

Caesar v HSBC Bank USA, N.A.

2018 NY Slip Op 34253(U)

January 31, 2018

Supreme Court, Westchester County

Docket Number: Index No. 61658/2017

Judge: Sam D. Walker

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

FRANCIS M. CAESAR and LISA N. CAESAR

Plaintiff,

-against-

HSBC BANK USA, NATIONAL ASSOCIATION, SOLELY AS TRUSTEE OF THE J.P. MORGAN MORTGAGE TRUST 2007-A2; and CITIBANK NA,

Defendants.

DECISION & ORDER

Index No. 61658/2017

Motion Sequence # ! & 2

The following papers were considered on Defendants motion seeking an order

of dismissal and other relief:

Table listing legal documents and page numbers: Notice of Motion (# 1)/Affirmation/Affidavits/Exhibits 1-11 (1-14), Memorandum of Law in Support (15), Notice of Motion (# 2)/Affirmation/Affidavit/Exhibits A-E (16-23), etc.

BACKGROUND

On January 22, 2007, Plaintiffs obtained a loan from PHH Mortgage Corp., which was secured by a mortgage on the property located at 19 Hayrake Lane, Chappaqua,

New York. Citibank is a subordinate mortgagee on the Property by virtue of a mortgage securing a home equity loan that was recorded on November 10, 2008.

On or about March 17, 2011, a foreclosure action was commenced against Plaintiffs in Westchester County Supreme Court in connection with the Mortgage. The Foreclosure Action incorrectly identified US Bank NA, as trustee of the JPMorgan Alternative Loan Trust 2007-A2 ("US Bank") as the plaintiff due to an error in the assignment of mortgage. The holder of the note was, and is, HSBC Bank USA NA, as Trustee of the JP Mortgage Trust 2007-A2 ("HSBC Bank"). On May 13, 2016, the Court (Lefkowitz, J.) ordered that HSBC be substituted as plaintiff in the Foreclosure Action.

On or about June 8, 2015, Plaintiffs commenced an action in Westchester County Supreme Court to quiet title to the Property. The first quiet title action sought to discharge the Mortgage pursuant to RPAPL § 1501 on the grounds that US Bank lacked standing to foreclose on the Mortgage and that HSBC Bank was barred from doing so due to the applicable statute of limitations. Citibank was named a defendant in the first quiet title action solely by virtue of its subordinate mortgage. The Amended Complaint specifically noted that Citibank was a necessary party, but did not assert any adverse claims against it.

On or about November 22, 2016, Citibank moved to dismiss the first quiet title action pursuant to CPLR 3211 and 3212 on the grounds that the Amended Complaint did not seek any relief against Citibank, and that Citibank was not a necessary party to the litigation. On February 10, 2017, the Court (Lefkowitz, J.) granted Citibank's motion, stating that Citibank NA established that the complaint failed to seek relief against it, and that Citibank was not a necessary party to grant relief to the remaining parties.

US Bank and HSBC Trust also moved for summary judgment dismissing the first quiet title action. On February 10, 2017, the Court (Lefkowitz, J.) granted their motion. The Court specifically found that US Bank never had an interest in the Property and, more importantly, held: "...the foreclosure action, whether measured by the filing of the original foreclosure complaint on March 17, 2011, or by the amendment of the foreclosure complaint on May 13, 2016, was commenced within six years of accrual." Thus, the Court found that the foreclosure action, and HSBC Bank's right to foreclose on the Property, was not barred by the applicable statute of limitations.

Despite the foregoing, on July 10, 2017, Plaintiffs filed a motion for summary judgment in the foreclosure action on the grounds that US Bank lacked standing and HSBC Trust's right to foreclose on the Property was barred by the failure to serve a complaint, even though the Court amended the complaint in the foreclosure action and substituted HSBC Trust as plaintiff. This Court by Decision and Order dated January 19, 2018, found that HSBC Trust had standing and that Plaintiff established a prima facie case for foreclosure against the Caesars, the plaintiffs herein.

Prior to this Court issuing its Decision and Order, Plaintiffs commenced another action seeking the same relief as in the first quiet title action and in its summary judgment motion in the foreclosure action, naming Citibank again as a necessary party because of its subordinate mortgage on the Property.

The Complaint asserts no claims against Citibank, and only mentions Citibank once: Citibank claims that it has been named a party to this action pursuant to RPAPL §§ 1505(5) and 1511 because Defendant Citibank has a mortgage recorded on November 10, 2008 with the Westchester County Clerk's Office, which mortgage

purports to encumber the Property. Citibank contends that, as the Court already found in the first quiet title action, this action should be dismissed against Citibank with prejudice.

Defendant HSBC Trust also moved to dismiss the Complaint, and for sanctions as well as for injunctive relief pursuant to CPLR 3211(a)(5) and (7), and 22 NYCRR § 130-1.1.

DISCUSSION

CITIBANK

There are no claims asserted against Citibank in Plaintiff's Complaint other than Citibank being a second mortgagee. CPLR 3017(b) provides that, in an action for a declaratory judgment, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested and, if further or consequential relief is claimed, "the nature and extent of any such relief which is claimed." *American Hydrocarbon Corp. v. Selby*, 47 Misc.2d 777, 263 N.Y.S.2d 280 (Sup Ct., New York Cty. 1965). Here Plaintiffs in their complaint failed to set forth any allegation against Citibank or whether or not they are objecting to Citibank's interest.

Furthermore, in the first quiet title action, Plaintiffs moved for summary judgment seeking to invalidate Citibank's interest in the Property. The Court denied Plaintiffs' motion stating that "the motion seeks relief not demanded in the complaint." Moreover, Citibank is not a necessary party in these proceedings. Necessary parties are "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action" (CPLR 1001 [a]), *Sorbello v. Birchez Associates, LLC*, 61 A.D.3d 1225, 876

N.Y.S.2d 789 (3d Dept 2009). Here, if Plaintiffs do not prevail on their claims asserted in the Complaint, the *status quo* will remain. If Plaintiffs prevail Citibank's mortgage will remain in place and move to first position. Therefore, as to Plaintiffs' claim to cancel the HSBC Bank's First Mortgage Citibank is not a necessary party.

Plaintiffs' request to convert Citibank's motion to dismiss into one for summary judgment should also be denied. Since there has been no discovery or evidence presented as to Citibank's interest in the property, summary judgment would be premature as no material issue of fact for trial has been established. As the Court stated in the first quiet title action, without having engaged in discovery, triable issues of fact exist.

HSBC TRUST'S

Plaintiffs' arguments fail for several reasons. This Court by Decision and Order dated January 19, 2018, in the accompanying action brought by HSBC Bank to foreclose the first mortgage under Index No. 70104/2015 found that HSBC Trust "has made out a prima facie case establishing its entitlement to judgment of foreclosure and sale as a matter of law." This Decision renders moots many of the arguments raised by Plaintiffs in this action.

Further, the arguments raised by Plaintiffs in this action have previously and repeatedly been rejected by the Court in the foreclosure action and the prior quiet title action. The Court in its January 19, 2018 Decision and Order recognized that HSBC Trust was the plaintiff since the commencement of the foreclosure action, thereby eviscerating the basis of Plaintiffs' statute of limitations and "substitution" argument.

Additionally, unlike Plaintiffs' arguments to the contrary, the prior quiet title action was not dismissed as "unripe" but rather, summary judgment was granted to HSBC Trust. Consequently, the doctrines of res judicata and collateral estoppel apply.

Moreover, the records relied upon by Adam P. Hartley in his Affirmation are all part of the Court's record and are subject to judicial notice. In fact, the Court's Decision and Order of January 19, 2018 in favor of HSBC Trust, is dispositive of Plaintiff's claim.

Therefore, it is

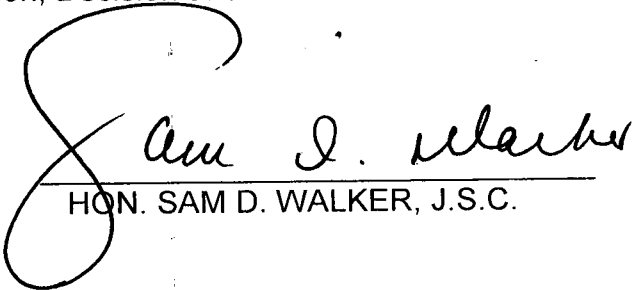
ORDERED, that Plaintiffs' Complaint against Citibank is dismissed with prejudice; and it is further

ORDERED, Plaintiff s'Complaint against HSBC Trust is dismissed; and it is further

ORDERED, that Defendant, HSBC Trust's application for sanctions and for injunctive relief is GRANTED to the extent that Plaintiffs are barred from commencing any further action in this matter without leave of the Court.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
January 31, 2018


HON. SAM D. WALKER, J.S.C.