

Wells Fargo Bank, N.A. v Escoto

2016 NY Slip Op 32769(U)

January 27, 2016

Supreme Court, Queens County

Docket Number: 17268/14

Judge: Valerie Brathwaite Nelson

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This opinion is uncorrected and not selected for official publication.

17268/2014 MEMO DECISION

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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 7

WELLS FARGO BANK, N.A.,	X	INDEX NO. 17268/14
Plaintiff,		MOTION CAL. NO. 149
-against-		MOTION SEQ. NO. 1
EMMANUEL ESCOTO, DANIELLE MOODIE, PEARL LOWE, CITY REGISTER FOR THE CITY OF NEW YORK,		MOTION DATE: 10/6/15
Defendants.	X	BY: BRATHWAITE NELSON, J.
		DATED: 1/27/16

Plaintiff commenced this action on November 26, 2014. This is an action to quiet title affecting the real property located at 79-37 Elks Road, Elmhurst, New York (the subject property). The plaintiff seeks to cancel and expunge a satisfaction of mortgage that was allegedly filed in error and to reinstate the mortgage and for an order declaring that the plaintiff's consolidated mortgages are a valid consolidated first lien on the subject premises.

Emanuel Escoto, Danielle Moodie and Pearl Lowe acquired the subject property on June 27, 2006. Emanuel Escoto, Danielle Moodie and Pearl Lowe then gave a mortgage to HomeTrust Mortgage Bankers, dated June 27, 1996 to secure a note in the principal amount of \$100,000 (the First Mortgage). HomeTrust Mortgage Bankers then assigned the mortgage on June 27, 1996 to Norwest Mortgage, Inc. This assignment was recorded on August 6, 1996. On July 9, 2001, Pearl Lowe conveyed her interest in the property to Emmanuel Escoto

and Danielle Moodie. Emmanuel Escoto and Danielle Moodie then gave a mortgage to Wells Fargo Home Mortgage, Inc., dated July 25, 2001 to secure a note in the principal amount of \$54,936.52 (the Second Mortgage). Emmanuel Escoto and Danielle Moodie and Wells Fargo Home Mortgage, Inc. agreed to consolidate the First Mortgage and the Second Mortgage to form a single consolidated debt in the principal sum of \$153,200, through a Consolidation, Extension, and Modification Agreement dated July 25, 2001. Wells Fargo Home Mortgage, Inc. then recorded a Satisfaction of Mortgage purporting to discharge the First Mortgage. The plaintiff alleges that this satisfaction of mortgage was recorded in error and at that time there was still an amount due and owing under the First Mortgage.

Wells Fargo, Bank, N.A. is the successor in interest to both Norwest Mortgage, Inc. and Wells Fargo Home Mortgage, Inc.

A party moving for summary judgment must show by admissible evidence that there are no material issues of fact in controversy and that they are entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). A mortgagee may have an erroneous discharge of mortgage, without concomitant satisfaction of the underlying mortgage debt, cancelled, and have the mortgage reinstated where there has not been detrimental reliance on the erroneous recording (*Deutsche Bank Trust Co., Ams. v Stathakis*, 90 AD3d 983 [2d Dept 2011]; *New York Community Bank v Vermonty*, 68

AD3d 1074 [2d Dept 2009]; *Citibank, N.A. v Kenney*, 17 AD3d 305 [2d Dept 2005]). In support of its motion, the plaintiff submitted the affidavit of Ralph L. Hall, a Vice President. The affidavit stated that satisfaction of mortgage was erroneously executed and sent for recording as a result of a clerical error that occurred in the course of the consolidation transaction, that the mortgage should never have been discharged as the mortgage had not been satisfied and that the balance due under the loan remained outstanding. The plaintiff further submitted evidence that the defendants have continued to make payments and have not changed their position in reliance on the filing of the satisfaction of mortgage. Therefore, the plaintiff has established its prima facie entitlement to cancel and vacate the satisfaction of mortgage (see *Mortgage Elec. Registration Sys., Inc. v Smith*, 111 AD3d 804 [2d Dept 2013]).

In opposition the defendants failed to raise any triable issue of fact. The defendants argue that the plaintiff lacks the standing to prosecute this action. Once a plaintiff's standing is placed in issue by the defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief (see *U.S. Bank N.A. v Sharif*, 89 AD3d 723 [2011]). A plaintiff establishes that it has standing where it demonstrates that it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note (*Bank of N.Y. v Silverberg*, 86 AD3d 274 [2011]; *Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95 [2011]).

An assignment of the mortgage without assignment of the underlying note or bond is a nullity (*Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636 [2011]). Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation (*U.S. Bank, N.A. v Collymore*, 68 AD3d 752 [2009]). Here, the plaintiff established its standing through the assignment of the note from HomeTrust Mortgage Bankers to Norwest Mortgage, Inc. Further, the plaintiff demonstrated that it is the successor in interest to Norwest Mortgage, Inc.

Accordingly, the motion by plaintiff is granted.

Settle Order.



VALERIE BRATHWAITE NELSON, J.S.C.

FILED

FEB 5 - 2016

COUNTY CLERK
QUEENS COUNTY