

Bayview Loan Servicing, LLC v Victor Horsford Realty Corp.

2016 NY Slip Op 30064(U)

January 12, 2016

Supreme Court, New York County

Docket Number: 650372/14

Judge: Jennifer G. Schechter

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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BAYVIEW LOAN SERVICING, LLC, A DELAWARE,
LIMITED LIABILITY COMPANY
Plaintiff,

Index No.650372/14

-against-

VICTOR HORSFORD REALTY CORP., ROCKY HORSFORD,
NECHADIM CORP., NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, STATE OF
NEW YORK, CITY OF NEW YORK, and "JOHN DOE"
#1-10, "MARY DOE" #1-10, the names being
fictitious, their true names being unknown
to the plaintiff, persons intended being
persons in possession of portions of the
premises herein described,
Defendants.

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JENNIFER G. SCHECTER, J.:

Pursuant to CPLR 3212, plaintiff Bayview Loan Servicing LLC, a Delaware Limited Liability Company (Bayview) moves for summary judgment against defendants Victor Horsford Realty Corp and Rocky Horsford (collectively Horsford) and for an order appointing a referee to ascertain and compute the amount due to plaintiff. Plaintiff also seeks leave to amend the caption in this action by discontinuing the action against the John and Mary Doe defendants and adding Gavid Reid, Willie Johnson, John Somerfall, Ivan Somerfall, Aundel Cocorn, Jesus Rodriguez, Kenrick Dubidad, Nigel Hamilton, Lyndyann Romero and Eve Herrera. Horsford opposes the motion for summary judgment and the appointment of a referee. The motion is granted.

Background

This action was commenced by Bayview to foreclose on a 2005 \$1,000,000 mortgage made by Victor Horsford Realty Corp. and guaranteed by Rocky Horsford, to Silver Hill Financial LLC (Surico Affirmation in Support [Supp], Exs A and B; Locke Affidavit [Locke Aff], ¶¶ 4 and 7). In 2006, Silver Hill Financial LLC assigned the mortgage to Bayview (Supp, Ex C; Locker Aff, ¶ 7). Bayview commenced this action to recover \$992,077.81 plus interest from October 2013 for Horsford's default in paying the loan since November 2013 (Locke Aff ¶¶ 9-10).

By this motion Bayview seeks summary judgment on its claim and an order assigning the matter to a referee to ascertain and compute the award. In addition, plaintiff seeks to amend the caption and the papers in this action to remove the John and Mary Doe defendants and to replace them with individually named defendants that were served.

The Horsford defendants oppose the motion for summary judgment because a foreclosure settlement conference was not held, proposed orders were not attached to the motion, plaintiff does not have standing, and there was no notice of default prior to the commencement of the action.

The motion to amend is unopposed.

Analysis

Summary Judgment is a drastic remedy that should not be granted if there is any doubt as to the existence of material triable issues (see *Glick & Dolleck v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968] [denial of summary judgment appropriate where an issue is "arguable"]; *Sosa v 46th Street Develop. LLC*, 101 AD3d 490, 493 [1st Dept 2012]). The burden is on the movant to make a *prima facie* showing of entitlement to judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any disputed material facts. Once the movant has made this showing, the burden then shifts to the opponent to establish, through competent evidence, that there is a material issue of fact that warrants a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Here, Bayview has made its *prima facie* showing of entitlement to judgment as a matter of law. Bayview has established that it is the rightful owner of the mortgage between Horsford and Silver Hill Financial LLC pursuant to a January 30, 2006 assignment (Supp, Ex C; Locke Aff). It has also established that Horsford has not made a payment on the mortgage since October 2013 and remains in default of the

mortgage and its terms despite a demand letter mailed on November 14, 2013 (Locke Aff, ¶ 9; Supp, Ex K).

In opposition to this *prima facie* showing, Horsford has failed to raise a question of fact. Significantly, there is no affidavit or any attestation from Rocky Horsford refuting plaintiff's allegations, including that payment has not been made of the mortgage since October 2013.

Rather, Horsford argues in opposition that the motion should be denied because the parties have not participated in a foreclosure settlement conference. However, under the circumstances of this case, where there is no allegation that this is a home loan, nor does Rocky Horsford allege that he is a resident of the property and in light of the fact that the documents were entered into for a corporate entity, there is no such conference requirement (CPLR 3408; RPAPL § 1304[5][a]). Horsford also urges, without citation to any authority, that summary judgment should be denied because no proposed orders and judgments were attached to the motion. This does not raise a triable issue of fact to defeat the motion. Additionally, contrary to Horsford's assertions, Bayview has established standing by attaching the documents assigning the mortgage from Silver Hill Financial LLC to Bayview as well as an affidavit from Gary Locke, plaintiff's document coordinator (Supp, Ex C; Aff Locke). Defendant's

assertion that there is a fatal flaw in the "property type as indicated by the recording documents from the initial mortgage to the assignment" is unclear on its face and in any event the documents list the same block and lot numbers (Opp at ¶ 26; Supp, B and C). Lastly, Horsford allege that plaintiff failed to show that it "complied with a condition precedent contained in the mortgage agreement, which required that it give the defendant notice of default prior to demanding payment of the loan in full" (Opp at ¶ 41). However, Horsford does not deny receiving such notice and does not in any meaningful way attack plaintiff's proof that such notice was given in any meaningful way (Supp, Ex K; Locke Aff).

It follows that plaintiff's motion for summary judgment is granted.

Plaintiff's unopposed motion to amend the answer to add individual defendants Gavid Reid, Willie Johnson, John Somerfall, Ivan Somerfall, Aundel Cocorn, Jesus Rodriguez, Kenrick Dubidad, Nigel Hamilton, Lyndyann Romero and Eve Herrera in the place of "John Doe" #1-10 and "Mary Doe" #1-10 is granted.

Accordingly, it is

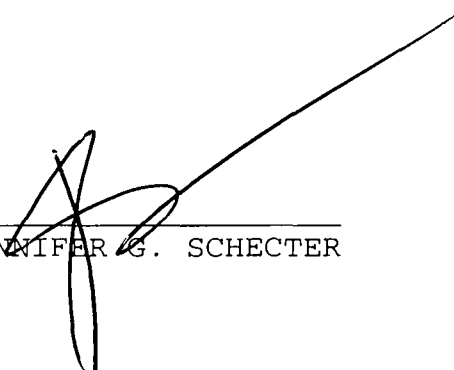
ORDERED that plaintiff's motion for summary judgment is granted; and it is further

ORDERED that the matter is referred to a referee--Alicia Kaplow, 75 Maiden Lane, Suite 503, New York, New York, 10038 (212) 233-6363--to ascertain and compute the amount due to plaintiff; and it is further

ORDERED that plaintiff's motion to amend is granted.

Settle order on notice.

Dated: January 12, 2016



HON. JENNIFER G. SCHECTER