

Wells Fargo Bank, N.A. v Yapkowitz

2018 NY Slip Op 34041(U)

July 23, 2018

Supreme Court, Rockland County

Docket Number: 033182/2013

Judge: Paul I. Marx

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND
HON. PAUL I. MARX, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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WELLS FARGO BANK, N.A., AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF THE MERRILL
LYNCH MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-HE3,

Plaintiff,

-against-

Index No. 033182/2013

FRED J. YAPKOWITZ A/K/A FRED YAPKOWITZ;
ELAINE M. YAPKOWITZ A/K/A ELAINE
YAPKOWITZ; ARGENT MORTGAGE COMPANY,
LLC; METRO PORTFOLIOS, INC.; LVNV FUNDING,
LLC A/P/O CITIBANK; CITIBANK (SOUTH
DAKOTA), N.A.; AMERICAN EXPRESS
CENTURION BANK; AMERICAN EXPRESS
CENTURION BANK; MIDLAND FUNDING, LLC;
TARGET NATIONAL BANK; DISCOVER BANK;
"JOHN DOE #1-#5" and "JANE DOE #1-#5" said
names being fictitious, it being the intention of
Plaintiff to designate any and all occupants, tenants,
persons or corporations, if any, having or claiming an
interest in or lien upon the premises being foreclosed
herein,

DECISION ON POST
TRIAL MOTION

Defendants.

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The following papers numbered 1 to 5 were read in connection with Plaintiff's motion pursuant to CPLR §4404(b), seeking to set aside the portion of the Decision After Bench Trial Submitted on Paper entered and filed on May 22, 2018, which found that Plaintiff failed to comply with the service requirements of RPAPL § 1304, and if granted, ordering ancillary relief:

Notice of Post-Trial Motion To Set Aside Decision Pursuant to CPLR 4404(b)/Affirmation of Laurence P. Chirch, Esq. in Support/Exhibits 1/Proposed Order 1-3
Affirmation of Isabel L. Becker, Esq. in Opposition/Exhibits A-B4
Reply Affirmation of Laurence P. Chirch, Esq.5

Upon the foregoing papers, it is hereby ORDERED that Plaintiff's motion is denied for the reasons which follow.

“Pursuant to CPLR 4404(b), after a nonjury trial, a court may, on the motion of a party or its own motion, set aside its decision and make new findings of fact or conclusions of law.” *BNG Properties, LLC v Sanborn*, 153 AD3d 1221, 1221 [2nd Dept 2017] (citing *Trimarco v Data Treasury Corp.*, 146 AD3d 1008, 1009 [2nd Dept 2017]; *Paterno v Strimling*, 107 AD3d 1233, 1234 [3rd Dept 2013]). “In the case of a nonjury trial, a motion pursuant to CPLR 4404 is subject to the same standard of review as findings in a nonjury trial generally.” *Trimarco, supra* at 1009 (citing *Paterno, supra* at 1235). As explained in *Paterno, supra* at 1234, “a motion under that statute is not limited to situations where new evidence is discovered (*see* CPLR 4404[b]).” The motion may assert that the trial court “misapprehended their theory of liability”. Thus, a CPLR §4404(b) motion may encompass any basis for setting aside the court’s decision and the circumstances for entertaining it are within the trial court’s broad discretion motion. *Matter of Ramsey H. (Benjamin K.)*, 99 AD3d 1040, 1043 [3rd Dept 2012].

In the instant case, Plaintiff claims that this Court misinterpreted the language of RPAPL § 1304 and overlooked Plaintiff’s proof of proper mailing of the required notices. It is clear from Plaintiff’s papers that its motion is a complete rehash of the arguments made in its trial brief, and that its resources would have been better spent on prosecuting an appeal. It is abundantly clear from this Court’s Decision After Bench Trial that Plaintiff’s arguments were already considered. Plaintiff’s motion is similar to a motion to reargue pursuant to CPLR §2221. Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. *Haque v Daddazio*, 84 AD3d 940, 942 [2nd Dept 2011] (quoting *Mazinov v Rella*, 79 AD3d 979, 980 [2nd Dept 2010]). Rather, it is designed to allow a party to call to a court’s attention errors of fact or law committed by the court.

The Court does not share Plaintiff’s view that it misconstrued the law or the facts in rendering its Decision After Bench Trial. Accordingly, the motion is denied. The Judgment will be signed simultaneously herewith.

Dated: July 23, 2018
New City, New York

ENTER


HON. PAUL I. MARX, J.S.C.