

Eddy v U.S. Bank N.A.
2016 NY Slip Op 32687(U)
September 13, 2016
Supreme Court, Rockland County
Docket Number: 031770/16
Judge: Gerald E. Loehr
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To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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SHELLEY R. EADDY,

Plaintiff,

DECISION AND ORDER
Index No.: 031770/16

-against-

U.S. BANK NATIONAL ASSOCIATION; WELLS FARGO BANK, N.A.;
STEVEN J. BAUM, P.C.; CHARLES D.J. CASE, ESQ.;
GROSS POLOWY, LLC, AMANDA RUDROFF-LAVIS, ESQ.;
HOGAN LOVELS US, LLP; JORDAN ESTES, ESQ.;
BRIAN H. BERKOWITZ, ESQ.; ET AL.,

Defendants.

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LOEHR, J.

The following papers numbered 1-10 were read on the motions of all Defendants other than Brian Berkowitz to dismiss the Complaint.

	<u>Papers Numbered</u>
Notice of Motion (#4)- Affirmation - Exhibits	1
Memorandum of Law in Opposition	2
Affidavit in Opposition - Exhibits	3
Notice of Motion (#5) - Affirmation - Exhibits	4
Notice of Rejection of Motion #5	5
Reply Memorandum of Law	6
Notice of Motion (#7) ¹ - Affirmation in Opposition - Exhibits	7
Memorandum of Law in Support	8

¹There is no motion #6.

Affidavit in Opposition to #7 - Exhibits

9

Reply Affirmation (#7)

10

Upon the foregoing papers, it appears that in 2007, U.S. Bank National Association (“US Bank”) commenced a foreclosure action in this Court, *U.S. Bank National Association* (Index No. 9898/07)(the “Foreclosure Action”) with respect to property owned by Plaintiff and located at 7 Perrin’s Peak Road, Stony Point, New York the (“Premises”). US Bank was apparently the assignee of the Mortgage and Wells Fargo Bank, N.A. (“Wells Fargo”) apparently serviced the loan. As alleged in the Complaint herein, Plaintiff acquired the Premises on November 1, 2005 for \$2,075,000, having borrowed \$1,5550,000 from Wall Street Mortgage Bankers Ltd. By Order dated February 26, 2008, US Bank was granted an Order of Reference on default in the Foreclosure Action and on September 9, 2009, US Bank was granted a Judgment of Foreclosure and Sale by Judge Berliner, which Order was affirmed on appeal (79 AD3d 1022 [2d Dept 2010]). That Judgment determined that as of April 9, 2009 the debt was \$1,756,778.71. Thereafter, Plaintiff moved to reargue Judge Berliner’s Order. The case having been reassigned to Judge Alfieri, Judge Alfieri denied the motion for several reasons, including that one cannot reargue an order that has been affirmed on appeal. US Bank than moved to substitute an Affidavit of Merit in order to comply with OCA’s Administrative Orders. The application was granted by Judge Alfieri in an Order dated October 5, 2011, which Order was affirmed on appeal (109 AD3d 908 [2d Dept 2013]). While the appeal was pending, Plaintiff moved to reargue Judge Alfieri’s October 5, 2011 Order, which motion was denied by Judge Alfieri by Order dated January 9, 2012. That Order was affirmed on appeal (123 AD3d 809 [2d Dept 2014]). On March 30, 2016, Defendant Berkowitz, the Referee who had been appointed by Judge Berliner, sold the Premises at auction to US Bank. Prior to delivery of the Referee’s Deed, Plaintiff wrote to the Referee, asserting that the foreclosure and auction were illegal and invalid and threatening legal action if the Referee did not cease and desist from what he was directed to do by Judgment of the Court. By letter dated April 12, 2016, the Referee wrote to Judge Berliner seeking guidance as what to do. Judge Berliner’s response, if any, does not appear in the record. Finally, on May 18, 2016, Plaintiff, still pro se, commenced this action. It appears to be a hybrid action seeking a declaration that Plaintiff still owns the Premises as well as damages against the Defendants – the foreclosing and servicing banks and the attorneys who represented them. As best as the Court can decipher the Complaint, Plaintiff herein is now asserting that the Mortgage – which was reduced

to a Judgment in 2009 and which Judgment was affirmed in 2010 – was somehow satisfied or rendered invalid by Plaintiff Eaddy having “rescinded” it – without returning the money she borrowed – on March 17, 2015. And Plaintiff seeks damages from the Defendants for foreclosing a Mortgage which she asserts they never owned – the affirmed Judgment of Foreclosure and Sale notwithstanding.

Defendant Berkowitz first moved to dismiss the Complaint based on res judicata and that as a Referee, appointed by the Court to sell the Premises, he is immune from suit for doing what he was ordered to do. In response, Plaintiff moved to compel the attorney Defendants to present proof of their authority to represent US Bank in this and the Foreclosure Action.

In a Decision and Order dated August 8, 2016, this Court held:

“The motions are decided as follows: as this is, at least in part, a declaratory action, based on the documentary evidence, it is determined and declared that, upon delivery of the Referee’s deed to US Bank, it shall have title to the Premises pursuant to the foreclosure sale in the Foreclosure Action. All other claims in the Complaint are dismissed: the affirmed Judgment of Foreclosure and Sale in the Foreclosure Action is res judicata as to the validity of the Mortgage and its foreclosure and cannot be collaterally challenged here (*Dupps v Betancourt*, 121 AD3d 746, 747 [2d Dept 2014]; *Indymac Bank, F.S.B. v Vincoli*, 704, 706 [2d Dept 2013]). Moreover, Defendant Berkowitz can have no liability for following the affirmed Judgment of the Court. Plaintiff’s motion to compel is denied as moot. Moreover, based on the history of this and the Foreclosure Action as set forth above, on the Court’s own motion, the Plaintiff is hereby enjoined from making any further motions in this case or the Foreclosure Action and from commencing any further actions with respect to the Premises, other than appealing this Decision and Order and responding to other pending motions herein, without leave of this Court.”

All of the other Defendants have now moved to dismiss the Complaint as asserted against them based, inter alia, on res judicata. Those motions are now all granted.

This constitutes the decision and order of the Court.

Dated: New City, New York
September **B**, 2016



Hon. GERALD E. LOEHR
J.S.C.

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