

M & T Bank v Spencer-Graham
2016 NY Slip Op 31763(U)
September 23, 2016
Supreme Court, Wayne County
Docket Number: 74693
Judge: Daniel G. Barrett
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At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Town of Lyons, New York on the 17th day of August, 2016.

PRESENT: Honorable Daniel G. Barrett

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

M & T BANK,

Plaintiff

-vs-

DECISION
Index No, 74693

LINDA SPENCER-GRAHAM a/k/a
LINDA L. SPENCER-GRAHAM a/k/a
LINDA L. SPENCER a/k/a LINDA GRAHAM a/k/a
LINDA SPENCER, ATLANTIC CREDIT & FINANCE, INC.
a/p/o HSBC, ARROW FINANCIAL SERVICES, LLC
a/p/o GE MONEY BANK, "JOHN DOE #1 - #50" AND
"MARY ROE #1 - #50", THE LAST TWO NAMES
BEING FICTITIOUS, SAID PARTIES INTENDED
BEING TENANTS OR OCCUPANTS, IF ANY,
HAVING OR CLAIMING AN INTEREST IN OR
LIEN UPON THE PREMISES DESCRIBED
IN THE COMPLAINT,

Defendant

This Decision encompasses multiple applications made by each of the parties. Essentially, the Plaintiff, M&T Bank, is seeking Summary Judgment against the Defendant, Linda Spencer-Graham. The Defendant, Linda Spencer-Graham, is seeking a dismissal of a foreclosure action and requesting monetary relief against the Plaintiff.

Initially, the Defendant duly executed, acknowledged and delivered to M&T Mortgage Corporation, its successors or assigns, her (N)ote whereby she promised to repay M&T Mortgage Corporation the principle sum of \$59,150.00 with interest as set forth in the Note. The terms successors and assigns means that if any entity succeeds M&T Corporation, the Defendant will still be liable on the Note and likewise if it is assigned the Defendant will still be liable for paying the Note.

To secure payment of the Note, the Defendant executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for M&T Mortgage Corporation, a (M)ortgage dated August 16, 2004, whereby she mortgaged her premises. In the meantime. The deputy superintendent of banks for the State of New York on September 9, 2004 issued the "Restated Organization Certificate of Manufactures and Traders Trust Company under section 8007 of the Banking Law. Effective September 9, 2004, Manufacturers and Traders Trust Company was to be known as M&T Bank.

On October 26, 2006, M&T Mortgage Corporation applied to merged with and into Manufacturers and Traders Trust Company, also known as M&T Bank. The merger was approved by the superintendent of banks on December 20, 2008.

On May 7, 2012 this Mortgage was assigned to M&T Bank by an assignment of mortgage dated May 7, 2012, and recorded in the Wayne County Clerk's Office on May 15, 2012.

The Summons, Complaint and Notice of Pendency, relative to this action, were filed with the Wayne County Clerk's Office on August 8, 2012. Therefore at the time the action was commenced M&T Bank was the holder of the Note and Mortgage.

The Summons and Complaint was served on Defendant and Mr. Graham on September 15, 2012. The Defendant served an Answer to the Complaint dated October 4, 2012.

The Answer alleged that the Plaintiff violated the Fair Collection Practices Act, and the Real Estate Practices Act, Truth and Lending Act and the Plaintiff had no legitimate claim to the property. The Defendant also alleged that the Plaintiff falsified and altered documents in an attempt to defraud the Court and the Defendant. The Plaintiff counter-sued for violations of the Ricco Laws, Banking Laws, Fair Debt Collections Practices Act, Consumer Protection Laws, the Real Estate Protection Act and counter sued in the amount of \$1.5 million dollars among other things. The Defendant claims the court does not have jurisdiction of this matter.

On February 7, 2013, a settlement conference was conducted by Confidential Court Attorney, Richard M. Doyle. Mr. Doyle advises that the following people attended the settlement conference: David Graham, Linda Spencer-Graham, their son, Frances Graham and the bank's attorney, Anne M. Hulburt. The Graham's indicated that their son, Frances Graham, would represent them. Although not an attorney, he possessed a Bachelor's degree in business. Mr. Graham stated that the bank violated some rules and regulations and that the loan would not be collected. Mr. Graham indicated the Defendant was not interested in a work out program. The purpose of the settlement conference is to determine whether the home owner and the bank can work out a modification of the loan so that the bank is paid and the home owner maintains the premises. Since the mortgage was contested this matter was released from the settlement part.

The Note and Mortgage were thereafter assigned to the Secretary of Housing and Urban Development by assignment of mortgage dated June 9, 2013, and recorded in the Wayne County Clerk's Office on September 23, 2013.

Subsequently, the Note and Mortgage were assigned to Queen's Park Oval Asset Holding Trust by assignment of mortgage dated September 8, 2013 and recorded in the office of the Clerk on September 23, 2013.

On June 19, 2013, M&T Bank sent a letter to the Defendant notifying her that the servicing of the mortgage loan would be transferred from M&T Bank to RoundPoint Mortgaging Service effective July 9, 2013.

This letter went on to state that as a result of the default by the Defendant the Plaintiff made a claim for payment on the FHA insurance. The Plaintiff assigned the Defendant's mortgage loan to FHA. FHA sold the mortgage loan to RoundPoint Mortgage Servicing Corporation, which is now the new owner of your mortgage loan. The servicing of the loan shall be transferred to RoundPoint Mortgage Servicing Corporation. All payments up to and including July 8, 2013, to M&T Bank and payments thereafter payable and mailed to RoundPoint Mortgage Servicing Corporation.

The confusing part of this letter for the Court is the fact that RoundPoint is mentioned as the owner of the mortgage. The Wayne County Clerk's records show that the mortgage was transferred from FHA to Queen's Park Oval Asset Holding Trust with no mention as RoundPoint as an owner.

Despite the confusion, no payments were made and it does not affect the rights of either of the parties to this action.

The Plaintiff filed a Notice of Motion for Summary Judgment dated September 9, 2015 returnable in court on October 20, 2015. This application requested that judgment be granted against the Defendant and that the caption be amended to substitute the latest assignee of the mortgage, Queen's Park Oval Asset Holding Trust, as Plaintiff. In addition it requested that Mr. Graham be listed as an additional defendant. It also requested that a Referee be appointed.

When this matter appeared on the court's calendar on October 20, 2015, there were no papers or appearances by the Defendant in opposition thereto. As a result, all the relief requested by the Plaintiff was granted.

The Defendant filed a motion to dismiss dated December 30, 2015 which was returnable before the Court on January 20, 2016. On January 20, 2016, the Defendant appeared but no one from the Plaintiff appeared. In court Defendant advised she was unaware of the Plaintiff's application for summary judgment which was granted in October of 2015. The motion papers were served to the Defendant at an incorrect address which explains why she did not receive them. The Defendant served her motion to dismiss on the M&T Bank at a Buffalo address rather than the bank's attorneys in this action. On its own initiative, this Court vacated the previously granted judgment of foreclosure and directed the parties to serve papers at the appropriate addresses.

A few adjournments were granted and more papers were submitted. Ultimately the various applications were argued before the Court on August 17, 2016.

The Defendant and Mr. Graham appeared as well as an attorney for the Plaintiff.

One of the grounds raised in the motion to dismiss was lack of standing on behalf of the Plaintiff. At the time the action was commenced, August 8, 2012, M&T Bank was the holder of the Note and Mortgage. Through assignments, presently, Queen's Park Oval Asset Holding Trust is the holder of the Note and Mortgage and this application has requested that Queen's Park Oval Asset Holding Trust be substituted as Plaintiff. This application is appropriate and therefore standing is not an issue which bars this action.

The analysis of the prior paragraph demonstrates that M&T Bank no longer has an interest in collecting the debt but through various assignments of the mortgage Queen's Park Oval Asset Holding Trust does have an interest in the debt and is being substituted as Plaintiff.

The Defendant alleges that the Plaintiff violated the Defendant's rights under FDCPA, FCRA, and RESPA. The FDCPA and FCRA are Federal Regulations, and as such, any such claim for violation of them must be made in the proper forum, i.e., Federal Court. This Court does not have subject matter jurisdiction of these claims.

Defendant, in its motion to dismiss, alleges Plaintiff is attempting to collect a debt that does not exist. In the motion papers the Defendant enclosed a letter to the Lien Release Department dated August 6, 2015 wherein she states she was recently denied access to a line of credit due to inaccurate information being recorded in her land records. She asserts this is in violation of her rights under the FDCPA and FCRA. She quoted from a letter sent to her which requires that she provide an original Satisfaction/discharge for the mortgage of this litigation and it recites the successive assignments of the mortgage through the present holder, Queen's Park Oval Asset Holding Trust. The Satisfaction/discharge of Mortgage cannot be provided as the loan is not paid. In an e-mail from Frances T. Graham to Doc Requests dated August 12, 2015, the Defendant states as follows: "I understand that M&T Bank is recorded as a servicer of this Note, however, they claim to have sold the loan to a company that no longer exist..."

It is true that M&T Bank assigned the Note and Mortgage and the documentary records reflect that it is currently owned by the Queen's Park Oval Asset Holding Trust.

In part, the e-mail message continues: "In addition, please IMMEDIATELY e-mail me a copy of the record showing that this debt has been satisfied/discharged."

In open court on the return date of this motion the Defendant indicated that the debt was not discharged in her personal bankruptcy and the last time she made a payment was sometime in 2012.

Based upon the papers submitted and the oral argument, the motion to dismiss the Complaint is dismissed as well as the counter-claim seeking damages against the Plaintiff.

Relative to the application by the Plaintiff for summary judgment against the Defendant, the Court is reserving decision.

The Court is ordering the Plaintiff and Defendant to attend a settlement conference conducted by my Confidential Court Attorney, Richard M. Doyle, in the Hall of Justice, 54 Broad Street, Lyons, New York on October 20, 2016 at 11:00 A.M.. The purpose of this settlement conference is to determine if the parties can work out a loan modification.

If the parties have a problem with this date, contact Mr. Doyle.

This constitutes the Decision of the Court. Attorney for the Plaintiff to prepare an Order consistent with this Decision.

Dated: September 23, 2016
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice