

Deutsche Bank Trust Co. v Stathakis

2017 NY Slip Op 32492(U)

November 15, 2017

Supreme Court, New York County

Docket Number: 20415/04

Judge: Janice A. Taylor

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

-----x
DEUTSCHE BANK TRUST CO. AMERICAS
f/k/a BANKERS TRUST COMPANY, AS TRUSTEE,

Plaintiff(s), Index No.:20415/04

Motion Date:08/17/10

- against -

Motion Cal. No.: 10
Motion Seq. No: 10

LARRY STATHAKIS, CONSOLIDATED EDISON CO
OF NEW YORK, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY STATE DEPARTMENT OF TAXATION AND
FINANCE, WELLS FARGO BANK, NA. SUCCESSOR
BY MERGER TO WELLS FARGO BANK WEST, GEO
GRAPSA, JACKELYN SUAREZ, JOAN LEON, JOSE
GRISELES, MARICELLA MERCHEN, VICKY GLENIS ,

Defendant(s).

-----x

The following papers numbered 1 to 15 read on this motion by the non-party movant Koren Dafni for an order substituting her for plaintiff in this action and amending the caption to reflect this substitution, vacating this court's order, dated October 2, 2007, which discontinued this action, cancelling and expunging the Satisfaction of Mortgage dated February 13, 2007 and recorded on March 1, 2007 and directing the Queens County Clerk to amend and reform its land records to reflect the cancellation of the Satisfaction of Mortgage; and a cross-motion by defendant Larry Stathakis for an order dismissing this action.

	<u>Papers</u> <u>Numbered</u>
Order to Show Cause-Affirmation-Exhibits-Service.....	1 - 4
Notice of Cross-Motion-Afffirmation-Exhibits-Service...	5 - 8
Affirmation in Opposition-Service.....	9 - 10
Affirmation in Opposition-Exhibits-Service.....	11 - 13
Reply Affirmation-Service.....	14 - 15

Upon the foregoing papers it is **ORDERED** that the motion and

cross-motion are considered together and decided as follows:

This is an action for foreclosure of the property located at 211-15 45th Drive, Bayside, New York 11361. With this application, movant seeks an order substituting the movant for plaintiff in this action and amending the caption to reflect this substitution, vacating this court's order, dated October 2, 2007, which discontinued this action, cancelling and expunging the Satisfaction of Mortgage dated February 13, 2007 and recorded on March 1, 2007 and directing the Queens County Clerk to amend and reform its land records to reflect the cancellation of the Satisfaction of Mortgage.

Movant Koren Dafni ("Dafni") alleges that this mortgage between defendant Larry Stathakis ("Stathakis") and mortgagor Crossland Savings Bank was assigned, on or about August 2001, to plaintiff Deutsche Bank Trust Cp., Americas f/k/a Bankers Trust Company, as Trustee ("Deutsche Bank") The mortgage was subsequently assigned from plaintiff to non-party Residential Funding Company, LLC. Finally, on or about November 5, 2007, the subject mortgage was assigned from non-party Residential Funding Company, LLC to movant Koren Dafni. Accordingly, those portions of Dafni's motion which seek an order substituting him/her as plaintiff in this action and amending the caption to reflect this change are granted. The amended caption will read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----x
KOREN DAFNI,

Index No.:20415-04

Plaintiff(s),

- against -

LARRY STATHAKIS, CONSOLIDATED EDISON CO
OF NEW YORK, NEW YORK CITY TRANSIT
ADJUDICATION BUREAU, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY STATE DEPARTMENT OF TAXATION AND
FINANCE, WELLS FARGO BANK, NA. SUCCESSOR
BY MERGER TO WELLS FARGO BANK WEST, GEO
GRAPSA, JACKELYN SUAREZ, JOAN LEON, JOSE
GRISELES, MARICELLA MERCHEN, VICKY GLENIS ,

Defendant(s).

-----x

Dafni also seeks an order vacating this court's order, dated

October 2, 2007, which discontinued this action. However, a review of the document, dated October 2, 2007 and filed with the Queens County Clerk, reveals that the order of discontinuance was withdrawn and was not signed by this court. Thus, no further judicial intervention is required on the issue of the order of discontinuance.

Those portions of Dafni's application which seeks an order cancelling and expunging the Satisfaction of Mortgage dated February 13, 2007 and recorded on March 1, 2007 and directing the Queens County Clerk to amend and reform its land records to reflect the cancellation of the Satisfaction of Mortgage is granted. Dafni has submitted sufficient proof to this court that the Satisfaction of Mortgage was erroneously filed. Former plaintiff Deutsche Bank submits an affirmation confirming that the Satisfaction of Mortgage was filed erroneously. It is well-settled that if it appears that a discharge was filed in error, a court of equity may cancel and reinstate the mortgage to its prior position (See, *Federal Deposit Insurance Corporation v. Five Star Management, Inc.*, 285 Ad2d 15 [1st Dept. 1999]). Accordingly, Dafni's motion is granted to the extent that the New York City Department of Finance, Queens County Register, the custodian of mortgages is directed to amend and reform its records. It is hereby,

ORDERED, that the Satisfaction of Mortgage, dated February 13, 2007 and recorded on March 1, 2007 is cancelled and expunged. It is further,

ORDERED, that the New York City Department of Finance, Queens County Register is directed to amend its records to reflect the cancellation of the erroneously filed Satisfaction as if the Satisfaction had never been recorded and restoring the plaintiff Koren Dafni to all rights arising out of the subject mortgage. It is further,

ORDERED, that the stay enacted by the "So-Ordered" stipulation dated June 1, 2010 remains in effect to the extent that defendant Larry Stathakis is prevented from selling, hypothecating, transferring, mortgaging, disposing or taking any action as to the subject property until after the Queens County Clerk has amended its records as directed herein.

The cross-motion of defendant Larry Stathakis is denied by this court. Defendant Stathakis has not served an answer to the complaint, nor has he requested an extension of his time to answer. Thus, he has no standing to make the instant application.

Dated: November 15, 2010

JANICE A. TAYLOR, J.S.C.