYS2d 274 [Supreme Court Kings County 2013] "thus, by virtue of the PAA, Chase became the assignee of the Note and Mortgage" (id).

Therefore, as a matter of law JPMorgan Chase was the holder of the note concerning the property when the action was commenced

and had the requisite standing to commence the action.

Concerning the fraud argument, even if the allegations are true, they cannot bar the foreclosure here since the defendant is estopped from asserting such claims pursuant to 12 USC §1823(e) commonly known as the D'Onch Doctrine (see, LibertyPointe Bank v. 125th LLC, 2013 WL 582254 [Supreme Court New York County 2013]). In any event, there is no evidence to support the allegations of fraud sufficient to defeat this motion.

Therefore, the motion seeking summary judgement and an order of reference is granted. The order of reference will be issued separately.

So ordered.

ENTER:

DATED: August 12, 2014
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC


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