

801 Ventures LLC v U.S. Bank N.A.

2015 NY Slip Op 32790(U)

November 5, 2015

Supreme Court, Kings County

Docket Number: 510614/2014

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 76J, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of Nov. 2014

FILED
KINGS COUNTY CLERK
DEC 11 AM 8:05

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

801 VENTURES LLC,

Plaintiff,

-against-

510614/14

Index No. 15621/12
DECISION/ORDER

U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE UNDER POOLING AND SERVICING
AGREEMENT DATED AS OF DECEMBER 1, 2006 MASTER
ASSET-BACKED SECURITIES
TRUST 2006-NC3 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-NC3

Hon. Ellen M. Spodek
Justice, Supreme Court

Defendants

Papers	Numbered
Notice of Motion and Affidavit.....	1
Notice of Cross Motion and Affidavit.....	_____
Answering Affidavits	2
Replying Affidavits	3
Exhibits	_____
Other	_____

Upon the foregoing papers, plaintiff 801 VENTURES LLC, moves for summary judgment, pursuant to CPLR 3212. Defendant U.S. BANK NATIONAL ASSOCIATION opposes the motion.

This case arises out of a mortgage taken out by Owen Lofton for the property 801A Willoughby Avenue ("the property") in 2006. On November 5, 2007, defendant commenced a foreclosure action against Owen Lofton, for failure to make payments on the mortgage. In 2010, defendant voluntarily discontinued this action, and a second foreclosure action was commenced in October 2009. The second foreclosure action was dismissed without prejudice on June 18, 2013. Defendant has not commenced any further action to foreclose on the mortgage. Plaintiff then purchased the property from Owen Lofton on December 13, 2013 and proceeded to bring a motion to remove any encumbrance of the property in accordance with RPAPL § 1501(4) which states, in relevant parts, "where the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage . . . has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person . . . to secure the cancellation and discharge of record of such encumbrance." Since defendant accelerated the mortgage and commenced a foreclosure action on November 5, 2007, the six year statute of limitation began to run from that time and would have run out by November 5, 2013. Plaintiff contends that defendant no longer has a right of encumbrance to the property and moves for summary judgment discharging defendant's mortgage encumbrance on the property.

Defendant does not dispute that the statute of limitations has expired its ability to foreclose on the property. However, defendant raises the issue of whether plaintiff has a legitimate interest in the property. Defendant contends that plaintiff did not provide sufficient evidence to support its position that it is the owner of the property and that the purchase of the property was valid. As such, defendant argues that plaintiff has no standing to bring this motion.

"Summary judgment is a drastic remedy which should not be granted when there is any significant doubt as to the existence of a triable issue of fact." *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). In this case, the Court finds that the plaintiff did not make a prima facie

showing supporting summary judgment. With the evidence presented, there is a significant question as to the legitimacy of plaintiff's interest in the property. To be considered a good faith purchaser and with a valid interest in the property, there needs to be evidence of proportionate consideration. *Ten Eyck v. Witbeck*, 135 N.Y. 40, 47 (1892). When the deed is executed for consideration consisting of both money and "valuable consideration", the purchaser must part with something of substantial value for the deed to be valid. *Ochenkowski v. Dunaj*, 232 A.D. 441, 446 (1931). Without any evidence in this case indicating that the plaintiff paid good and valuable consideration for the property, there is a triable issue of fact of whether plaintiff has a legitimate interest in the property or not.

Plaintiff argues that the means by which they received the property is not relevant. In support, plaintiff cites *Guccione v. Estate of Guccione*, 84 A.D.3d 867 (2011) which states that the doctrine of "unclean hands" is not a sufficient reason to deny a motion for summary judgment. However, the doctrine of "unclean hands" in that case dealt with the question of tax evasion. In this case, the issue is whether plaintiff is a bona fide purchaser of the property and has legitimate standing to bring this present action. Furthermore, defendant did not invoke the doctrine of "unclean hands" as an affirmative defense. As such, *Guccione* is not applicable to the present action.

Plaintiff argues that defendant's reliance on *Ochenkowski* is misguided as that case dealt with an unrecorded encumbrance and a lack of notice, while in the instant case, plaintiff was fully aware of defendant's encumbrance at the time of purchase. Though it is correct that notice played a role in the court's opinion in *Ochenkowski*, the necessity for there to be valuable consideration is as applicable there as it is here. Plaintiff did not present any evidence supporting the notion that they paid valuable consideration or assumed the mortgage of Owen Lofton.

Plaintiff further contends that defendant has no standing to question the validity of plaintiff's deed. However, plaintiff does not provide the Court with any case law to support this

argument. Though this is not a quiet title action, the validity of plaintiff's deed is a material issue in this case. As plaintiff explained, "there are only two questions at issue here: (i) whether the statute of limitation for the commencement of a foreclosure action by defendant U.S. Bank has run; and (ii) whether plaintiff has an interest in the subject property." See Plaintiff Notice of Motion ¶ 21. If plaintiff does not have a valid deed, there is a significant question as to whether plaintiff has a legitimate interest in the property.


The Court finds that plaintiff has failed to make a prima facie case demonstrating that there are no outstanding issues of material fact. Plaintiff's motion for summary judgment is denied.

This constitutes the decision and order of the Court.

ENTER

JSC

HON. ELLEN M. CROCKER


2015 DEC 11 AM 8:06
CLERK COUNTY CLERK