

Corning Fed. Credit Union v Georgilis

2018 NY Slip Op 34595(U)

September 14, 2018

Supreme Court, Queens County

Docket Number: Index No. 710044/16

Judge: Timothy J. Dufficy

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X
CORNING FEDERAL CREDIT UNION,

Plaintiff,

-against-

Index No.: 710044/16

Motion Date: 8/14/18

Mot. Seq. Nos.: 5

**STEVEN GEORGILIS, DIBENEDETTO
PROPERTIES, INC., JASON GEORGILIS,
and JOHN DOE 1 and 2, the names of the
"John Doe" defendants being Fictitious and
Unknown to Plaintiff, but intended to be the
Parties, if any, Having or Claiming an Interest
in the Real Property Described Herein,**

Defendants,

FILED
SEP 24 2018
COUNTY CLERK
QUEENS COUNTY

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The following papers numbered E123 to E141 were read on this application by nonparty, BOKF, NA (BOKF), for leave to intervene, pursuant to CPLR 1012, and for a stay, pursuant to CPLR 2201.

| | |
|--|------------------------|
| | PAPERS . |
| | <u>NUMBERED</u> |
| Order to Show Cause - Affirmation - Exhibits | EF123-139 |
| Answering Affirmation - Exhibit | EF140-141 |
| Affidavit of Service..... | |

Upon the foregoing papers, it is ordered that this application seeking intervention, pursuant to CPLR 1012, and a stay, pursuant to CPLR 2201, is determined as follows:

In July 2010, non-party, American Made Tire, Inc. (AMT) entered into a Mortgage Term Promissory Note (Mortgage Note) and Commercial Term Loan Note and Security Agreement (Commercial Note) with plaintiff. Defendant, Steven Georgilis, guaranteed payment of the notes. Both notes were breached by AMT and Georgilis, resulting in an April, 2017 judgment, in Chemung County, New York, in favor of plaintiff, and against Georgilis, in an amount in excess of \$400,000.00, which judgment has not been satisfied.

Prior to the commencement of the Chemung County action in May, 2013, Georgilis

[*1]

owned a one-half interest in the property, located at 37-22 59th Street, Woodside, New York. In December, 2013, Georgilis transferred his one-half interest in the Woodside property to defendant DiBenedetto Properties (DiBenedetto) for \$30,000.00. In July, 2014, DiBenedetto transferred its one-half share of the Woodside property to Jason Georgilis for \$200,000.00. It is alleged that, in 2017, the appraised market value of the Woodside property was \$990,000.00.

Plaintiff's instant action seeks to overturn, set aside, and have declared null and void, the transfer of the Woodside property from Georgilis to DiBenedetto, allegedly for lack of fair consideration, to satisfy the outstanding judgment it holds against Georgilis. Plaintiff moved for leave to amend its pleadings to add Quontic Bank, as a party-defendant, which this Court granted on September 10, 2018. At the same time, the plaintiff moved to vacate the transfer of the property from Georgilis to DiBenedetto, which motion was denied as premature, on the same day, due to the aforementioned decision granting leave to add Quontic Bank as a party-defendant, and the right of the proposed new necessary defendant to be heard on such issue.

Here, nonparty, BOKF, moves, by order to show cause, for leave to intervene in the instant action, alleging intervention as of right, pursuant to CPLR 1012 (a) (2) and (3), alleging that it is the assignee of the mortgage between defendant Jason Georgilis, as mortgagor, and Quontic Bank, as mortgagee, and, therefore, BOKF may be adversely affected by any judgment in this action. For intervention in an action as of right, under CPLR 1012 (a), a person must demonstrate, among other things, "the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment" or "affected adversely by the judgment." Additionally, under CPLR 2013, the court may, in its discretion, permit intervention "when the person's claim or defense and the main action have a common question of law or fact." However, under the liberal rules of construction, such distinctions between intervention as of right and discretionary intervention have been rendered insignificant, and intervention should be allowed where the proposed intervenor has shown a substantial interest in the outcome of the proceeding (*see Trent v Jackson*, 129 AD3d 1062 [2d Dept 2015]; *Berkowski v Board of Trustees of Inc. Vil. of Southampton*, 67 AD3d 840 [2d Dept 2009]).

BOKF has demonstrated its requisite "real and substantial interest in the outcome of the litigation" (*Global Team Vernon, LLC v Vernon Realty Holding, LLC*, 93 AD3d 819, 820 [2d Dept 2012]; *see Ramm v Allen*, 118 AD3d 708 [2d Dept 2014]; *Wells Fargo Bank, N.A.*

[*2]

v McLean, 70 AD3d 676 [2d Dept 2010]), by producing the assignment of mortgage to the subject property, and demonstrating that its interest in the property may be adversely affected by the judgment sought (*see Brown v Brown*, 136 AD3d 852 [2d Dept 2016]). Movant also established, by reason of the lack of opposition to this application and the motions by plaintiff, that the representation of its interest by the parties to the action has been inadequate (*see ABM Resources Corp. v Doraben, Inc.*, 89 AD3d 773 [2d Dept 2011]). Further, movant's submissions include a stipulation, signed by counsel both for plaintiff and for Jason Georgilis, agreeing to forgo opposition to this branch of BOKF's application. Consequently, the branch of BOKF's order to show cause seeking intervention is granted.

The branch of BOKF's application seeking a stay of plaintiff's motion to vacate the transfers of the subject property, is denied as moot. Such motion has already been decided by the Court, as aforementioned, and does not, at this time, present an open legal question.

Accordingly, pursuant to CPLR 1012 (a) (2) and (3), it is

ORDERED, that this application by nonparty, BOKF, for an order permitting it to intervene in this action as an interested party, is granted, and the caption shall be amended to reflect "BOKF, NA" as intervenor-defendant, and it is further

ORDERED, that the caption is amended as follows:

**SUPREME COURT STATE OF NEW YORK
COUNTY OF QUEENS**

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CORNING FEDERAL CREDIT UNION,
Plaintiff,

-against-

Index No.: 710044/16

**STEVEN GEORGILIS, DIBENEDETTO
PROPERTIES, INC., JASON GEORGILIS,
QUONTIC BANK and JOHN DOE 1 and 2,
the Names of the "John Doe" defendants being
Fictitious and Unknown to Plaintiff, but intended
to be the Parties, if any, Having or Claiming an
Interest in the Real Property Described Herein,**

Defendants,

-and-

BOKF, NA,

Intervenor-Defendant.

-----X
; and it is further

[*3]

ORDERED, the proposed verified answer, attached as Exhibit "G" to the order to show cause, is deemed served and the plaintiff is directed to serve a response, if any, within twenty (20) days after receipt of this Order with Notice of Entry, and it is further

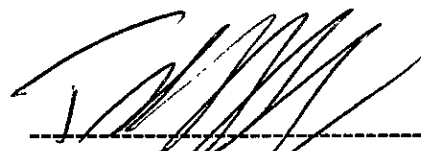
ORDERED, that, if not already done, the plaintiff shall provide copies of all discovery exchanged to date, as delineated in the aforementioned stipulation, dated June 23, 2018 (Exhibit "H"), and it is further

ORDERED, that any applications not specifically addressed are denied; and it is further

ORDERED, that, within thirty (30) days of entry, counsel for intervenor shall serve a copy of this Order, with Notice of Entry, upon all parties to the action, including joined defendant, Quontic Bank, and upon the clerk of the court, who is directed to amend the court records to reflect the change in caption.

The forgoing constitutes the decision and order of this Court.

Dated: September 14, 2018



TIMOTHY J. BUFFICY, J.S.C.

FILED
SEP 24 2018
COUNTY CLERK
QUEENS COUNTY