

HSBC Mtge. Corp. (USA) v Ramchandani
2016 NY Slip Op 33110(U)
July 25, 2016
Supreme Court, New York County
Docket Number: 115242/09
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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HSBC MORTGAGE CORPORATION (USA),

Plaintiff,

INDEX NO. 115242/09

-against-

PREM RAMCHANDANI, EFRAT GINOT,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. AS NOMINEE FOR STERLING
NATIONAL MORTGAGE CO INC., NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, STATE OF WEST
VIRGINIA, UNITED STATE OF AMERICA ACTING
THROUGH THE IRS, "JOHN DOE #1" TO "JOHN
DOE #10," the last 10 names being fictitious and
unknown to plaintiff, the persons or parties intended
being the persons or parties, if any, having or claiming
an interest in or lien upon the mortgaged premises
described in the verified complaint,

Defendant.

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JOAN A. MADDEN, J.:

FILED

AUG 02 2016

COUNTY CLERK'S OFFICE
NEW YORK

In this mortgage foreclosure action, plaintiff moves for an order pursuant to CPLR 5015(a)(1) vacating the court's order dated December 14, 2010, which granted the motion by defendant BAC Home Loan Servicing, L.P., as the real party interest, successor in interest and assignee of defendant Mortgage Electronic Registration Systems, Inc, as Nominee for Sterling National Mortgage Co., Inc. (hereinafter "BAC Home Loan"), for summary judgment dismissing the complaint, and directed that the Office of the City Register of the City of New York to reflect in its records that the mortgage made with HSBC Mortgage Corporation, in the principal amount

of \$500,000 on May 17, 2004 and recorded in the Office of the City Register on July 5, 2004 at CRFN 2004000410153, be deemed satisfied and of no force or effect. Plaintiff also moves to vacate the judgment entered on March 24, 2011, which dismissed the complaint in accordance with the court's order. Only defendant BAC Home Loan has appeared in opposition to the motion.

The following facts are not disputed unless otherwise noted. On or about May 17, 2004, defendants Prem Ramchandani and Efrat Ginot (hereinafter "defendants") executed to plaintiff a Note for a Home Equity Line of Credit in the sum of \$500,000 secured by a mortgage on the property located at 111 East 13th Street, New York, New York. On or about January 15, 2010, defendants defaulted, and on October 29, 2009, plaintiff commenced the instant action to foreclose on the mortgage. On or about January 8, 2010, plaintiff advised the court that it would be discontinuing the action as defendants Ramchandani and Ginto had reinstated the loan. On or about November 2009, the loan was reinstated, but defendants subsequently defaulted on January 15, 2010. According to plaintiff, its former counsel, Steven J. Baum, P.C., "under the erroneous assumption that the instant matter Index No. 11542/2009, was discontinued, inadvertently closed their file and restarted a new action on August 11, 2010 under Index Number 110725/10" (the "second action").

On or about November 1, 2010 defendant BAC Home Loan, moved for summary judgment dismissing the complaint on the ground that the subject mortgage was paid in full and requested an order deeming plaintiff's mortgage satisfied. Plaintiff acknowledges that its former counsel, Steven J. Baum, P.C., failed to submit opposition to the motion, and explains that its former counsel "inadvertently" believed that the file had been "marked closed." On December

14, 2010, this court issued an order granting BAC Home Loan's motion for summary judgment in the absence of opposition, and the complaint was dismissed and the mortgage deemed satisfied. On December 20, 2010, BAC Home Loan served plaintiff's counsel with notice of entry of the court's December 14, 2010 order. Thereafter, BAC Home Loan moved to dismiss the second action, Index No. 110725/10, based on this court's December 14, 2010 dismissal of the instant action. Although plaintiff's former counsel opposed that motion, on September 13, 2012, the Hon. Lucy Billings issued an order granting the motion and dismissing the second action based on the dismissal of the instant action. On the same day, September 13, 2012, Justice Billings issued a separate order denying plaintiff's motion to reargue the dismissal of the instant action "without prejudice to a future timely motion to reargue that motion for summary judgment in that action before Justice Madden, who granted the motion for summary judgment." On November 12, 2015, plaintiff made the instant motion to vacate the court's December 14, 2010 order of dismissal and to restore this matter to active status.

In support of the motion, plaintiff argues that if it is "forever" barred from foreclosing on the instant note and mortgage, the borrowers/mortgagors, defendants Ramchandani and Ginot, will receive a "windfall" at plaintiff's expense. As noted above, on or about May 17, 2004, Ramchandani and Ginot executed to plaintiff a Note for a Home Equity Line of Credit in the sum of \$500,000 secured by a mortgage on the property located at 111 East 13th Street, New York, New York. In 2005, defendant Sterling National Mortgage Co, Inc. gave Ramchandani and Ginot a loan for \$3 million secured by a mortgage on the same property as plaintiff's home equity line of credit. It is undisputed that as part of that \$3 million loan, Sterling gave plaintiff a check in the amount of \$504,233.11 to pay off the outstanding balance on the line of credit.

According to plaintiff, despite that payment, the line of credit remained open to use and Ramchandani and Ginot did in fact continue to borrow new amounts, and as of November 2015, they had an outstanding balance of \$426,119.56. For that reason, plaintiff is still seeking to foreclose on the property securing the home equity line of credit. Plaintiff asserts that at no time was a request made by defendant borrowers to close the line of credit. However, at oral argument, counsel advised that a home equity line of credit is ordinarily recorded as a lien on the property up to the maximum amount of the credit available, which in this instance was \$500,000. Counsel acknowledged that the custom and practice in the industry would have been for plaintiff to file a satisfaction of lien after Sterling paid the \$504,233.11 outstanding balance on the lien in 2005. Counsel for BAC Home Loan explained that if the dismissal of this action is vacated and plaintiff's action to foreclose on its mortgage is restored, Sterling's mortgage from 2005 may be subordinate to plaintiff's mortgage originating in 2004, which will result in severely prejudicing BAC Home Loan as successor to Sterling.

To vacate the dismissal of an action pursuant to CPLR 5015(a)(1), plaintiff must establish both a reasonable excuse for the default and a potentially meritorious cause of action, and must move to vacate the order within one year of service of the order with notice of entry. See CPLR 5015(a)(1); Eugene DiLorenzo, Inc v. A.C. Dutton Lumber Co, Inc, 67 NY2d 138 (1986); Lee v. Zhang, 133 AD3d 651 (2nd Dept 2015); Pina v. Jobar USA, LLC, 104 AD3d 544 (1st Dept 2013); Taveras v. Philibert, 107 AD3d 492 (1st Dept 2013); Caba v. Rai, 63 AD3d 578 (1st Dept 2009). In determining whether a party has demonstrated a reasonable excuse for its default, "several relevant factors should be taken into consideration, including the length of the delay, prejudice to the opposing party and the strong public policy in this State favoring the resolution of matters on

the merits.” Mejia v. Ramos, 113 AD3d 429 (1st Dept 2014).

Here, plaintiff’s motion is untimely. Nearly five years have elapsed between December 2010, when plaintiff received notice that this court had granted BAC Home Loan’s unopposed motion for summary judgment and dismissed the complaint, and November 2015, when plaintiff finally made the instant motion to vacate the dismissal and restore the matter to the court’s active calendar. Furthermore, even though in September 2012, Justice Billings explicitly denied plaintiff’s motion to reargue the dismissal of the instant action without prejudice to a motion to reargue before this court, plaintiff never sought such relief, and instead waited another three years before making the instant motion to vacate the dismissal. In view of such extensive delays, plaintiff’s motion must be denied as untimely. See Lee v. Zhang, supra; Pina v. Jobar USA, LLC, Taveras v. Philibert, supra.

Where as here plaintiff’s CPLR 5015(a)(1) motion is untimely, the court need not reach the issues of reasonable excuse and a meritorious cause of action. See id.

Accordingly, it is

ORDERED that plaintiff’s motion is denied in its entirety.

FILED

AUG 02 2016

DATED: July 25, 2016

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NEW YORK



J.S.C.