

**Rhoe v Reid**

2015 NY Slip Op 32884(U)

May 12, 2015

Supreme Court, Nassau County

Docket Number: 601531/14

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

\_\_\_\_\_

SHERYL RHOE,

Plaintiff,

- against -

TRIAL/IAS PART 36  
NASSAU COUNTY

Index No.: 601531/14  
Motion Seq. No.: 02  
Motion Date: 03/18/15

PATRICIA REID and HOME SAVERS CONSULTING  
CORP.,

Defendants.

\_\_\_\_\_

**The following papers have been read on this motion:**

	Papers Numbered
Order to Show Cause, Affirmation and Exhibits	1
Affirmation in Opposition and Exhibits	2

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves, pursuant to CPLR § 602, for an order consolidating, for joint trial and discovery, the above captioned action (“Action No. 1”) with Nassau County Supreme Court action, *The Bank of New York Mellon Trust Company, N.A., as Trustee on Behalf of CWABS, Inc., Asset-Backed Certificates Trust 2005-9 v. Patricia Reid, Household Finance Realty Corporation of New York, “John Doe #1” through “John Doe #12,” the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint, Index No. 6328/14 (“Action No. 02”)*, on the grounds that both

actions involve claims of ownership of the same piece of real property known as 120 East Greenwich Avenue, Roosevelt, New York and as to the validity of the mortgage executed by defendant Patricia Reid; and moves for an order staying the Inquest in Action No. 02 since defendant “John Doe” a/k/a Action No. 01 plaintiff Sheryl Rhoe (“Rhoe”) interposed on Answer with counterclaims on or about September 12, 2014. Action No. 02 plaintiff, The Bank of New York Mellon Trust Company, N.A., as Trustee on Behalf of CWABS, Inc., Asset-Backed Certificates Trust 2005-9 (“BONY”) opposes the motion.

Counsel for Action No. 01 plaintiff Roe submits that “[t]he instant action was brought by Sheryl Rhoe against Patricia Reid to recover the property known as 120 East Greenwich Avenue, Roosevelt, New York. Sheryl Rhoe’s complaint sets forth the fraudulent actions involved in the recording of title. The Second Action, baring (*sic*) index # **6328/2014**, was brought by Bank of New York Mellon Trust Company against Patricia Reid to foreclose on the subject premises based upon the fraudulent deed filed in Nassau County. SHERYL RHOE is a ‘John Doe’ defendant in the action brought to foreclose upon said premises. Plaintiff SHERYL RHOE brought the within action to recover title from Ms. Patricia Reid, prior to the foreclosure action. The Bank of New York Mellon Trust (‘BONY’) has NO interest in the property as the security instrument pledging the property (the mortgage) was predicated upon a fraud (*sic*) deed transfer. BONY instituted a prior action against defendant, Patricia Reid in 2008 under index number 13280/2008, but discontinued that action because numerous irregularities in the documents. After the Statute of Limitations had expired, plaintiff BONY started a new action against Ms. REID in 2014. Ms. RHOE interposed an answer with counter claims on September 12, 2014 ..., which BONY’s counsel ignored in the hopes of getting a quick default judgment. Upon information and

belief, after discussions with defendant PATRICIA REID's counsel in this matter, it is apparent that she was never served with the summons and complaint in the foreclosure action." *See* Action No. 01 Plaintiff Rhoe's Affirmation in Support Exhibit 2.

Counsel for Action No. 01 plaintiff Rhoe contends that "[p]laintiff/petitioner SHERYL RHOE purchased 120 East Greenwich Avenue, Roosevelt, New York in 1987.... She paid her mortgage payments on time up and until 2005 when she ran into some financial difficulties.... In 2005, she saw a billboard advertising the services of HOME SAVERS CONSULTING CORP. which claimed to specialize in refinancing and loan modifications.... Thereafter, she went to Home Savers and met a woman by the name of Marjorie Reyes.... After a brief interview, Ms. Reyes informed the plaintiff/petitioner that HOME SAVERS would be able to get her approved for refinancing by allowing Ms. Reid or the company to become a co-deed holder, and co-signer on the refinanced mortgage.... Ms. Rhoe was advised that the fee for their services would be \$10,000.00 which would be taken out from the home's equity at the time of closing for the refinancing.... Ms. Rhoe agreed.... On the date of the closing of the refinancing, Ms. Rhoe signed a deed whereby she transferred a 50% interest to Ms. Reid. She was told that Ms. Reid had not yet arrived and that she was free to leave. In 2014, Ms. Rhoe found out that Home Savers filed a deed whereby Ms. Reid was the actual purchaser of the home although **Ms. Rhoe had been paying the mortgage**, and upkeep of the home. Upon information and belief, the originating lender COUNTRYWIDE HOME LOANS, INC. was aware HOME SAVERS CONSULTING CORP.'s business practices as it closed hundreds if not thousands of loans with them. At some point in time, BONY allegedly acquired the note and mortgage from COUNTRYWIDE. All were well aware of RHOE's interest. BONY was well aware that plaintiff RHOE was making the

mortgage payments as all payments came from her account. Defendant REID **has admitted** that she was paid \$10,000.00 by defendant HOME SAVERS to act as a 'purchaser' of the property belonging to plaintiff RHOE .... REID never paid RHOE any monies, and RhoE never received any monies from REID. Defendant REID has admitted that she **NEVER** made a single mortgage payment, and that the mortgage obligation was really that of plaintiff SHERYL RHOE....

Defendant REID admits that RHOE did not and may not have understood that she was transferring 100% ownership to REID..., and fails to state the date upon (*sic*) defendant REID notified RHOE of the deception. In 2007, RHOE (like many other homeowners) ran into financial trouble and fell behind on her mortgage. Unbeknownst to plaintiff RHOE, Steven J. Baum filed suit against REID for foreclosure. **That action was discontinued, and the statute of limitations has now expired.** Thus, neither REID nor RHOE are responsible on the mortgage.”

Counsel for Action No. 01 plaintiff RhoE argues that “[i]n the instant case there is NO doubt that the within cases have common questions of law and fact: a. Both actions involve the title to the same piece of property; b. Both actions involve PATRICIA REID’s claim of ownership of the property; and c. Both actions involve the validity of the mortgage placed upon the subject property.”

In opposition to the motion, counsel for Action No. 02 plaintiff BONY submits that “[d]espite Plaintiff’s claims to the contrary, Plaintiff did not properly and/or timely serve an answer on BONY MELLON in Action #2, and said alleged answer only came to BONY MELLON’s attention due to its inclusion as an exhibit in this action. Affirmant’s business records do not show any record of receiving Plaintiff’s alleged answer and the affirmation of Plaintiff’s counsel is insufficient to establish it was served on September 12, 2014.... The Plaintiff’s Attorney Affirmation of Service attached hereto .... clearly fails to state that the answer

was deposited in a post office or official depository under the exclusive care and custody of the United States Postal Service. The Attorney Affirmation is insufficient to establish that the answer was served as it does not describe the method used to effectuate service in a manner specified by CPLR 2103(b). [citation omitted]. As stated and demonstrated above, Plaintiff is in default in Action #2, and despite no requirement to do so, a notice of rejection has been served on Plaintiff.... Defendant, Patricia Reid, is also in default in Action #2. Plaintiff has not shown any basis for the granting of a stay of the inquest in Action #2, and said request should be denied accordingly. Furthermore, it should be noted that the proposed forty (40) page answer of Plaintiff is baseless, and without merit. Plaintiff was not a party to the mortgage transaction and lacks standing to assert any defenses and/or counterclaims in regards to same. [citations omitted]. *See* Action No. 02 plaintiff BONY's Affirmation in Opposition Exhibits C and D.

Counsel for Action No. 02 plaintiff BONY further contends that “[t]he instant action and Action #2 have no common questions of law and fact, and Plaintiff has failed to provide any evidence to the contrary. Plaintiff merely makes the conclusory and false claims that both actions involve 1) title to the same piece of property, 2) Patricia Reid's claim of ownership of the property, and 2) (*sic*) the validity of the mortgage placed upon the subject property.... However, the Plaintiff's action is apparently one for conversion against Patricia Reid and Home Savers Consulting Corp., according to the Summons and Notice included amongst Plaintiff's motion papers, while BONY MELLON's action is the for the foreclosure of the mortgage described in paragraph two. Furthermore, 1) BONY MELLON is not a defendant in the instant action; 2) no claim is made against BONY MELLON, nor is any relief or remedy sought from BONY MELLON; 3) BONY MELLON is a protected incumbrance for value pursuant to RPL 266; and 4) Plaintiff would be barred from asserting any claims against BONY MELLON based on a

number of factors, including the statute of limitations. Plaintiff's papers are filled with affidavits unrelated to the instant application, mischaracterizations, hearsay, unsupported and incorrect statements, and false claims. However, importantly, Plaintiff does not allege that she had any contact with BONY MELLON or its predecessor, that either made any misrepresentations to her, or that she justifiably relied on any misrepresentation by either. [citation omitted]. The alleged actions of the Plaintiff and defendant, Patricia Reid, in the instant action, could not be imputed to BONY MELLON or its predecessor as the alleged fraud would have required that Plaintiff being the true borrower be withheld from the lender.... As Plaintiff played a role in the scheme about which she now complains, and comes to court with unclean hands, she is barred from all equitable relief. [citation omitted]. Moreover, as Plaintiff engaged in a fraudulent scheme involving the conveyance of the premises, Plaintiff has then forfeited her right, in law or equity of protection or recourse in a dispute involving her accomplices in that very scheme. [citation omitted]. The actions do not have any of the same facts or issues of law, and individual issues clearly predominate concerning particular circumstances applicable to each plaintiff. [citations omitted]. Therefore, the threshold requirement to warrant the consolidation of the cases, namely, that a common question of law or fact exists, has not been met and Plaintiff's motion should be denied accordingly. [citations omitted].... Lastly, if Plaintiff's motion was granted Sheryl Rhoe would be both a plaintiff and defendant, and for that reason alone Plaintiff's motion should be denied. [citation omitted].

It is well settled that a motion for consolidation is addressed to the sound discretion of the trial court and, absent a showing of substantial prejudice by the party opposing the motion, consolidation is proper where there are common questions of law and fact. *See Zupick v. Flushing Hospital and Medical Center*, 156 A.D.2d 677, 549 N.Y.S.2d 441 (2d Dept. 1989); *TT*

*Enterprises v. Gralnick*, 127 A.D.2d 651, 511 N.Y.S.2d 878 (2d Dept. 1987); *Marshall v. Monegro Investors*, 132 A.D.2d 651, 518 N.Y.S.2d 23 (2d Dept. 1987); *Stephens v. Allstate Insurance Co.*, 185 A.D.2d 338, 586 N.Y.S.2d 305 (2d Dept. 1992).

Such orders should be entered where, as here, common questions of fact and law are presented and any opponent thereto has failed to show substantial prejudice. *See Stephens v. Allstate Insurance Co.*, *supra*; *Marshall v. Monegro Investors*, *supra*; *Sarrds, Inc. v. Dove Demolition Corp.*, 71 A.D.2d 1001, 420 N.Y.S.2d 292 (2d Dept. 1979).

Both Action No. 01 and Action No. 02 involve the subject mortgage on the property located at 120 East Greenwich Avenue, Roosevelt, New York in 1987 and a determination as to validity of said mortgage is an issue in both actions.

Accordingly, based upon the foregoing, and in the sound discretion of the Court, the branch of Action No. 01 plaintiff Rhoe's motion, pursuant to CPLR § 602, for an order consolidating, for joint trial and discovery, Action No. 1 with Action No. 02, *The Bank of New York Mellon Trust Company, N.A., as Trustee on Behalf of CWABS, Inc., Asset-Backed Certificates Trust 2005-9 v. Patricia Reid, Household Finance Realty Corporation of New York, "John Doe #1" through "John Doe #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint*, Index No. 6328/14, is hereby **GRANTED**.

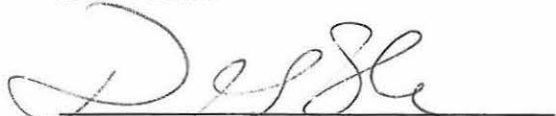
Additionally, the Court notes that, on or about February 19, 2015, the Honorable George R. Peck, A.S.C.J., signed an Order vacating the Note of Issue in Action No. 02 and removing said case from the Foreclosure Inquest Part. Accordingly, the branch of Action No. 01 plaintiff Rhoe's motion for an order staying the Inquest in Action No. 02 since defendant "John Doe"

a/k/a Action No. 01 plaintiff Sheryl Rhoe ("Rhoe") interposed on Answer with counterclaims on or about September 12, 2014 is hereby **DENIED as moot**.

All parties shall appear for a Certification Conference in IAS Part 36, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York, on June 30, 2015, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

**ENTER:**

  
**DENISE L. SHER, A.J.S.C.**

Dated: Mineola, New York  
May 12, 2015

**ENTERED**  
MAY 15 2015  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE