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| National City Bank v Ghaness |
| 2015 NY Slip Op 31227(U) |
| July 13, 2015 |
| Supreme Court, Queens County |
| Docket Number: 18982/09 |
| Judge: Allan B. Weiss |
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MEMORANDUM

SUPREME COURT QUEENS COUNTY
CIVIL TERM PART 2

NATIONAL CITY BANK

Plaintiff,

-against-

LATCHMAN GHANESS, ET AL

Defendants.

HON. ALLAN B. WEISS

Index No: 18982/09

Motion Date: 4/21/15

Motion Seq. No.: 4

Plaintiff commenced this action to reform, nunc pro tunc, the mortgage recorded against real property known as 184-20 90th Avenue, Hollis, New York to include the legal description for the premises and to foreclose the mortgage as reformed. The mortgage was given by defendant Latchman Ghaness as security for payment of a promissory note in the principal amount of \$228,000.00 plus interest.

Plaintiff made an ex-parte application for an order of reference, and by order dated January 6, 2010, the application was granted, appointing a referee to compute and ascertain the sums due and owing plaintiff, and examine and report whether the mortgaged premises can be sold in one parcel. Thereafter, defendant Latchman Ghaness served an answer dated January 12, 2010 in a self-represented capacity, which was rejected by plaintiff as untimely served. Defendant Latchman Ghaness then obtained counsel who served a notice of appearance on his behalf on September 30, 2010. On June 20, 2013, defendant First

Franklin Financial Corporation served a notice of appearance, and then, on September 24, 2013, served an answer which was rejected by plaintiff as untimely on October 1, 2013.

The Referee appointed pursuant to the order of reference, executed an oath and issued a report dated July 16, 2011,¹ and plaintiff moved to confirm the report and for a judgment of foreclosure and sale. By order dated August 2, 2013, that motion was denied with leave to renew upon proper papers. The court determined the Referee's report indicated that his calculations were predicated upon an affidavit of merit and amount due which had been prepared in relation to a different case, involving foreclosure of a mortgage on a different property. The court also determined that plaintiff had failed to offer an affidavit of merit or a verified pleading in support of its motion, and to provide a proper explanation as to its interest in the subject property.

Meanwhile, settlement conferences were held from January 12, 2011 to January 24, 2013. By order dated January 24, 2013, the Court Attorney Referee directed the parties to appear at a preliminary conference on March 7, 2013, noting that the case had not been settled due to the failure by defendant Latchman Ghaness to submit (to plaintiff) a complete financial packet despite having been directed to do so. By order dated March 7, 2013, the Court Attorney Referee directed plaintiff to file an affirmation of its counsel pursuant to Administrative Order 431/11 and make an application for a judgment of foreclosure and sale and appear at a status conference by June 30, 2013.

¹This report is not on file with the County Clerk.

The Referee appointed pursuant to the order of reference, executed an oath and issued a report dated July 28, 2014, indicating that plaintiff was due and owing the aggregate sum of \$323,316.72, representing principal and interest and other charges which accrued as of October 15, 2013, plus interest and other expenses from October 16, 2013. The Referee also reported that the mortgaged premises should be sold in one parcel.

Plaintiff moves to confirm the Referee's report, for leave to enter a judgment of foreclosure and sale, including an award of attorneys' fees and to adjudge and decree that the subject mortgage be reformed and amended nunc pro tunc to add the legal description as included in the deed dated November 16, 2005 recorded at CFRN 2005000637787.

Defendant Latchman Ghaness opposes the motion, asserting that it is procedurally defective. He claims that plaintiff failed to serve a copy of the notice of motion and supporting papers upon defendants Chitrowtie Ghaness, First Franklin Financial Corporation, "Mrs." London and Shondel London, and to submit a copy of the prior motion papers. Defendant Latchman Ghaness also asserts the motion is substantively defective insofar as counsel for plaintiff admits that the legal description of the subject property was mistakenly omitted from the subject mortgage, recorded on November 16, 2005.

That branch of the motion by plaintiff amend the caption to reflect that plaintiff's current name is PNC Bank, National Association s/b/m to National City Bank is granted. Plaintiff was acquired by and merged with PNC Bank, National Association.

To the extent defendant Latchman Ghaness asserts the instant motion is procedurally defective, the affidavit of service dated January 29, 2015 indicates that the notice of motion and supporting papers were served upon all the named defendants except for defendant People of the State of New York. Defendant People of the State of New York has appeared in the action, but waived service of all papers and notices of all proceedings except the referee's report of sale, notice of any application for discontinuance and notice of proceedings to obtain surplus moneys. Consequently, plaintiff was not obligated to serve defendant People of the State of New York with a copy of the notice of motion and supporting papers. The instant motion was properly made (*see* CPLR 2103, 3215[g][1]).

Contrary to the additional assertion of defendant Latchman Ghaness, plaintiff is not required to submit a copy of the prior motion in support of the instant motion. Plaintiff was previously granted leave to renew such motion (*see* order dated August 2, 2013).

That plaintiff seeks to reform the mortgage is proper insofar as plaintiff asserted a cause of action for reformation in its complaint, and previously sought reformation as part of its prior application for a judgment. The deed for the subject property references the street address "184-20 90th Avenue, Hollis, New York," and contains a legal description annexed as "SCHEDULE A." The subject mortgage also identifies the mortgaged property by the street address "184-20 90th Avenue, Hollis, New York," but lacks a legal description. Defendant Latchman Ghaness makes no showing that any property other than the one described by the street address in the subject mortgage was the property the parties intended

the mortgage to cover. Plaintiff is entitled to reformation of the mortgage to accurately reflect the parties' agreement (*see Wells Fargo Bank, NA v Ambrosov*, 120 AD3d 1225 [2d Dept 2014]). That branch of the motion to adjudge and decree that the subject mortgage be reformed and amended nunc pro tunc to add the legal description as included in the deed dated November 16, 2005 recorded at CFRN 2005000637787 is granted.

That branch of the motion by plaintiff for leave to confirm the Referee's report of computation and for leave to enter a judgment of foreclosure and sale is granted. Plaintiff has established that it is the assignee of the subject mortgage and underlying note pursuant to assignments dated September 6, 2006 and June 23, 2009, and defendant Latchman Ghaness is in default in payment thereunder. In addition, defendant Latchman Ghaness has made no showing that the computation of the Referee is erroneous or the mortgaged premises should be sold in more than one parcel.

Settle order and judgment.

Dated: July 13 , 2015

J.S.C.