

Manning v Forest

2015 NY Slip Op 32358(U)

December 15, 2015

Supreme Court, Queens County

Docket Number: 11228/08

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

BUEL PENELOPE MANNING, as
Administratrix of the Estate of Noel
George Manning,

Plaintiff,

- against -

Index No.: 11228/08
Motion Date: 12/1/15
Motion No.: 87
Motion Seq.: 9

VALERIE FOREST, AVIS WILLACY, MERISSA
MANNING, MAQUANA MANNING, MELISHA
MANNING, COUNTRYWIDE HOME LOANS
SERVICING LP, ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, THE BANK OF NEW
YORK MELLON TRUST COMPANY, N.A. f/k/a
THE BANK OF NEW YORK TRUST COMPANY,
N.A. (as Trustee) and "JOHN DOE,"

Defendants.

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The following papers numbered 1 to 14 read on this motion by COUNTRYWIDE HOME LOANS SERVICING LP (Countrywide) for an Order granting Countrywide partial summary judgment on the fourth and fifth counterclaims and cross-claims in its verified amended answer and declaring that Countrywide is the holder of an equitable first mortgagellen against the subject premises in the amount of \$262,655.17, plus interest from February 19, 2008, superior to the alleged ownership interest of plaintiff, Buel Penelope Manning, as Administratrix of the Estate of Noel George Manning (Buel), in the premises and the interests, if any, of Countrywide's co-defendants, including Merissa Manning, Maquana Manning and Melisha Manning (collectively hereinafter the Manning Sisters); or in the alternative, granting partial summary judgment on the sixth and seventh counterclaims and cross-claims in its verified amended answer and declaring that Countrywide is the holder of an equitable first mortgage lien against the subject premises in the amount of \$155,237.33, plus interest from April 20, 2005, superior to Buel's alleged ownership interest in the subject premises and the interest, if any, of Countrywide's co-defendants, including the Manning Sisters:

Papers
Numbered

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This is an action concerning real property located at 216-18 135th Street, Laurelton, New York, 11413. The property was acquired by Noel George Manning (Noel) as tenant in common with Glenore Maynard (Glenore) on December 19, 1995. Noel and Glenore encumbered the premises with a \$146,728 mortgage to Premier Mortgage Corp. d/b/a PMC Mortgage Co. (PMC). The property was the marital abode of Noel and his spouse Buel until Noel's death on August 13, 2001. Because Noel died intestate and Buel's name was not on the deed, Buel was not an owner of record of the property and the property became an asset of the estate upon Noel's death. By decree of the Queens County Surrogate's Court dated August 6, 2005, Buel was issued Letters of Administration for the estate of her husband.

Buel asserts that she was desirous of remaining in the house, but the mortgage was in arrears and she could not obtain a new mortgage in her own name to purchase the property from the estate. She states that she reached an agreement with her friend, Valerie Forest (Valerie), to permit Valerie to obtain a mortgage and acquire title from the estate with the understanding that Buel would reacquire title once she could obtain her own mortgage. Based upon this understanding, plaintiff deeded the premises to Valerie on April 20, 2005. Valerie financed her acquisition of title to the premises with a \$255,000 mortgage from First National Bank of Arizona (FNBA). The amount of \$155,237.33 from the proceeds of the FNBA mortgage was paid to satisfy the PMC mortgage.

Buel alleges that after the deed was transferred she remained in the house and paid the mortgage. She also alleges that on February 19, 2008, Valerie transferred title to the premises to one Avis M. Willacy (Avis) without Buel's knowledge. Avis financed her purchase by obtaining a mortgage loan from Countrywide in the principal amount of \$417,000. The amount of \$262,655.17 from the proceeds of the Countrywide mortgage was paid to satisfy the FNBA mortgage.

On May 5, 2008, Buel commenced an action pursuant to RPAPL § 15 against Valerie and Avis to (1) vacate the deed between Valerie and Avis; (2) declare that Buel is the sole fee owner of

the subject property; and (3) strike the Countrywide mortgage of record obtained by Avis on the ground that Buel obtained a constructive trust over the premises and that Valerie committed fraud by selling the premises without Buel's permission, knowledge or consent.

On November 26, 2008, Countrywide commenced a foreclosure action, Index No. 28701/2008, against Avis and Buel.

On June 1, 2011, Avis commenced a separate action under Index No. 13170/2011 by filing a summons with notice against Eric Forest, Valerie, Countrywide and Buel to recover money damages and to rescind the subject note and mortgage of February 2008. Money damages are sought against the Forest defendants based upon their allegedly fraudulent actions against Avis in inducing her to enter into the mortgage. Avis claims she had no idea she was signing a mortgage, did not live in the subject premises, did not know that she was the title owner of property, and did not benefit from a sham perpetrated upon her. The action also seeks to rescind a deed pertaining to the subject property as between Avis and Buel dated May 6, 2011.

Pursuant to this Court's Orders dated July 28, 2010 and November 28, 2011, Index Nos. 11228/08, 28701/08 and 13170/11 were consolidated for joint trial.

On February 10, 2012, Buel filed an amended summons with notice and amended complaint, dated February 6, 2012. Countrywide served an amended answer which includes counterclaims and cross-claims against co-defendants in this action including Avis and the Manning Sisters.

In an Order dated January 5, 2015, this Court found that the Manning Sisters' interest in the premises were unequivocally waived and relinquished to their mother Buel and this Court granted a default judgment in favor of Countrywide and against the Manning Sisters.

Countrywide now moves pursuant to the doctrine of equitable subrogation for a declaration that it holds an equitable first mortgage lien on the premises in the amount paid from the proceeds of the Countrywide mortgage to satisfy the \$255,000 FNBA mortgage. Counsel for Countrywide, Bill Tsevis, Esq., contends that the FNBA mortgage was a good a valid and enforceable lien on the premises, and Buel's alleged ownership interest in the premises was subject and subordinate to the \$255,000 FNBA mortgage, which was paid from the proceeds of the Countrywide mortgage. Counsel further contends that Countrywide had no knowledge of Buel's claims of fraud or her alleged ownership interest in the premises on the closing date.

Countrywide submits the transcript of the examination before trial of Buel taken on September 30, 2014. Buel testified that it was her idea to put title in Valerie's name so that Valerie could obtain the FNBA mortgage to satisfy the PMC mortgage, which already encumbered the premises.

Countrywide also submits the affidavit of Joseph S. Degaetano, the settlement agent for FNBA at the April 20, 2005 closing of FNBA's \$255,000 mortgage loan to Valerie. Mr. Degaetano states that he was not told at the closing, nor did he have any knowledge, that the transaction was anything other than an arms-length sale of the premises by Buel and Glenore to Valerie. He affirms that as far as he knew, FNBA's \$255,000 mortgage loan was being used to finance Valerie's purchase of the premises.

In opposition, counsel for Buel, Everett Hopkins, Esq., contends that if judgment is granted in favor of Countrywide, it should be limited to the balance of the FNBA mortgage on the date of Valerie's sale to Avis. Counsel argues that Countrywide is not entitled to interest from the date of its payment.

Counsel for the Forest defendants, Alan J. Wohlber, Esq., also opposes this motion contending that all issues of fact have not been eliminated.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his or her position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

"The doctrine of equitable subrogation applies 'where the funds of a mortgagee are used to satisfy the lien of an existing, known incumbrance when, unbeknown to the mortgagee, another lien on the property exists which is senior to his but junior to the one satisfied with his funds. In order to avoid the unjust enrichment of the intervening, unknown lienor, the mortgagee is entitled to be subrogated to the rights of the senior incumbrance'" (Pawling Sav. Bank v Jeff Hunt Props., 225 AD2d 678, 680 [2d Dept. 1996], quoting King v Pelkofski, 20 NY2d 326, 333-334 [1967]).

Here, it is undisputed that Buel knowingly and deliberately deeded the premises to Valerie for the specific purpose of enabling Valerie to obtain the \$255,000 FNBA mortgage. Moreover, Buel and the Manning Sisters reaped the benefits of the FNBA mortgage proceeds since the proceeds were used to satisfy the PMC Mortgage. Buel also made payments on the FNBA mortgage for about three years, thereby ratifying the FNBA mortgage (see Rothschild v Title Guar. & Trust Co., 204 NY 458 [1912]; Rosen v Rosen, 243 AD2d 618 [2d Dept. 1997]). If the \$255,000 FNBA mortgage had not been paid from the proceeds of the Countrywide mortgage, the FNBA mortgage would have continued to encumber the premises. As Buel comes to this Court with unclean hands, she is equitably estopped from disavowing or seeking to avoid the FNBA mortgage (see Stein v Doukas, 98 AD3d 1026 [2d Dept. 2012]; First Union Natl. Bank v Tecklenburg, 2 AD3d 575 [2d Dept. 2003]). Accordingly, Countrywide has made a prima facie case of its entitlement to summary judgment.

In opposition, neither party demonstrated the existence of material issues of fact. Additionally, the lien of the equitably subrogated mortgagee should include appropriate interest (see Wagner v Maenza, 223 AD2d 640 [2d Dept. 1996]). Lastly, Countrywide's request for sanctions in its reply is denied.

Based on the foregoing, Countrywide's motion is granted to the extent that it is hereby

ORDERED, that COUNTRYWIDE HOME LOANS SERVICING, L.P. is granted partial summary judgment on its fourth and fifth counterclaims and cross-claims in its verified amended answer; and it is further

ORDERED and ADJUDGED, that COUNTRYWIDE HOME LOANS SERVICING, L.P. is the holder of an equitable first mortgage lien against the subject premises in the amount of \$262,655.17, plus interest from February 19, 2008, superior to the alleged ownership interest of plaintiff, Buel Penelope Manning, as Administratrix of the Estate of Noel George Manning, in the premises and the interests, if any, of its co-defendants, including Merissa Manning, Maquana Manning and Melisha Manning.

Dated: December 15, 2015
Long Island City, NY

ROBERT J. McDONALD
J.S.C.