

Nationwide Equities Corp. v Bauco
2014 NY Slip Op 33471(U)
May 30, 2014
Supreme Court, Westchester County
Docket Number: 60161/13
Judge: Linda S. Jamieson
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Disp ___ Dec x Seq. #s 1-3 Type misc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X
NATIONWIDE EQUITIES CORP.,

Index No. 60161/13

Plaintiff,

DECISION AND ORDER

-against-

ANTOINETTE BAUCO, MARIA CIULLO, ONE
WEST BANK, N.A., INDYMAC MORTGAGE
SERVICES, a Division of One West Bank,
N.A., MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, Inc., as nominee for INDYMACK
BANK, F.S.B., SHEBA TRUST COMPANY, et
al.,

Defendants.

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The following papers numbered 1 to 9 were read on these motions:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavits, Affirmation and Exhibits ¹	1
Memorandum of Law	2
Notice of Cross-Motion, Affidavit and Exhibits	3
Memorandum of Law	4
Memorandum of Law	5
Notice of Cross-Motion, Affirmation and Exhibits	6
Affirmation and Exhibits in Opposition	7
Memorandum of Law	8
Reply Affirmation and Exhibits	9

¹Exhibits must be tabbed. Counsel is directed to review the Part Rules.

The Court has three motions before it in this action to quiet title. There are two lenders involved in this case: plaintiff, and defendant OneWest Bank, FSB² and Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for IndyMac Bank, F.S.B. ("IndyMac"). There are two borrowers involved in this case: defendants Bauco and Ciullo. It is not clear from these papers what the relationship between Bauco and Ciullo is, if any. There are also two loans involved in this case. The first loan was made by MERS as nominee for IndyMac to Bauco in 2006. The second loan was made by plaintiff to defendant Ciullo in 2012. This action by plaintiff, the second lender, seeks to determine that the 2006 mortgage made by defendant Bauco was validly satisfied and discharged.

The first motion before the Court is filed by OneWest Bank, FSB and MERS as nominee for IndyMac (collectively, the "Bauco Mortgage Holders"). It seeks to dismiss the complaint or, in the alternative, summary judgment dismissing the complaint. The second motion, filed by plaintiff, seeks (1) to deny the motion filed by the Bauco Mortgage Holders (which is not a proper subject for a motion) and (2) leave to amend the complaint. The third motion, filed by defendants Bauco and Ciullo, seeks only to have both motions denied without prejudice to renewal after the

²This entity was erroneously sued as One West Bank, N.A. and IndyMac Mortgage Services, a Division of One West Bank, N.A.

completion of discovery. (Again, this is not a proper basis for relief in a motion.)

The following facts are undisputed. Bauco borrowed \$320,000 in November 2006 from IndyMac and gave it a mortgage on her home (the "Baucu Mortgage"). In 2008, the Office of Thrift Supervision closed IndyMac and all of its assets were eventually transferred to OneWest Bank. In April 2012, Ciullo bought the property from Bauco, borrowed over \$260,000 from plaintiff, and issued plaintiff a reverse mortgage encumbering the premises.

It is also undisputed that in March 2012, just before Ciullo's transaction with plaintiff, a purported Discharge of the Baucu Mortgage by IndyMac - which, at that point, no longer existed - signed by a man named Bruce A. Lewis, and dated February 14, 2012, was recorded with the Westchester County Clerk. The Baucu Mortgage Holders swear, in no uncertain terms, that Lewis did not have, and never had, any position with them, or with any company or entity affiliated with them. In short, the Baucu Mortgage Holders swear that Lewis was an imposter³ with no binding authority whatever to execute the Discharge. (They also point out numerous flaws in the purported Discharge of Mortgage, recitation of which is not necessary here.) There does

³This appears to be a pattern for Lewis. The Baucu mortgage holders point to another Westchester County Supreme Court action in which Lewis forged similar Discharge of Mortgage documents. In that case, the Court vacated those documents. Moreover, a cursory Google search discloses that at least one title company has put out a warning memorandum about Lewis and his ilk.

not appear to be any dispute that the Bauco Mortgage was never paid off.

The Bauco Mortgage Holders argue that because the Discharge of the Bauco Mortgage was fraudulent, the Bauco Mortgage was never actually discharged. They thus conclude that plaintiff, which is seeking a judgment that the Bauco Mortgage was satisfied and discharged, cannot succeed in this action under any circumstances and, accordingly, that the complaint should be dismissed.

Plaintiff asserts that it relied on the Discharge of Mortgage, as set forth in a title report, and only made the loan to Ciullo because it believed that the Bauco Mortgage had been discharged. Whether it was reasonable for plaintiff to have done so or not is a question of fact that cannot be ignored on these motions. While the Bauco Mortgage Holders may ultimately be correct that the Discharge was indeed fraudulent (and thus the Bauco Mortgage will be reinstated), the Court cannot make that determination at this juncture.

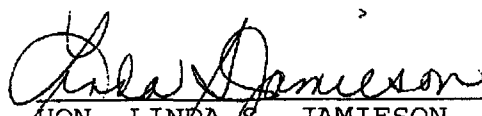
Accordingly, the Court denies the Bauco Mortgage Holders' motion, and grants plaintiff's motion to amend the complaint. *Lui v. Town of East Hampton*, --- N.Y.S.2d ----, 2014 WL 1797660 (2d Dept. May 7, 2014). Plaintiff must serve its amended complaint within five business days of receipt of this Decision and Order. The Court notes that although the company that Lewis

may be affiliated with, Sheba Trust Company, is a defendant,
Lewis himself is not.

The parties are directed to appear for a Preliminary
Conference in the Preliminary Conference Part on July 14, 2014 at
9:30 a.m.

The foregoing constitutes the decision and order of the
Court.

Dated: White Plains, New York
May 30, 2014


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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